

The complaint

B complains that AMERICAN INTERNATIONAL GROUP UK LIMITED ('AIG') unfairly declined a claim it made on its retail combined insurance policy, which it then voided for the policy year claimed on as well as two previous years. It's also unhappy with the service it received from B generally and the way in which its claim was dealt with.

B wants AIG to accept its claim and reinstate its policies.

B's complaint is brought by Mr G but unless referencing Mr G personally, I shall refer to all submissions made by him as B's own for ease of reference.

What happened

The details of this complaint are well known to both parties, so I won't repeat it again here. Instead, I'll focus on giving my reasons for my decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I agree with the conclusions reached by the investigator. Before I explain why I wish to acknowledge the detailed nature of the submissions made by the parties but particularly B in this complaint. Whilst I have read everything they've said, I won't be addressing each and every point. That's not intended to be disrespectful. Rather it represents the informal nature of the Financial Ombudsman Service. Instead, I'll focus on the crux of B's complaint, namely whether AIG treated it fairly.

Misrepresentation

It's not in dispute that B didn't provide the correct information about the value of its stock at its 2023 renewal. Rather it allowed the policy to auto renew on the information previously provided when it took out the policy on a rolling basis two years before. In particular the value of its stock B agreed was correct was declared as £20,000 but when it came to claim on the policy, the true value was declared to be £70,000 to £80,000.

When the policy was renewed, the relevant law was the Insurance Act 2015, under which there's a duty to make a "fair presentation" of the risk. This duty applied at each renewal of the policy. When buying or renewing the policy the party seeking insurance – in this case, B – was required to disclose every circumstance it knew, or should have known, which would influence a prudent insurer in deciding whether to underwrite a risk or what premium to charge. In addition to the legal position, the documents provided to B at renewal made clear how important it was to provide relevant information. B accepts that the information it provided was inaccurate but rather that it allowed the policy to auto renew. And it was specifically told that the cover provided was based on the information it gave so that it would need to tell AIG if anything had changed. B was also warned that if it needed to make a claim and any of the details it had given were incorrect, it might not be covered.

Taking into account B's legal duty to disclose every material circumstance they knew or

ought to have known about and the warnings about not disclosing information, the need to say if anything was incorrect, and the wider legal duty to disclose anything that would influence the insurer's decision about offering cover, my judgment is that B knew (or should have known) that AIG would have wanted to be told about the correct value of its stock. So, this should have been disclosed. By not telling AIG about this, B misrepresented the risk and failed to meet its legal duty, namely the duty make a "fair presentation" of the risk.

If the insured party fails to disclose this kind of circumstance, and the insurer can show it would have done something differently this will amount to a qualifying breach under the Act. If the qualifying breach is considered to be careless and the insurer would still have offered cover if the correct information had been given, then the correct remedy is for the insurer to settle the claim proportionality. But if the breach is considered to be deliberate or reckless and they would still have offered cover if the correct information had been given, then an insurer is not obliged to do what it would have done and settle the claim. Rather it's entitled to void it and it doesn't have to refund the premium to the insured.

I've considered whether AIG have shown that the breach was a qualifying breach. In order for this to happen they would need to demonstrate they would have done something differently. In this case AIG have provided comments from their underwriters to show B would not have been offered cover had the true value of its stock been known when compared to the type of intruder alarm system B declared to have in place. In this case AIG's underwriter has provided information to support that the level of alarm B had was inadequate for it to be prepared to offer cover for stock worth £70,000 to £80,000 in B's postcode and that a Level 3 alarm system would have been the minimum type of system required for this to happen. AIG's underwriter has said that as B selected 'other' when determining the type of alarm system it had, this would be equivalent to it having had no alarm at all. So, I'm satisfied that there was a qualifying breach in this case.

The issue then remains as to whether the breach itself was deliberate or reckless. B says its failure to disclose the information asked of it accurately was due to it allowing the policy to auto renew, which suggests that this was an oversight on its part. AIG has offered the return of the policy premium for the policy in 2023, which suggests to me that it considers the breach to have not been deliberate or reckless. Having considered this carefully, I agree that the breach was not deliberate or reckless but rather down to a careless mistake by B. Because of this the correct remedy is for B to return the policy premium to it.

B has however also voided the two previous policy years for the same reasons and I don't agree this is fair. B has not adduced any evidence to support that the value of B's stock during those policy years was worth more than it disclosed, which B has since accepted in response to the investigator's view. Because of this I have set out what B should do to put things right in respect of this below.

Handling of the claim

AIG have accepted a number of failings in the way in which they handled B's claim, namely.

- There was an initial delay in a loss adjuster being appointed as well as DisasterCare to collect and clean soiled items and that due to the lack of clarity about whether this was a claim that was covered DisasterCare did not take any items away for review.
- B needed to chase the loss adjuster for updates about damaged stock on two occasions.
- B didn't receive a formal response to the complaints it raised from October 2023 until May 2024, five months after it referred its complaint to the Financial Ombudsman Service.

AIG apologised for the foregoing and offered B £500 in compensation for this.

I can see that AIG didn't accept some of the points Mr G complained about- namely that the loss adjuster broke into and trespassed at his home address, that B was treated differently because it was a charity rather than a private enterprise, that unwarranted investigations were made into Mr G that violated his human rights and that the loss adjuster for AIG said he would make sure B's claim was not covered.

I've thought about the nature of the enquiries made by AIG's loss adjuster. And whilst I agree that an insurer is entitled to make reasonable enquiries to help validate a claim and determine what should be paid, I'm not sure that AIG have necessarily provided a sound basis for which some of those enquiries that were made. I say so because those enquiries seemed to be directed at Mr G personally as a Trustee for B but not to anyone else involved in the day to day running of B. From what I've seen Mr G has said that he attended B's premises on a voluntary basis twice a week but had a paid job elsewhere. The shop was otherwise staffed by other volunteers. And rather than investigating B as an entity, the loss adjuster seemed to focus on Mr G on a standalone basis. I find this peculiar in the circumstances and am uncertain of the basis for this, particularly as B is a registered charity rather than the sole proprietorship of Mr G.

Nevertheless, as the investigator said, this is B's complaint and not Mr G's, so I can't consider any wrongdoing against him personally. But I think the way in which the investigations were focussed haven't been adequately explained by AIG so I can't say that the enquiries made were reasonable. Because of this I think AIG should pay B compensation for this.

Taking into account the matters AIG have acknowledged, I think the sum they've offered is adequate compensation for both those and the fact that they caused B inconvenience in the way they focussed their investigations. I appreciate Mr G might be disappointed by this, but this broadly accords with our award scales for inconvenience awards against entities like B as opposed to a private individual.

Finally, I know B has made submissions about what AIG should have done in terms of the stock it should have arranged to be taken away and which still remain at the premises but because my finding is that AIG didn't have to cover the claim- and were entitled to void the policy- I don't think AIG need to do anymore here. For the same reasons AIG didn't need to consider B's claim for business interruption which also formed part of the cover that was correctly voided.

Putting things right

To put things right, AIG should:

- Reinststate B's policy for the 2021 and 2022 policy years.
- Refund B's policy premium paid for the 2023 policy.
- Remove records of cancellation for the policy years 2021 and 2022 from any internal and external databases.
- Issue B with a letter confirming that the 2021 and 2022 were cancelled in error.
- Pay B £500 in compensation if they haven't already done so.

My final decision

I uphold B's complaint against AMERICAN INTERNATIONAL GROUP UK LIMITED and direct them to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 10 February 2025.

Lale Hussein-Venn
Ombudsman