DRN-5798881

The complaint

A limited company, which I will call D, has complained that its claim under its "Office and Surgeries" commercial insurance policy with Hadron UK Insurance Company Limited has been rejected and that Hadron has voided the policy.

Ms B, as director of D, has brought the complaint on its behalf. Ms B is also represented in this complaint, but I will refer to her throughout.

What happened

In July 2024, Ms B contacted Hadron to make a claim under the policy following a fire at its premises. The fire started in the onsite laboratory used to make bridges, crowns and other dental prosthetics.

Hadron looked into the claim but said it intended to void the policy and decline the claim because D had only disclosed that it undertook dentistry work when applying for the policy and did not disclose that it also offered cosmetic treatments. Hadron said D's website listed several beauty and cosmetic services, including botox, fillers, spray tanning, eyebrow and eyelash tinting, facials, microdermabrasion and tattoo removal.

Hadron said if it had been aware of this it would not have offered the policy at all. Hadron said that if these cosmetic services had been declared in the application process, the application would either have been automatically declined or referred to an underwriter, and its underwriters have confirmed they would not have offered the cover. Hadron provided extracts from its underwriting guides, which it said support this.

Hadron also said that during the investigation, it was found that D also manufactured dental moulds for other dental practices. It said this created further additional risks it had not been aware of and it reserves its rights in relation to this.

D was very unhappy with this and complained. Hadron did not change its position, so D referred the matter to us. D has made a number of points in support of its complaint. I have considered everything it has said and have summarised its main points below:

- It was not given the opportunity to respond to the policy being voided, which contradicted fair insurance practices.
- The majority of the alleged cosmetic services that Hadron says were not disclosed had already been discontinued before D took this policy with Hadron.
- At the time of inception, D's primary business activity was dentistry, and the brokers online application did not provide a clear section to specify additional services beyond this.
- At that time the only cosmetic service still being offered was botox, which represented around 1% of D's revenue. In addition, it was offered in conjunction with dentistry work.
- Hadron has not provided any evidence that it would not have offered insurance if it had known about this. The extract from the underwriting guide provided is not

conclusive, as it only indicates that such activities might lead to a referral or decline depending on their significance within the business.

- This suggests that if cosmetic treatments had been a main or significant element of the business, cover may have been refused, but it does not confirm that any level of cosmetic activity would have resulted in a decline to cover.
- The cases of Synergy Health (UK) Limited v CGU and others EWHC 2583 and The North Star Shipping v Sphere Drake Insurance Lloyds Rep 76, set out that the court should approach with care the evidence of underwriters as to whether they were induced into offering insurance by any non-disclosure or misrepresentation of risk and it should be borne in mind that their evidence "*is necessarily hypothetical and that hypothetical evidence by its very nature lends itself to exaggeration and embellishment in the interests of the party on whose behalf it is given. It is very easy for an underwriter to convince himself that he would have declined a risk or imposed special terms if given certain information. "*
- There has been no consideration as to whether the alleged non-disclosed activities had any bearing of the fire and claim.
- The assertion about manufacturing moulds isn't true, it produces dentures, implants etc, like most dental practices; and it declared the dental laboratory when taking out the policy.

Ms B asks that the policy be reinstated, the claim dealt with and compensation for the losses caused by the wrongful voidance of the policy.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld, as she was satisfied that Hadron was entitled to take the action it did.

D does not accept the Investigator's assessment, so the matter has been passed to me.

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.

Relevant considerations

As this is a commercial contract of insurance, The Insurance Act 2015 is the relevant law here.

The Insurance Act 2015 places a duty of fair presentation of risk on the policyholder:

> "*Before a contract of insurance is entered into, the insured must make to the insurer fair presentation of the risk."*

And:

> *"the disclosure required is …disclosure of every material circumstance which the insured knows or ought to know."*

If the insured fails to do this the insurer has certain remedies, provided the breach of the duty of fair presentation is a qualifying breach, as set out in the Act. If the insurer shows it would not have offered the policy at all, or would only have offered it on different terms, then it's a qualifying breach.

Schedule 1 of the Insurance Act 2015 sets out the remedies available for insurers for

qualifying breaches.

> *"If a qualifying breach was deliberate or reckless, the insurer—*
> *(a) may avoid the contract and refuse all claims, and*
> *(b) need not return any of the premiums paid.*
>
> *Other breaches*
>
> *Paragraphs 4 to 6 apply if a qualifying breach was neither deliberate nor reckless.*
>
> *4 If, in the absence of the qualifying breach, the insurer would not have entered into the contract on any terms, the insurer may avoid the contract and refuse all claims, but must in that event return the premiums paid.*
>
> *5 If the insurer would have entered into the contract, but on different terms (other than terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms if the insurer so requires.*
>
> *6 (1) In addition, if the insurer would have entered into the contract (whether the terms relating to matters other than the premium would have been the same or different), but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim."*

Was there a fair presentation of risk by D?

In order to fulfil a fair presentation of risk, The Insurance Act 2015 says a commercial policyholder must disclose 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.

The Insurance Act 2015 doesn't give consideration to how clear any questions asked of the applicant were when deciding if a policyholder made a fair presentation. However, we usually think it's fair and reasonable for an insurer to ask a clear question to find out what it wants to know. And the Insurance Conduct of Business Sourcebook says that a way of ensuring a commercial customer knows what they need to disclose is to have "*asked clear questions about any matter material to the insurance undertaking".*

I have therefore considered whether clear questions were asked of D, and what a reasonable consumer would have done in the circumstances. And of course, D could only answer Hadron's questions, or provide information, to the best of its knowledge or belief.

During the online quote process, D was asked to confirm its business activities and it put "*dentistry*".

D has said that most of the cosmetic treatments it advertises had stopped at the time of this application and the cosmetic treatments it still offered were such a small proportion of its work, it was not improper to describe itself as a dentistry in response to this question.

I have carefully considered D's submission that the cosmetic services it offered at the time of the application were so reduced, that they would not have needed to be declared. I am prepared to accept, for the sake of argument, that D was only offering botox at that time and none of the other services still listed on its website. However, even if I accept this and that it made up only a very small percentage of D's overall revenue, and that botox was only offered to dental patients, it still remains that it is a cosmetic procedure and cannot be described as a dental service. I do not think that it making up a small percentage of overall

revenue means that it did not need to be declared.

D also says that in any case, there was no space to add any other business activities on the application form. However, Hadron says the form would have accepted up to five different trades. I have no reason to doubt this.

The policy documentation provided to D also set out D's obligations to give a clear representation of risk. This included the following warning in the 'statement of facts' provided to D with the quote:

> "This statement of facts together with the quotation shows the information you have provided us. You must read this statement of facts carefully in conjunction with the quotation and check to ensure all the details are correct. If any of the information in this document is not accurate or complete, please tell your insurance broker in order to ensure that the cover meets your needs.
>
> If you fail to advise us of any inaccurate or incomplete information, your policy may not protect you in the event of a claim."

Given this and D's obligation to make a fair presentation of risk, I think it should have been sufficiently clear to D that it needed to disclose any other business activities. So even if the form did not accommodate a full answer about its business activities (which has not been established), that would not remove D's obligation to make full disclosure. I think it is incumbent on an insurance applicant to raise any issues if they are not sure of what they are required to do.

Having considered everything carefully, I think that D should reasonably have known that its provision of cosmetic treatments needed to be disclosed and it wasn't. It therefore seems to me there was not a fair presentation of risk.

Hadron has also referred to possible non-disclosure of the manufacture of dental moulds for other surgeries. D denies making moulds but I think Hadron meant dental prosthetics, such as implants, crowns etc. I however do not think I need to make any findings about whether this should have been disclosed this as I do not think I need to in order to fairly determine the outcome of this complaint.

<u>Did the misrepresentation of risk impact Hadron's decision to offer insurance or the terms on which it did so?</u>

D says the cosmetic services it offers are irrelevant, as they were not related to the fire. However, the issue is whether Hadron would have offered the policy it did, on the same terms it did, if it had known about the cosmetic services. Hadron does not have to show that the fire was the result of any undisclosed business activity.

I note the legal cases D has referred to about the consideration needed of evidence about underwriting decisions made in hindsight. I have to consider what is most likely on the evidence provided to me. I have considered everything very carefully.

Hadron has provided an extract from its Offices & Surgeries Underwriting guide. Hadron says that applications from trades that are its target market would be automatically accepted but others, including dentistry, which are outside its target market would be referred to its underwriters for "*consideration at their discretion including their assessment of the full extent of business activities being undertaken".* This is confirmed in the extract.

Hadron also said that if there'd been a disclosure of the beauty and cosmetics aspects of the

business, the Chief Underwriting Officer had confirmed in writing that it wouldn't have underwritten the risk.

D says this is not conclusive and the extract suggests that the referral would have been to consider the extent and significance of any beauty or non-dentistry activities carried out and, as this was only a small proportion of its business, it is likely that it would have been offered cover.

I do not agree. I will explain why.

Hadron's Offices & Surgeries underwriting guide confirms that dentistry is not in its target market and so would not automatically be accepted for cover. Any application from a dental practice would be referred to underwriters for consideration. There is no suggestion that this consideration would only be of any non-dentistry activities disclosed. It seems clear to me it would be consideration of the full extent of the dentistry activities and any other disclosed activities if there are any. I do not consider anything in this guide, or in what Hadron said, can be interpreted as meaning that a small amount of other non-dentistry activities would likely be accepted.

In addition to the extract from the "Offices & Surgeries" underwriting guide, Hadron has also provided an extract from its 'Shops' underwriting guide. This sets out various retail activities that it will automatically cover but also says it will automatically decline cover for businesses offering beauty products and cosmetics and beauty salons. As Hadron is not willing to offer cover for shops selling beauty products and cosmetics or for beauty salons, it seems unlikely to me that it would have agreed to offer cover for such activities ancillary to any other business.

Given this, I have no reason to doubt the statement from Hadron's Chief Underwriting Officer that if it had known about any of D's beauty or cosmetics activities (even if it was 1% of D's overall turnover) it would not have provided the insurance policy it did. Therefore, I am satisfied that this is a qualifying breach in accordance with the Act.

Remedy available to Hadron

As this was a qualifying breach, Hadron is entitled to a remedy under the Insurance Act. The remedy available depends on whether the breach was deliberate or reckless or not deliberate or reckless.

There is no reason to think this was a deliberate misrepresentation. Instead, it seems to me likely that this was a result of carelessness.

As set out above, if a qualifying breach is deliberate or reckless, The Insurance Act 2015 provides that the insurer can void the policy, reject any claim and keep the premium. If it is not reckless or deliberate it is still entitled to void the policy but should refund the premium. If it was careless oversight then it would fall within the category of breaches that the Act describes as "*neither deliberate nor reckless*".

Hadron seems to also accept it was not deliberate or reckless, as it confirmed that it would refund the premium. Having considered everything carefully, I think Hadron has acted fairly and reasonably and in line with The Insurance Act 2015.

Finally, D has complained that Hadron voided the policy without consultation. It may have been reasonable for Hadron to notify it of its intention in advance. However, I do not think it the lack of warning has made any difference to D's position, given that I consider Hadron was entitled to take the action it did.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 25 November 2025.

Harriet McCarthy
Ombudsman