

The complaint

Mr C complains that U K Insurance Limited trading as NIG ('UKI') unfairly voided his property owner's insurance policy and declined to cover a claim he made.

What happened

The details of the claim are well known to both parties, so I won't repeat them again here. Instead, I'll give a brief overview and then focus on the reasons for my decision.

Mr C owns a number of residential properties and insured them with UKI. He took out a policy in October 2021 that then renewed in October 2022. In July 2023, Mr C made a claim for malicious damage at one of his properties.

UKI considered the claim but, following investigations, concluded that Mr C had failed to disclose historic company liquidations connected to him as a director. UKI voided his policy, declined his claim, and retained the premiums paid as they considered the non-disclosure of relevant information to have been done recklessly. Mr C raised a complaint, but UKI maintained their decision – so, Mr C brought the complaint to this Service.

An Investigator looked at what had happened but didn't recommend the complaint should be upheld. They said Mr C was required to disclose relevant information and the liquidations were within a ten-year period that pre-dated inception of the policies. They also were satisfied UKI had demonstrated they wouldn't have provided cover – so, they felt UKI had acted fairly and reasonably in the circumstances.

Mr C disagreed with the Investigator's findings and submitted detailed replies, the key points of which said:

- He was aware of the previous liquidations but hadn't considered them to be relevant at the time he took out and then renewed the policy.
- The dissolution dates in 2014 were administrative endpoints and did not accurately reflect either the timing of insolvency events or his personal involvement in the affected companies.
- He felt that UKI had not demonstrated that he had acted recklessly.
- His broker had provided testimony that UKI would still have offered the policy on the same terms and without any increase in premium had they known about the insolvencies.
- The November 2022 cover was renewed without any renewal questionnaire being issued and without any specific questions being asked about insolvency or historic company liquidations.
- The 2022 Statement of Fact showed that the insolvency declaration was pre-populated. Mr C was not asked to answer that question afresh, nor was his attention drawn to it during the renewal process.

I issued a provisional decision on the complaint, and I said the following:

"I want to start by acknowledging that I've summarised Mr C's complaint in less detail than he's presented it, and I've not commented on every point he has raised. Instead, I've focussed on what I consider to be the key points I need to think about in order to reach a fair and reasonable conclusion. However, I want to assure the parties that I've read and considered everything that they've provided and if there's something I've not mentioned, it isn't because I've ignored it. No discourtesy is intended by this; it simply reflects the informal nature of this Service.

As the complaint presently stands, Mr C has submitted two main points of argument against UKI voiding his policy and not covering his claim. The first is that he says there is no breach at all as he says he was not asked a question and did not withhold information in response to an enquiry at renewal. The second is that he says any breach that did occur would not be fairly considered deliberate or reckless, and UKI has not demonstrated this.

I've considered Mr C's policy, and I'm satisfied it is a non-consumer insurance contract, and that means the applicable law is set out in the Insurance Act 2015 ("the Act"). Essentially, the Act says that before the contract is entered into, a customer must disclose to the insurer:

- everything they 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 circumstances.*

The Act says a policyholder "ought to know" what should reasonably have been revealed by a reasonable search of information available to them. And a circumstance is material if it would influence the judgement of a prudent insurer in determining whether to take on the risk and, if so, on what terms. This requirement is known as the duty of fair presentation. If the insurer decides the customer didn't give a fair presentation, and they would have done something differently as a result of knowing that information, this is called a qualifying breach.

When the policy was originally taken out in October 2021, Mr C was asked to confirm:

"Neither the proposer, director or partner of the Trade or Business or its Subsidiary Companies either personally or in any business capacity:

e) has been subject of an individual voluntary arrangement with creditors, voluntary liquidation, a winding up or administration order, or administrative receivership proceedings within the last 10 years?"

As the Investigator previously set out, Mr C answered 'no' to this statement, which was recorded on the policy's statement of fact. However, UKI found that Mr C had been a director of two previous businesses that were subject to insolvency, which were dissolved in February and April 2014.

I understand that Mr C has outlined why he feels the focus has been placed on the date the insolvency process finished, when the date the process started should be used instead. Mr C has said that "...Dissolution dates in 2014...are administrative endpoints and do not

accurately reflect either the timing of insolvency events or my personal involvement.”

While I understand the processes may have started in 2012, the statement didn't ask about when they started. The statement was whether Mr C had been subject to any of the insolvency processes in the last ten years. The companies were dissolved in 2014, which was within the previous ten years of the policy being taken out and later renewed in 2022. On that basis, I am satisfied UKI fairly concluded Mr C breached the duty of fair presentation.

I also appreciate Mr C has said in his latest submission that he was not asked a question about insolvency and therefore did not fail in the duty of fair presentation at renewal. But as I have set out above, the Act imposes a positive duty on a policyholder to submit relevant information. And he was under a duty to check the information at renewal was accurate. Given Mr C's earlier testimony, that he knew there had been historical liquidations involving companies he was a director of, I am not satisfied the evidence persuades me no breach occurred at all.

I will then move on to consider whether it is qualifying under the Act. An insurer will only have a remedy for a breach of the duty of fair presentation where they can demonstrate that, but for the breach, they either would not have entered into the contract of insurance at all or would have done so on different terms. UKI has provided evidence which shows that, if they had known about the previous company liquidations, they wouldn't have provided cover at all, as it's not within their risk appetite to provide cover in these circumstances. Having considered this evidence, I'm satisfied it shows the breach of the duty of fair presentation was qualifying under the Act. So, I think UKI is reasonably entitled to apply the relevant remedy available to them.

The remedies available to an insurer depend on whether the qualifying breach was deliberate or reckless, or neither. UKI said they treated the qualifying breach as deliberate or reckless. The Act says this is where the customer either knew that they were in breach of the duty of fair presentation, or did not care whether or not they were in breach of that duty. The Act says that where the qualifying breach was deliberate or reckless the insurer can avoid the policy and refuse all claims, and they can keep the premiums paid. The Act also says that it is for the insurer to show that a qualifying breach was deliberate or reckless. I've therefore considered whether I'm satisfied UKI has fairly demonstrated this.

However, based on the evidence I've seen, I don't think that UKI can demonstrate the qualifying breach of duty was reckless, in that Mr C didn't care whether the answer he gave was true or not. I say this for two main reasons in respect of the available evidence. The first is that Mr C's testimony clearly sets out that he had thought about the information he needed to provide. He explained that he believed that historic insolvencies from 2012 were spent, remote, or not relevant to a commercial landlord policy taken out many years later. The second is that Mr C had also disclosed a historic County Court Judgment ('CCJ') that was later considered not to be relevant to the situation in any event.

Based on Mr C's testimony and actions, I'm persuaded that, while it was ultimately incorrect, he had a belief in what he disclosed and had at least given it some thought. And this means I don't find that UKI can safely demonstrate Mr C did not care about the information he was giving them to show he acted recklessly. As such, I am not persuaded it would be correct to treat the qualifying breach as deliberate or reckless. And this means the remedy available to UKI in the circumstances is that they can avoid the policy and refuse all claims, but must return the premiums paid. For the

avoidance of doubt, I consider the premiums that must be returned are from any policy that UKI has voided in line with their remedy under the Act. UKI should also pay 8% simple interest on that sum from the date the policy was voided.

I understand Mr C has placed considerable weight on his broker's testimony, which says that had the historic 2012 liquidations been disclosed, UKI would still have offered the policy on the same terms and without any increase in premium. I certainly appreciate Mr C's strength of feeling on this evidence and I have no reason to doubt the sincerity of his broker's submissions. But in the specific circumstances of this case, I am satisfied UKI has demonstrated they wouldn't have provided cover had they known about the previous liquidations. And that means I am satisfied they are entitled to rely on the remedy available to them under the Act.

I'm ultimately satisfied that UKI following the Act and applying the remedies available to them in respect of a breach of duty of presentation produces a fair and reasonable outcome in the circumstances of this complaint. While I appreciate this is not the preferred outcome Mr C had hoped for, I trust my decision explains why I have reached the outcome I have."

I concluded that I intended to uphold the complaint in part and to direct UKI to refund Mr C's policy premiums for the policies they'd voided; and pay 8% interest on that refund, from the date they voided the policy until the refund is paid. I invited both parties to provide a response to my provisional decision.

Mr C said he agreed with my conclusions on how to resolve the complaint. UKI did not provide any further information for me to consider.

As both parties have now had the opportunity to provide a response to my provisional decision, I will set out my final decision below.

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 have provided any additional information for me to consider, I see no reason to depart from the findings that I set out provisionally above, which now becomes my final decision.

Putting things right

UKI should refund any premiums for policies they have voided and pay 8% on those refunds. For the avoidance of doubt, if UKI voided both policies then they would need to refund both policy premiums. But if they voided just one policy then they would only need to refund one premium.

My final decision

For the reasons I have set out above, my final decision is that I uphold this complaint in part. I direct U K Insurance Limited trading as NIG to:

- Refund Mr C's policy premiums for the policies they have voided; and
- Pay 8% interest on that refund, from the date they voided the policies until the refund is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 March 2026.

Stephen Howard
Ombudsman