

The complaint

A limited company, which I will refer to as J, complains about the decision of U K Insurance Limited trading as NIG to avoid its commercial insurance policy.

What happened

Both parties are aware of the circumstances leading to this complaint, so the following is intended only as a brief summary. Additionally, whilst various individuals have been involved on both sides, I have largely just referred to U K Insurance Limited (UKI) and J. UKI is ultimately responsible for the actions of its agents in relation to this complaint.

J operates as what I will refer to as a manufacturer. In 2021, J was insured via a policy underwritten by UKI. J indicated that it wished to change some of its operations and a discussion took place with UKI over whether the policy that existed at that time could be amended to incorporate this. In March 2021, UKI made the decision that it was unwilling to cover J's amended operations and advised that it would be cancelling J's policy after 30 days. J then confirmed that it would not be making the changes to its operations immediately, and UKI agreed to continue to provide cover.

Then, in late June 2021, J confirmed that it had decided to take out an alternative policy that would provide cover for its plans. J cancelled the policy with UKI at this point.

In November 2022, J took out a new policy underwritten by UKI. At the time the policy was entered, J declared that it had not previously had any policy cancelled, renewal refused, or had special terms imposed.

It seems that following this, there was some discussion about the operations at J's premises and whether certain practices were acceptable to UKI. However, it does not appear UKI took any action as a result of these discussions.

However, in September 2023, UKI informed J that it was in breach of the duty of fair presentation set out in the Insurance Act 2015 (the Act). UKI considered that J ought to have declared that UKI had previously made the decision to cancel the above policy with effect from the end of June 2021. UKI said that, had this been declared, it would not have offered J the 2022 policy. So, UKI avoided the 2022 policy from inception. UKI did say that it would refund the premium J had paid.

J complained about this. UKI initially refused to change its position. However, on 20 November 2023 it confirmed that the decision to avoid the policy was withdrawn. It should be noted that J had taken out alternative cover from 15 September 2023. And that the 2022 UKI policy was due to end on 25 November 2023.

J brought its complaint about this situation to the Ombudsman Service. Our Investigator recommended the complaint be upheld. He thought the complaint should be upheld, as UKI had – by withdrawing the avoidance letter – essentially admitted it had avoided the policy in error. And that this had been detrimental to J. Our Investigator said that UKI ought to pay J the difference in the premiums it paid for its insurance policies (both the replacement of this

cover and other policies relating to its business), and reimburse J the premiums it had paid for the UKI policy. He also recommended UKI provide J with a letter explaining the situation that could be taken to future insurers, and to pay J £500 compensation for the inconvenience caused.

J thought further costs that it had incurred also should be covered, but ultimately accepted our Investigator's recommendations. UKI did not.

UKI considered that the 2021 policy had been cancelled and that J ought to have declared this. UKI also referred to further information that arose after the 2022 policy had incepted about J's operations, that J had not declared at the time the policy was entered. UKI also said that it considered the decision to rescind the voidance was a mistake – albeit it has not overturned this decision as such.

UKI has said that our Investigator reviewed matters purely from the customer's viewpoint and that J's actions were deliberate. UKI also said that J had benefitted from a cheaper policy than they ought to have, and that the higher premiums they were subsequently charged are what ought to have happened earlier. UKI referred to the operations of J as being another reason why cover would not have been provided. Lastly, UKI said that the Investigator's opinion on the complaint ought to have been communicated to it prior to being communicated to J.

As our Investigator was unable to resolve matters, this complaint was passed to me for a decision. The following is an extract from that decision:

“Both parties have had the opportunity to consider matters and have provided detailed submissions, which I have reviewed in full. I will not comment on each of the points made though. Instead, I will focus 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.

Should J have declared a cancellation of the 2021 policy?

The first issue that I consider to be key is whether J ought to have declared the cancellation of the 2021 policy.

As a commercial customer, J has certain responsibilities set out in the Act. These effectively require J to declare all material circumstances, which are those circumstances that would influence the judgement of a prudent insurer in determining whether to take the risk and, if so, on what terms. Declarations of a matter of fact need to be substantially correct.

The cancellation of a previous policy, by a previous insurer, is something that a prudent insurer would most likely consider relevant to the risk posed by a customer. So, if J had previously had a policy cancelled by a previous insurer, it ought to have declared this to UKI when taking out the 2022 policy.

UKI has said that it considers the policy to have been cancelled by the underwriter. However, that is clearly not what happened. UKI did initially give notice of an intention to cancel. I do not consider this would actually be a cancellation until it took effect though. And this cancellation did not take effect. The policy was due to cancel late April 2021, but it did not.

Indeed, UKI agreed not to cancel the policy. On 16 April 2021, UKI said:

“We will agree to carry on with the cover as you have stated that the Insured has advised that they will not be proceeding with the [change in] operation.”

J then took their own decision in late June 2021, some three months after UKI's initial notification, to cancel the policy. This was a cancellation by the policyholder and clearly was not a cancellation by UKI. As a result, this would not need to be declared to a future insurer.

So, I do not consider J ought to have declared a cancellation of the 2021 policy when taking out the 2022 policy. It follows that I do not consider UKI's decision to avoid the policy on the basis that there had been a breach of the duty of fair presentation relating to this, to be fair or reasonable.

This appears to be the position UKI reached in late 2023, and it is not clear why the current position on this from UKI has changed. It is also not clear why UKI now considers the alleged breach to be deliberate, whereas – given it offered to refund the premiums paid for the policy – this was not the position it took in 2023.

What was the impact of the voidance?

Where a financial firm has made an error, it is necessary to try to put the customer back in the position they otherwise would have been. This is not always entirely possible. And it is also necessary to think about the actions of the customer, to determine whether any consequences they experienced were inevitable or ought to have been mitigated.

Our Investigator recommended a number of costs ought to be repaid to J. However, I am not persuaded that it is fair and reasonable to require UKI to pay all of these. Whilst it is clear that UKI made an error, and that this had an impact on J, it is not my role to punish UKI. And I need to consider the actual and unavoidable impact of UKI's error on J.

J was initially left without insurance for several weeks and then had to source alternative cover. J has also provided some information about the overall impact it says this had.

Our Investigator has recommended that UKI refund the premium J paid for the 2022 to 2023 policy. This would be appropriate if UKI had maintained its position on the voidance of the policy due to a non-deliberate or reckless breach of the duty of fair presentation. However, UKI changed its position on the voidance and said that it no longer applied. This means its offer to refund the premium would also not apply.

If there is no voidance, then J benefitted from having cover in place for the period of insurance. It would not be fair or reasonable to require UKI to refund J for a policy that it benefitted from. (I appreciate no claim was made, but J benefitted from having cover for any potential claim.)

J did though have to take out alternative cover for part of the period when it ought to have been benefitting from the UKI policy. J took out a policy from 15 September 2023 when it ought to have continued to have the benefit of the UKI policy, but was told it did not. Effectively, when UKI rescinded the decision to avoid, J became double insured for this period.

UKI's decision to reverse the voidance came only a few days prior to the end of the 2022 to 2023 policy on 25 November 2023. Had there been a substantial period of

this policy remaining, I might conclude it would have been reasonable for J to have cancelled the new policy, and for UKI to cover the cost of this cancellation. In the actual circumstances, this would not have been practical though.

However, UKI should cover the full cost of this new policy for the period from 15 September to 25 November 2023. This was a period when J had this policy, but would not have needed it had UKI not made an error.

J then benefitted from this new policy for the rest of its policy period (presumably until mid-September 2024). It would always have had to take out some cover for this period though. And arranging this cover would have come at a cost. So, I am unable to say UKI should meet the cost of arranging or having this policy for the remainder of its term.

Additionally, our Investigator has said that UKI ought to meet the increased cost of this new policy. However, there are a few issues with this. Firstly, it is not clear whether the new policy was comparable with that provided by UKI. J has indicated that it provided less benefit, but I have not been provided with the relevant terms.

Secondly, it is also not clear whether the new insurer took into account aspects of J's operations that UKI had not. UKI has indicated that J did not provide full details of these operations when the 2022 policy was initially taken out. And it seems that there were some conversations around this in the months that followed.

UKI did not avoid the policy on the basis of this, but it is quite possible that had it been fully aware of J's operations, it would either have charged more for the policy or even not provided it at all. I make no finding in this decision as to whether there was any breach of the duty of fair presentation here – this is not something UKI has actually relied upon. But it is quite possible that the new insurance policy J took out from September 2023 would have inevitably cost more than that UKI charged. And even this is not the case due to the operations of J, it is also not clear what impact there would always have been on the policy premiums due to inflation, etc. The cost of insurance has generally risen over the period in question, so it is likely some of the additional cost of this new policy was inevitable.

Thirdly on this point, having been informed of UKI's decision to rescind the voidance, and with the knowledge that it had no previous cancellation to declare, J ought to have approached its new insurer and asked it to re-rate the policy on the basis that there was no voidance. The new insurer may then have been required to refund any additional sum J had paid that resulted from UKI's error. The same applies to the other insurance policies J took out relating to different aspects.

Taking these points into account, I cannot fairly and reasonably require UKI to meet the difference in premiums J was charged.

J has referred to other financial impacts of the situation. It has said that it employed an expert to assist it with complaining about UKI's decision to avoid the policy. However, in thinking about whether the cost of this is something UKI needs to meet, I need to consider whether this was a cost that should have been mitigated. Essentially, I need to think about whether J could have pursued matters without this assistance.

I have seen some of the communications between J and this expert, and undoubtedly J was helped by these. I agree with our Investigator here though, in that I think J could have sent similar communications to UKI without this help.

Additionally, as our Investigator has said, once the new policy was set up in mid-September, there was no longer an urgent need to resolve the situation with the voidance. So, I am not persuaded that UKI should cover this cost.

J has also said that it incurred additional costs running its own operations whilst it was dealing with the insurance issue. I appreciate that J is a relatively small company and would have had limited resources internally. Perhaps J's directors would have been required to work slightly longer hours to deal with the issue with UKI. However, I am not persuaded that the impact of UKI's error reasonably necessitated hiring in a management consultant. So, the cost of this is not something I can fairly and reasonably require UKI to meet.

That said, having to deal with this entire situation would have had an impact on J. Having an insurance policy voided would no doubt be stressful. But J is a limited company, and this limited company is the complainant in this case. So, whilst I am sorry to hear about the personal impact on J's director(s), I am unable to take this into account. J itself would have been significantly inconvenienced as a result of the situation though. It would have had to think about its operations and clearly it had to spend time resolving the issues with its insurance. So, I consider an award to reflect this is something UKI should pay."

I asked both parties for any additional information they wanted me to consider. J provided additional comments around the alternative cover that was taken out. It made a number of comments, including that it was unable to obtain quotes from many insurers and had no choice but to take the more expensive policy that it did.

I took these points on board, and explained to both parties that I was amending my conclusions on this aspect. Given the fact that J would have been unable to receive a quote for its new policy from much of the market due to the presence of the cancellation, I explained that I thought the main reason for the premium being higher with the new insurer was most likely the presence of the cancellation. And this policy has since expired.

So, I thought UKI should meet the difference between the amount J paid for the new policy with the cancellation declared and what its previous policy had cost.

I also said that, rather than pay the entire cost of this new policy for the period when it otherwise would not have been required (September to November 2023), it would make more sense – taking into account the above – that UKI refund the cost of its own policy for this period.

However, I was not persuaded that UKI should refund anything in relation to the other insurance policies J took out for other elements of its business. Whilst I noted there was only a few days between when UKI amended its position in November 2023 and the expiry of these existing policies, it would still have been possible for J to have arranged cover for them, without the need to declare the cancellation.

Neither party provided any further comments.

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.

As neither party provided any additional comments following my suggested amendments to the provisional decision, and as UKI had not provided any response to the provisional

decision at all, I have come to the same outcome and for the same reasons as set out above.

I do not consider J ought to have declared a cancellation of the 2021 policy when taking out the 2022 policy. It follows that I do not consider UKI's decision to avoid the policy on the basis that there had been a breach of the duty of fair presentation relating to this, to be fair or reasonable.

J benefitted from having cover in place with UKI for the period November 2022 to September 2023. So, a full refund of the premium for this period is not required. But UKI should repay the premiums relevant to this cover from 15 September to 25 November 2023.

J then had to take out alternative cover. And was limited in the options it had available to it, as having to declare the cancellation restricted its access to the market. So, I consider it had to take out a policy at a higher price than it otherwise would have. And I consider it is fair and reasonable that UKI should compensate J for having to pay a higher premium due to UKI's error in cancelling the policy.

UKI should also pay J interest on these sums, for the length of time it's been without them.

But I do think J could have taken out cover for its other needs without having to declare the cancellation. So, I do not consider UKI should make any payments to J in relation to these other policies.

This entire situation would have, and did, cause J significant inconvenience though. So, it is appropriate that UKI compensate J for this. And UKI should provide J with a letter explaining that there is no cancellation J needs to declare, but that UKI has refunded the additional cost of the replacement policy.

Putting things right

To put things right, UKI should:

- Refund any premiums relevant to its own policy for the period 15 September 2023 to 25 November 2023. And add interest on this amount from 15 September 2023 to the date of settlement.
- Pay J the difference between the cost of the policy it had with UKI (for the full 12-month period of cover) and the replacement policy it took out. And add interest on this amount from the date J paid the premium(s) for this new policy, to the date of settlement.
- Interest should be calculated at 8% simple per annum.
- Provide J with a letter confirming that the 2021 policy was not cancelled by UKI, and that the 2022 policy was not avoided.
- Pay J £500 in compensation.

My final decision

My final decision is that I uphold this complaint. U K Insurance Limited trading as NIG should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or

reject my decision before 11 April 2025.

Sam Thomas
Ombudsman