

The complaint

L, a company, complains about Hiscox Insurance Company Limited's ('Hiscox') decision to refuse a claim it made under its business insurance policy and void the cover.

L's complaint is brought by a representative on its behalf, but I shall refer to all submissions made as its own for ease of reference.

What happened

L took out a professional indemnity insurance policy with Hiscox and renewed it thereafter.

In October 2020 L made a claim on the policy it had taken out at renewal, at which point it came to Hiscox's attention that L was regulated by the Financial Conduct Authority – something Hiscox said they were unaware of previously. Hiscox declined the claim on the basis that L hadn't represented the position with regard to how it was regulated when renewing the insurance. Hiscox said that had L told them this, they wouldn't have provided cover. As a result, Hiscox voided the policy.

L says the position Hiscox has taken is unfair and that it was common knowledge that the work it did became regulated by the Financial Conduct Authority when it did. It also says the misrepresentation Hiscox have referred to was prepopulated by Hiscox and not it. L considers there was no change in the type of business it did when it became regulated, the position Hiscox have taken about cover and the voidance of the policy is unreasonable.

Our investigator considered L's complaint and concluded that it shouldn't be upheld. She said that L was asked specifically about whether its business was regulated by the Financial Conduct Authority, to which the form was ticked 'No' and that L had a duty to check the representations it was making were true. The investigator was also satisfied that Hiscox wouldn't have insured L had they known that L was regulated by the Financial Conduct Authority. Because of this she said it was reasonable for Hiscox to turn down L's claim, void the policy and return the premium.

L doesn't agree so the matter has been passed to me to determine.

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 won't be upholding L's complaint for broadly the same reasons set out by the investigator. This is why.

When L took out the policy that's the subject of this complaint with Hiscox, the relevant law was the Insurance Act 2015, under which there's a duty to make a "fair presentation" of the risk.

When buying or renewing the policy the party seeking insurance – in this case, L – was

required to disclose every circumstance it knew, or should have known about, which would influence a prudent insurer in deciding whether to underwrite a risk or what premium to charge. In addition to the legal position, the documents provided to L made clear how important it was to provide relevant information.

L doesn't dispute that it was under a duty to provide material evidence when taking out the cover. And it was specifically asked to confirm whether it was "...regulated by the Financial Conduct Authority or the Prudential Regulation Authority or are you involved in arranging or advising on any finance, investments or loans?". The schedule that L agreed to answered 'no' to this.

L has said that the insurance automatically renewed each year and that whilst it was the case that in previous years, it wasn't regulated by the Financial Conduct Authority, this changed, but the documents that it was provided with hadn't and it didn't notice that the question remained prepopulated with the incorrect answer. L also says it was common knowledge that businesses like the one it operated as became regulated when it did. Whilst this might be right, I don't think I can say that L did fairly present the risk it was seeking insurance for, irrespective of what might have been in the public domain. That's because the covering letter enclosing the renewal documents set out that L needed to check them carefully and ensure all of the details were correct. It also said that L needed to tell it if anything had changed, either then or in the future. I'm satisfied that this letter was clear on the question of what L needed to do. Given the content of the letter and L's wider legal duty to disclose anything that would influence the insurer's decision about offering cover, my judgment is that L should have reasonably answered 'Yes' to the question about being regulated by the Financial Conduct Authority. And it wasn't up to Hiscox to infer whether the information contained within the schedule it sent was wrong- that was up to L to correct given its change in status. So, this should have been disclosed. By not telling Hiscox about this, L misrepresented the risk and failed to meet its legal duty – whether the duty of "utmost good faith" or the duty make a "fair presentation" of the risk.

If the insured party fails to disclose this kind of circumstance, and the insurer can show it would not have offered the policy if it had been disclosed, it's entitled to void the policy. And if the breach was deliberate or reckless, it doesn't have to refund the premium to the insured.

I've considered whether Hiscox has shown L's failure to disclose it became regulated by the Financial Conduct Authority would have made a difference. The information I've seen strongly suggests this would have been the case. From what I've seen answering 'yes' to the question would have meant that Hiscox wouldn't have offered L cover because they would have considered the to them risk as unacceptable. So, I think Hiscox has been disadvantaged here.

I appreciate that L didn't intend to give misleading information about the change in its status in terms of how it was regulated, but ultimately it was responsible for disclosing this. And given that Hiscox have returned the policy premium to L, I think this accords with the misrepresentation being careless rather than deliberate or reckless. If Hiscox was satisfied that the misrepresentation to be deliberate or reckless, it would have been entitled to withhold the policy premium. In this case I'm satisfied that the misrepresentation was careless, so I think the return of the premium was reasonable in the circumstances of this complaint.

For the avoidance of doubt, I have taken on board all of L's detailed submissions in this complaint. Although I haven't addressed each and every one of them here, I don't think they change things given our longstanding approach to misrepresentations like the one L made, which incorporates taking a fair and reasonable position in respect of each complaint. Taking account of the relevant law, the policy terms and all the circumstances as well as what's fair

and reasonable, I think Hiscox' decision to decline L's claim and void the insurance was fair.

My final decision

For the reasons set out above, I don't uphold L's complaint against Hiscox Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 15 December 2023.

Lale Hussein-Venn
Ombudsman