

## **The complaint**

R, a limited company, complains HDI Global Specialty SE voided its business protection insurance policy meaning a claim it made wasn't paid.

## **What happened**

In March 2024 R took out business protection insurance with HDI. The following month it made a claim following a theft from its business premises. After investigating HDI said when taking out the policy R answered 'no' when asked whether anyone with a financial interest in the business had received a County Court Judgement (CCJ) regarding debt. But that wasn't right as a CCJ had been issued against R in April 2023. It said if the question had been answered correctly it would have declined to cover R. It said it would be voiding the policy (meaning no claim would be paid). And, as it regarded this as a deliberate or reckless misrepresentation, it wouldn't be refunding the premium R paid.

In her most recent view our investigator said the outstanding CCJ was something R should have been aware of when taking out the policy. And it should have been disclosed in response to the question HDI asked. She was satisfied HDI wouldn't have offered cover if it had been aware of the CCJ. And she thought it had reasonably concluded the nondisclosure by R was reckless. She thought HDI acted in line with the relevant law in retaining the premiums R paid for the policy.

R didn't agree with her outcome. It said it hadn't been aware of the CCJ as it hadn't received correspondence about this. And it was in the process of having that removed. It didn't accept HDI wouldn't have offered cover if it had been aware of this as other companies had been insured despite having CCJ's against them. So I need to reach a final 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.

The relevant rules and industry guidelines say HDI has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

And as HDI's reasons for declining the claim (and voiding the policy) relate to information it says R should have provided when taking out the policy I've also taken into account the relevant law in relation to that which is the Insurance Act 2015. The Act says when taking out the policy R had a duty to make a fair presentation of risk. So it had to disclose

- everything it knew, or ought to have known, that would influence the insurer's judgment in deciding whether to insure the risk and on what terms; or
- enough information to put the insurer on notice that it needed to make further enquiries about potentially material circumstance.

The Insurance Act says the policyholder “ought to know” what should reasonably have been revealed by a reasonable search of information available to them. So the policyholder should take reasonable steps to check any available information and consider if there’s anything they ought to disclose. In considering whether a policyholder made a fair presentation of risk I think it’s also reasonable to take into account whether an insurer sought any particular information from them. So I think it’s relevant to consider what question HDI asked and how clear and specific that question was.

In this case I understand the relevant question is the one contained in the Statement of Fact issued at the time the policy was taken out in March 2024. That said “*Has anyone with a financial interest in the business, including you, your family, or any partner/principal/director, received a County Court Judgement (CCJ) regarding debt (either as an individual or in connection with a business)?*” R answered no to that question. But that wasn’t correct as it’s clear a CCJ was issued against R in April 2023.

R says it wasn’t aware of that at the time. However, I think information about the CCJ (both the initial notice of a claim and the subsequent court papers) would have been sent to its registered address. And in any event I think making reasonable checks (in line with the requirements of the Insurance Act) would have included R checking its credit file prior to completing the insurance application. I appreciate R is now seeking to have the CCJ set aside but it’s the position as it applied when it took out the policy that’s relevant here. For the reasons I’ve explained I’m satisfied R didn’t make a fair presentation of risk when doing so.

R says it’s aware of other companies that have been offered cover despite having CCJ’s against them. I accept in some cases HDI might be prepared to accept the risk of a CCJ. But I’ve seen underwriting evidence which satisfies me in the circumstances here (including that the policy was taken out less than 12 months after the CCJ was issued) HDI wouldn’t have offered cover if it had been aware of it.

Where an insurer can show it would have done something different, had there been a fair presentation of risk, this is known as a “qualifying breach”. If an insurer can show a qualifying breach was deliberate or reckless it can avoid the contract and doesn’t need to return any of the premiums paid. If the breach wasn’t deliberate or reckless but the insurer wouldn’t have entered into the contract it can avoid the contract but must return the premiums paid.

In this case HDI has said the breach was deliberate or reckless. I don’t think that’s unfair based on the available evidence. As I’ve already said I think it likely correspondence about the CCJ would have been sent to R’s registered address. I haven’t seen any evidence of an issue with the address used or a specific problem with postal services in that area. I think it likely R was (or should have been) aware of the CCJ at the point it took out the policy. And failure to disclose that in these circumstances was reckless. So, for the reasons I’ve explained, I don’t think it was unfair of HDI to avoid the policy, decline the claim R made, and retain the premiums it paid for this.

### **My final decision**

I’ve decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I’m required to ask R to accept or reject my decision before 16 April 2025.

James Park  
**Ombudsman**