DRN-5421500

The complaint

A complaint has been brought by the director of a limited company, which I'll refer to as "P", that U K Insurance Limited trading as NIG Insurance ("UKI") unfairly declined P's claim and subsequently avoided P's policy due to a misrepresentation.

What happened

In December 2023, there was a fire at P's company premises. P was, at the time of the incident, the tenant of the unit where the fire originated.

The incident was treated by the police as arson as there was evidence to suggest the fire had been started deliberately. Extensive damage was caused and during firefighting the entire building was demolished, so no physical evidence remained.

UKI declined the claim and avoided P's policy (treated it as though it never existed). It said P had failed to make a fair presentation of the risk when the policy was taken out, because P had said it was the sole occupier of the premises and that the business was self-contained, which was a requirement of cover and which UKI believed to be inaccurate.

P maintained it was the sole occupier of the premises. It said that it only allowed the director of another business to use the insured premises and machinery through an informal business arrangement – and that this did not mean the other business occupied the premises. It made a complaint to UKI.

In its response, UKI said that whilst P had provided it with a floor plan of the premises, this wasn't evidence that the unit occupied by P was self-contained with a separate entrance. It also said P hadn't explained why the other business had signage on the outside of the building, seemingly advertising its presence there. UKI therefore maintained its decision to avoid the policy and decline the claim.

P didn't accept UKI's response, so it referred its complaint to this service. Our Investigator considered it, but didn't think it should be upheld. She said UKI hadn't acted unreasonably because there was sufficient evidence to show that P hadn't made a fair presentation of the risk to UKI.

Because P didn't accept our Investigator's opinion, and wanted an Ombudsman to review the matter, the complaint has now come to me to decide.

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 this is an informal service, I'm not going to respond here to every point raised or comment on every piece of evidence P and UKI have provided. Instead, I've focused on those I consider to be key or central to the issues in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm not

upholding this complaint. I'll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a claim. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

P holds a commercial property insurance policy with UKI, so the relevant legislation for me to consider is the Insurance Act 2015. Under the Act, commercial policyholders have an obligation to volunteer the right information to an insurer when taking out a policy, i.e. they have a duty to make a fair presentation of the risk. This means a commercial customer has to disclose either:

- Everything they know, or ought to know that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms; or

- Enough information to put an insurer on notice that it needs to make further enquiries about potentially material circumstances.

The Act also says that a policyholder ought to know information that should reasonably have been revealed by a reasonable search of information available to them. I've checked the Statement of Fact to understand what information was provided and in this document, I can see that the following questions were asked:

"Is Insured the sole occupant?" – this question was answered "Yes".

And "Is the business self-contained with its own means of access?" – which was also answered "Yes".

UKI's position is that both these answers were inaccurate, and that the incorrect information affected its assessment of the risk. It's provided us with evidence to demonstrate that if the correct answers had been provided, the risk assessment would've been referred to an underwriter. The underwriting criteria it's provided to this service also shows that no cover would've been offered if it had been established that the risk address wasn't self-contained.

So I've thought about whether the premises could reasonably be described as self-contained from the available information. I've considered the evidence P has provided in support of its position that the risk was self-contained and that it was the sole occupant of the premises. It's said, among other things, that the arrangement for another business director to use its machinery involved sharing the profit from using the equipment but that there was no formal lease or rental agreement in place. It said this indicated a cooperative business model rather than a tenant/landlord relationship. And that whilst the term "sole occupant" typically implied that the insured party was the only one using the premises, this straightforward interpretation was not reasonable in the more complicated context of how the premises was being used in P's case.

I've also taken into account the evidence provided by UKI. It's said that the other business's logo was displayed on the outside of the premises. And that P hasn't given a reasonable explanation for this, so it's clear the premises was being shared with another business. It's also referred to a witness statement by P's representative which confirms that the person who owned the other business *"would bring in jobs for us and include their work with my work"* and that *"As two businesses…were operating from the same premises, I was unable*

to get the right insurance cover". The statement also confirms that two other individuals *"brought in some of their specialist tools and began working for our orders"* and they *"kept their tools in one room previously a kitchen but later being used as a digital printing room"* and *"had their desktop computer and a laptop on a counter/kitchen worktop".*

The witness statement further confirms that P had an informal working arrangement with the two individuals, *"operated from my premises, using their own tools to work on my machines and my orders as I had big and industry matching equipment. They would bring in jobs for us and include their work with my work, so when we had a print run of several documents (such as flyers) the run could include some flyers from my business and some flyers for theirs."*

Taking everything into account, I'm satisfied it's clear that P's representative considered there to be another business operating from the insured premises. So it's difficult to see how the premises could be described as "self-contained" when they were shared with and used by another business. My interpretation of the term "self-contained" in the context of a property is one with no shared areas. And I think it's highly likely that this is what UKI also meant when it asked the question, because a shared space clearly has risk and liability implications. The shared nature of the space contradicts the idea of a self-contained unit designed for one business's exclusive use. So I think it's more likely that a self-contained property has to have exclusive use and access, which cannot be the case if another business also operates within the same space.

The witness statement further confirms that there were threats made against P, which also weren't disclosed to UKI, including a threat to set fire to the premises. I consider those threats to have been relevant to UKI's assessment of the risk and these also should've been disclosed.

So I consider UKI's position, that a fair presentation of the risk wasn't made, to be fair here. As P's representative was aware that another business was occupying the premises, this fact should've been disclosed to UKI, which would've then triggered an underwriter referral and resulted in no policy cover being offered. So I'm persuaded that the breach was what's known as a qualifying breach under the relevant legislation. UKI has treated the non-disclosure as deliberate or reckless, and I'm satisfied that P's representative knew the information provided was untrue or misleading – or knew that the matter to which the misrepresentation related was relevant to UKI. So I don't consider it unreasonable for UKI to have treated the breach as deliberate or reckless. And overall, I'm satisfied UKI has acted as we'd expect in the circumstances. As the Act entitles it to avoid a policy, refusing any claims, and retain premiums paid, in the event of a deliberate or reckless non-disclosure.

I'm also satisfied that the Statement of Fact directed P to check all the information and tell its broker whether anything was incorrect, incomplete or whether relevant information had been omitted.

I've considered the further evidence P has provided, including the statement from the director of the fire alarm company who confirms that the unit did not share any communal area with the rest of the units in the building and was self-contained. But as I've explained, this isn't what I think is meant by "self-contained". And P's position isn't supported by the other evidence I've seen, for example, the information in the witness statement which suggests others were using the same unit, and the signage on the outside of the premises which suggests another business was operating there. Whilst P has said the signage was temporary and informal, I find this less plausible than UKI's argument. I think it's more likely that the signage indicated an ongoing and more formal presence, particularly given the photographic evidence I've seen confirming the prominent and professional nature of the signage in question.

P has said the other business used the premises infrequently – but I don't consider the frequency of the use to be a determining factor here. The evidence all suggests the premises and equipment was shared, and that this was well known to P. So whilst I've thought carefully about the additional submissions made by P, I don't consider these to demonstrate that the unit was solely occupied by P and self-contained. And having also considered the submissions from UKI, I'm more persuaded by UKI's position, that the shared use of the premises introduced and increased a number of risk elements which meant the potential liability was far greater and the policy never would've been offered.

It follows therefore, that I don't consider UKI to have acted unfairly or unreasonably here in avoiding the policy and declining the claim, so I'm not upholding 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 P to accept or reject my decision before 15 August 2025.

Ifrah Malik
Ombudsman