DRN-5321092

The complaint

A limited company, which I will refer to as S, complains about the handling of its commercial property insurance claim by Zurich Insurance PLC.

What happened

The following is intended only as a brief summary of events. Additionally, although various parties have been involved in the correspondence from both sides, for the sake of simplicity, I've just referred to S and Zurich in this respect.

S held a commercial insurance policy underwritten by Zurich. In February 2020, S suffered theft of high value stock, and so claimed on the policy. The circumstances of the theft appear to involve the thieves being able to avoid detection by the alarm system installed in the premises.

Zurich identified that there had been issues with financial dealings involving a former director of the S. I'll refer to this former director as G. S had undertaken investigations into G's conduct, and G stopped being a director of S in 2017. G was still a shareholder of S though. Zurich asked for further details about these investigations, as well as confirmation of the management structure of S.

Zurich also became aware that another former director, who I will refer to as B, had previously been involved in bankruptcy proceedings. This former director was, at the time of the theft, no longer listed as a director of S, but was involved in the company. Zurich was concerned by this as, when the policy had been set up to cover the relevant premises, S had given the answer "No" to the question:

> "Has anyone connected with the ownership or management of the business been bankrupt?"

This led Zurich to carry out some further investigations and it became aware that HMRC had also carried out an investigation into some of the financial arrangements S had previously had.

In June 2020, Zurich confirmed that it had the three broad areas of concern referred to above. And requested a number of specific documents to allow it to consider the situation fully. Some documents were provided by S over the following months. However, a number of the documents requested by Zurich were not provided.

In November 2020, Zurich set out that it was still awaiting these documents. S responded, querying why some of these matters were relevant to the claim, and also providing some comments on the issues themselves. S said that majority of the information and documents Zurich was seeking had previously been provided. Zurich confirmed that the issues were relevant to whether it would have accepted the risk of providing insurance, and specified the information it still hadn't received and why this was required.

This pattern of communication continued over the next few months. In August 2021, Zurich

set out a number of assumptions it was making in the absence of information and evidence it considered to be required. These included that:

- B's bankruptcy had been annulled as the judge had considered that debts B owed to family, associated companies and – what Zurich assumed to be – tax saving schemes, were not due to be repaid at the time. And that this meant B may have committed an offence under the Insolvency Act 1986.

- Payments made by G that had been disguised as payments to suppliers, meant that tax was underpaid. And that by deciding not to take any further action, S had knowingly undeclared tax.

- It was incorrect to treat sales made by part of S's business as being VAT exempt. And Zurich asked for copies of all correspondence S had with HMRC.

Zurich said that these assumptions raised serious concern in relation to the conduct of S and related parties, which were potentially material facts that ought to have been disclosed when the policy was taken out and/or renewed.

S responded to this in April 2022, saying that Zurich had not explained the reasons for its continued requests for information, and that Zurich needed to settle the claim or legal proceedings would be commenced. Zurich responded, referring back to the explanation and requests previously made – including those in November 2020 and August 2021.

S responded to this in August 2023. It said that Zurich either needed to accept the claim or set out its case for avoiding the policy on the basis of non-disclosure. And that it was not appropriate to keep S in limbo, whilst Zurich conducted what S considered to be a pointless fishing exercise.

S also said that there had been no breach of the duty of fair presentation in relation to B's bankruptcy, as it considered it had accurately responded to the question asked at the point of sale – and that by asking a specific question, Zurich had waived its right to a wider disclosure relating to this point. S said that B was not an owner or manager of S at the time of the 2019 policy renewal, and it considered the word "connected" in the context of the question ought to be considered as synonymous with "involved". And S also pointed out that B's bankruptcy had been annulled after this, so this could not have been disclosed at that point regardless of whether such information ought to have been.

S said that G had not been involved with S for several years at the time of the 2019 renewal, so his conduct was not relevant to the moral hazard posed by S. And there had been a recent VAT inspection carried out by HMRC that had not identified any issues.

Zurich responded to this in September 2023. It said that it was S that had been responsible for the majority of the length of time the claim had remained open. Zurich also said that it was entitled to carry out reasonable enquiries and until these had been completed it was not in a position to avoid the policy or deal with the claim.

Zurich confirmed that it considered the evidence indicated B was connected with the management and ownership of the business. And said that although G was not a director, he was a shareholder of S. So, the events he had been involved in were material facts. And that Zurich had not been provided with the details of the VAT inspection S had referred to. Zurich also referred to the fact that, in 2022, S's auditor had resigned "with a stinging rebuke to the company and its directors", which referred to a failure of S to provide the auditors with requested information. Ultimately, Zurich consider that it had acted appropriately.

Having been made aware of S's intention to pursue a complaint about this situation with the Financial Ombudsman Service, Zurich issued a final response in November 2024. Essentially, it maintained the position it had reached previously.

Our Investigator didn't recommend that the complaint should be upheld. He considered that it was reasonable for Zurich to have requested the information it was seeking and that this should be obtainable. S remained unsatisfied and its complaint has been passed to me for a 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 am not upholding this complaint. I'll explain why.

Firstly, I will just note that both parties have provided detailed submissions covering a number of different points. I have considered all of this evidence, but I have not commented on each part. Instead, I have focussed on what I consider to be the key issues. This is not intended as a discourtesy, but rather reflects the informal nature of the Ombudsman Service.

S made a high value claim, and I consider it is fair and reasonable for Zurich to carry out an investigation of the circumstances of the theft and any related issues. However, S has suggested that the information Zurich has continued to ask for is not connected to the claim, and is a "fishing exercise". Asking for more information than needed is sometimes referred to as fishing. And I have thought about whether the issues Zurich are investigating are relevant to the claim.

However, the claim is also for hundreds of thousands of pounds, so it is reasonable that Zurich would carry out a comparably proportionate investigation. And that this would include consideration of the company's financial circumstances and history. The initial issues with G were identified at a very early point of this investigation, seemingly from the company's accounts. And it is fair and reasonable for Zurich to have wanted to understand the circumstances around this. On receiving the further information that was provided, I also consider it was appropriate for Zurich to have further questions around the actions of S, including in relation to the tax issues.

Zurich has also said that the circumstances of the theft raised some concerns. To my knowledge no-one has ever been arrested in relation to the theft, etc. and their identity is unknown. But, given the manner in which the thieves were seemingly able to avoid detection by the sophisticated alarm system, I can appreciate Zurich's concerns here. Identifying who the "key holders" were is something that I would expect to have happened. One of the key holders was B, and so it was reasonable to consider his position in the company. This then led to the fact he had previously been involved in bankruptcy proceedings to come to light. And the issues around this followed as a consequence.

Given the above, I can understand that Zurich would be interested in the arrangements and actions of the company. The size of the claim and the circumstances of the theft mean that these are potentially reasonable points of interest. So, I don't consider there to have been a 'fishing exercise', and I consider Zurich's investigation was reasonable.

The underlying reason for this is that when taking out or renewing a commercial policy, such as the one S has, the policyholder has a requirement to declare material facts. The Insurance Act 2015 sets out the duty of fair presentation, and this essentially says that a customer has to declare every circumstance that would influence the judgement of a prudent

insurer in determining whether to insure the risk and, if so, on what terms. Where there has been a breach of the duty, depending on the circumstances, an insurer may be entitled to avoid a policy and so not have to meet any claim that has been made. So, it is reasonable that an insurer, such as Zurich, considers whether a policyholder has breached this duty.

S has made arguments that B was not connected with the ownership or management of the company at the time the policy (to cover the relevant premises) was taken out or renewed prior to the claim. However, it is clear from the history of the company that B was previously significantly and directly involved in both the management and ownership of S, and that he is so now. At the time of the claim, B did not directly own any shares in the company, but this was seemingly only as a result of the bankruptcy process, and this process was later annulled.

It is also notable that all of the historic owners of S (other than the trustee in bankruptcy) are seemingly related, including G in some capacity. At the time the policy was sold and renewed, S's shares were split between B's parents and brother (and the trustee). The family have and continue to own and/or operate a number of other businesses in the same industry.

And whilst B was not a director at this point in time, he clearly had a position of responsibility and Zurich has referred to comments of others involved with the company that B was a decision maker. It isn't clear whether B stepped away from being a shareholder and director due to the bankruptcy process, or whether personal circumstances that he has referred to would have led to this anyway. Bu,t given the situation as a whole, I can understand Zurich's concerns that B continued to have, or at least had returned to, a role connected to the management and/or ownership of S at the time of the sale/renewal.

At this point, Zurich has not actually come to a decision that S was in breach of the duty of fair presentation when responding to the question around bankruptcy. And it is not necessary for me to make this finding either. It is enough for me to say that Zurich's enquiries here were reasonable and that it has not been provided with adequate information and evidence from S to answer them all.

Whilst its interest was initially raised by the presence of the bankruptcy, Zurich's concerns are also with the circumstances surrounding the annulment of the bankruptcy. The information it has been provided indicates that B should not have been made bankrupt and that the reasons for this are connected with the types of "debt" he purported to owe at the time. Zurich is concerned that these financial arrangements involve those of S and the other members of B's family who were directors at the time. Zurich has asked for information around this, but this has not been received.

Similarly, Zurich is concerned with the financial arrangements involving G and with the tax situation identified in the report on G's activities. Whilst I note S's comments that G was no longer a director of S when the policy was sold/renewed, he remained a shareholder. And the actions of S in responding to the concerns identified with the tax situation have not been answered with the required evidence.

No specific questions were asked of S around its financial/tax arrangements when the policy was sold or renewed. But I do consider that, if there has actually been an underpayment of tax liabilities, this would be a material circumstance. The judgement of a prudent insurer would be influenced by this fact. And the onus is on the customer of a commercial insurance policy to make a full declaration of material circumstances. So, if there has been an underpayment (or similar issue), S ought to have declared it to Zurich when taking out and renewing the policy, regardless of the lack of any specific question on this.

It is not clear whether this situation does exist at this time. But it is fair and reasonable for Zurich to require S to provide the necessary evidence to confirm this one way or the other. And, as S has not complied with this request, I consider the position Zurich has taken to be fair and reasonable.

Ultimately, Zurich has been quite clear on the evidence it requires and has explained why this is needed. Whilst clarification has led to slightly different questions, Zurich has been reasonably consistent in requiring this evidence since mid-2020. The evidence it is asking for would appear to be information S ought to be able to provide. So, I consider Zurich's requests are fair and reasonable, and that it is acting appropriately by not progressing the claim without this evidence.

It follows that I am unable to direct Zurich to do anything more in the circumstances of this complaint.

My final decision

My final decision is that I do not uphold this complaint.

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

Sam Thomas
Ombudsman