

## The complaint

A company, which I'll refer to as H, complains that Allied World Assurance Company (Europe) dac (Allied) unfairly avoided its Business Insurance policy and declined its claim.

Mr O, a director of H, brings the complaint on H's behalf.

## What happened

H took out a Business Insurance policy in 2020. In July 2021, a third-party (which I'll refer to as C) made a claim against H after its vehicle caught fire following the installation of a hydraulic hose which was supplied by H. H made a claim under its product liability cover.

Allied avoided H's policy for breach of the duty of fair presentation and didn't consider its claim. Allied said the statement of fact completed by H when taking out the policy in 2020 and when renewing in 2021 asked whether it knowingly supplied safety critical products to the motor industry – H answered 'no'. And it also asked whether H alters, modifies, repairs or labels any goods – this was also answered 'no'.

Allied said the answers to the above questions were not accurate which amounted to a breach of the duty of fair presentation under the Insurance Act 2015. Allied said the underwriter confirmed it would not have provided cover if H had answered the questions correctly.

H did not accept Allied's response. It said that the question about providing safety critical products was not clear. In response to the first statement, H accepted that the hydraulic hose could be classed as a safety critical product, but it argued that so would other items it provided such as wipers and bulbs. It said that Allied was made aware that its business was a motor factor/spares provider and therefore Allied should have been aware that it would provide these products. Furthermore, it argued that it didn't 'knowingly' provide these items to the 'motor' industry because the goods were provided via a third-party company (which I'll refer to as B) for many years and it simply didn't know the end user of most of the products it supplied.

In response to the statement about modifying products, H explained that the hydraulic hose, which is provided in a big roll, was cut to length to suit the need of the end user (C) and the ends of the hose crimped with a collar and fitting, but it wasn't modified beyond what is expected by the manufacturer. H says it wasn't responsible for fitting the hose which is what it thought caused the fire.

Our investigator considered the case and he didn't think Allied had acted unfairly. He said in summary H had a duty to make a fair presentation of the risk. The statement of fact included questions which he thought were answered incorrectly. He was satisfied that had the information been disclosed, the underwriter wouldn't have accepted the risk.

H didn't agree with the investigator and asked for an ombudsman's decision. In summary, it said it did answer the questions in the statement of fact correctly for the reasons given above.

H also said that it didn't believe C was in the 'motor industry' and that Allied knew H was a 'motor factor' and so it should have explored its business further. H also questioned the suitability of the product because it didn't think the policy provided cover for its core purpose.

### **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'm not upholding this complaint. I'll explain why.

Both parties have provided detailed submissions to support their position. I want to assure them I've read and carefully considered everything they've said, but I won't comment on everything.

The issue for me to decide in this instance is whether or not it is fair and reasonable for Allied to avoid H's policy and decline its claim on the basis they have set out in their final response to H's complaint.

Allied made the decision to avoid H's policy on the basis of a breach of the duty of fair presentation made by H when taking out the policy in 2020 and renewing the policy in 2021. When considering whether Allied acted fairly, the starting point is the Insurance Act 2015. Under this Act, commercial policyholders, such as H, have a duty to make a fair presentation of the risk to the insurer when taking out a policy. This means they have 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.

Where there has been a failure to fairly present the risks to an insurer, and this gives the insurer a right to a remedy under the Act, this is called a qualifying breach.

The Statement of Fact that was sent to H in 2020 and 2021 included the following two statements:

"Do you knowingly supply safety critical products and/or provide services to the medical, pharmaceutical, nuclear, aviation, aerospace, motor, marine, rail, offshore, defence, agricultural or petrochemical industries?"

"Do you alter, modify, repair or label any goods?"

And it explained that if any of the information provided on the Statement of Fact was incorrect, this could mean that any future claims may not be paid.

It's not in dispute that the above statements were marked as 'no' by H. However, H maintains that the answers provided to the above statements were accurate.

Allied says there is a breach and it has confirmed that if accurate information had been provided in relation to either of the above two questions, the policy would not have been offered.

I have started by considering question two first. It asked whether H modified, repaired or labelled any goods. H said answered 'no'. Based on the evidence I've seen, I'm satisfied that

H clearly does modify goods, even if it is done within what's permitted by the manufacturer. As H had said it didn't, but it actually did, it failed to fairly present the risk to Allied.

Question one asked whether H knowingly supplied safety critical products to the motor industry. Again, H said 'no'. There has been lots of argument about whether H does provide products to the 'motor' industry, and what Allied ought to have been reasonably aware of. I am not persuaded by H's arguments, but in any event, I don't need to make a finding on this as I consider it to be clear that there was a breach on question two, and from what I have seen, I am satisfied that Allied wouldn't have offered the policy based on the breach. I therefore don't think it's necessary for me to go further and consider any issues around question one as it won't change the outcome.

The Insurance Act says where there has been a breach and the insurer wouldn't have provided a policy, the insurer is entitled to avoid it. Allied hasn't treated the breach as deliberate or reckless and therefore I'm satisfied it was fair and reasonable for Allied to avoid the policy, refuse any claims and return the premiums for 2020 and 2021. This remedy puts H back in the position it would have been in had the duty of fair presentation not been breached. This is in line with the actions prescribed in the Insurance Act and I see no reason to depart from this approach.

Having considered everything very carefully, I think Allied acted fairly and reasonably in avoiding the policy and declining H's claim.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 29 December 2023.

Ankita Patel  
**Ombudsman**