

The complaint

A company, which I will refer to as 'S' complains U K Insurance Limited ("UKI") have unfairly avoided their buildings insurance policy.

Mr W has brought the complaint on behalf of S, so I will refer to him below.

All references to UKI also include its appointed agents.

What happened

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

This complaint relates to matters concerning S, and up until December 2023 when Mr W transferred the policy into his sole name.

I will not be considering anything after the above date here but if I do refer to it below, it is for the context of answering this complaint only.

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.

I understand Mr W has strong views about what has happened. In addition to his submissions, he provided further comments following our investigator's view of the complaint which I want to assure him I've read and considered carefully.

However, my findings focus on what I consider to be the central issues, and not all the points raised. This isn't intended as a discourtesy. The purpose of my decision isn't to address every single point the parties have raised or to answer every question asked.

My role is to consider the evidence presented by all parties to reach what I think is a fair and reasonable decision based on the facts of the case.

Having done so, I do not uphold this complaint for these reasons:

- As a commercial customer, under the Insurance Act 2015, it is the responsibility of the customer to make a fair presentation of the risk. So, it is for the customer to provide accurate information that might be relevant to UKI considering whether it would provide cover.
- A different Act applies for misrepresentation by a consumer. I realise Mr W believes the position taken in the Insurance Act 2015 is unfair, however it is the one that must be applied to this policy as it was taken out on behalf of a business.
- The policy also contains a condition which says the customer must make a fair presentation of the risk. It sets out if these conditions are not complied with, UKI may avoid the policy, retain any premiums paid and refuse to deal with a claim. This isn't unusual.

- UKI avoided S's policy as it said it found evidence Mr W had received 2 county court judgments ("CCJ") in his capacity as a director of another company ("S1") – and these were dated before the policy's inception.
- Further to this UKI's underwriter has provided confirmation it wouldn't have entered the policy under any terms had it known the true information.
- Mr W has not disputed the presence of the CCJs – and I can see from a report two CCJs are recorded against S1 - and that Mr W is listed as a director of S1. However, he has said he never received notification of the CCJs and never received any correspondence regarding CCJs in the post at the time.
- I've reviewed a copy of the statement of fact questionnaire completed by S prior to the policy inception in June 2023.
- One of the questions asked is if the customer, such as a director or partner of the business, or its subsidiaries has ever in a personal or business capacity:

"been the subject of a County Court Judgement (CCJ) in the last 5 years or been declared bankrupt or subject of bankruptcy proceedings, an individual Voluntary Arrangement ("IVA")."

- I can see this was answered as 'no'. So, under the Insurance Act 2015, it would be said that a qualifying breach occurred.
- What I need to decide is whether Mr W was aware, or ought to have been aware, of the presence of the CCJ's at the time the policy was taken out
- I've looked at the search information of the CCJs. It shows two CCJs were issued to S1 in 2023 and I can see one of these is recorded at the same address given for S, which recorded in the policy schedule.
- The other CCJ is recorded in the name of S1 but to a different address, so it's possible this could've made a difference in them receiving the CCJ in the post. I've also considered the difficult circumstances Mr W has disclosed about S at the time, and that human error could be a possible reason this was missed.
- But even if I take this into account, I think Mr W should've been reasonably aware of at least one of the CCJs - and as I've explained above, this needed to be disclosed when taking out the policy. Mr W has questioned the robustness of the notification process of CCJ's however this isn't within my remit to consider.
- In addition, I note by Mr W's own admission, he has said he was aware before the policy was taken out that S1 was subject to insolvency proceedings, but this has been answered as 'no' to the relevant question in the statement of fact.
- In summary, Mr W has my natural sympathy for the difficulties he has told our service about. But the relevant Act, as explained above, sets out what an Insurer can do in the event a consumer doesn't make a fair presentation of the risk.
- And as such I don't think UKI have been unreasonable in concluding S would've been reasonably aware of at least one of these CCJs and treating the misrepresentation as reckless. Therefore, I won't be interfering in UKI's decision.

My final decision

My final decision is that I do not uphold S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 6 March 2025.

Michael Baronti
Ombudsman