

The complaint

Mr P and Mr S are business partners, trading as S. They complain HCC International Insurance Company Plc turned down a claim they made on their Tradesman, Contractors and Professionals policy and voided that policy from the outset.

What happened

In February 2022 Mr P and Mr S had business equipment stolen from them and made a claim on their policy. After investigating HCC turned down the claim. It said the goods stolen weren't ones Mr P and Mr S's policy covered. And they were also stolen from a location that wasn't their insured location.

HCC also said if it had known the true nature of Mr P and Mr S's business it wouldn't have offered cover for this. In addition, if it had known Mr S was under 18 at the point the policy was taken out, that would also have led it to decline cover.

Our investigator thought HCC had acted fairly in concluding the items stolen weren't covered by the policy and weren't stolen from the insured location. In relation to the information provided when the policy was taken out she thought the relevant legislation was the Insurance Act 2015. And she agreed Mr P and Mr S hadn't made a fair presentation of risk to HCC. She was satisfied HCC wouldn't have offered cover if it been aware of the correct position and thought it acted reasonably in voiding the policy and refunding the premiums Mr P and Mr S paid for it.

Mr P and Mr S's representatives didn't agree and asked for an Ombudsman to review matters. So I need to reach a final decision.

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.

The relevant rules and industry guidelines say HCC has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've thought first about whether HCC was right to turn down the claim Mr P and Mr S made. I've looked at their policy schedule and I can see they didn't have cover for 'Tools and Business Equipment'. However, under 'Contract Works, Own and Hired in Plant' they are insured for up to £30,000 for 'Own Plant'. That's defined in the policy as "*Plant scaffolding site huts and temporary buildings owned by You...*"

I don't think the items stolen from Mr P and Mr S could fall within that definition. I've reviewed the invoices supplied and I can see the items relate to audio visual equipment. I don't consider any of those could constitute scaffolding, site huts or temporary buildings. I've thought about whether they could fall within 'plant' but I don't think that is the case. That term isn't further defined in the policy but I think a reasonable dictionary definition would be

“a large, heavy machine or vehicle used in industry, for building roads, etc”. That clearly wouldn't include the items stolen from Mr P and Mr S.

So I think HCC acted fairly in turning down the claim on the basis there wasn't cover for the loss suffered by Mr P and Mr S. I appreciate HCC also expressed concern about whether the items in question were being stored at an insured location. But as I'm already satisfied those items aren't covered by the policy at all I don't need to decide that.

I've gone on to consider whether HCC was right to void the policy from the outset. Mr P and Mr S's representatives have suggested the test which should be applied here is that set out in the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). They say given Mr S's age and experience it would be fair to do that and treat him as an unsophisticated policyholder.

However, CIDRA only applies to consumer insurance contract. A consumer is defined as someone who enters into the contract wholly or mainly for purposes unrelated to their trade, business, craft or profession. That clearly wasn't the case here as this was a commercial policy to protect Mr P and Mr S's business. And commercial policies are covered by the Insurance Act 2015

In some limited circumstances we might nevertheless think it was fair to apply the tests set out in CIDRA when considering a commercial complaint. The age and experience of the complainant could be relevant when considering this. And I appreciate Mr S appears to have been extremely young when the policy was taken out. But as I understand he was assisted by a broker when doing that I'm not persuaded it would be unfair to apply the provisions set out in the Insurance Act. In any case I don't think this is material to the outcome of the complaint.

That's because even applying the test set out in CIDRA I think HCC was entitled to void the policy. I understand that when taking out the policy Mr S was asked *“What is your Trade or Occupation?”*. The Statement of Fact (and policy schedule) records Mr S as saying *“TV Aerials and Audio Visual Installer”*. But I don't think that was correct. Mr P and Mr S's representatives told HCC the insured business rented out screens, lighting and sound. I understand it would then install those for one off client events following a referral from an event management company also owned by Mr S. I think that's a different business activity to the one recorded in the Statement of Fact.

And the Statement of Fact says *“the Insurers have used the information you have supplied to determine the terms on which they are prepared to provide the insurance and the premium they require. It is extremely important that you check this document most carefully to ensure that you have taken care to honestly provide this information and that to the best of your knowledge and belief, it is accurate...”*

I think it's reasonable to expect Mr S to have provided accurate information about what his business did when answering the question HCC asked or to have clarified that with HCC once the Statement of Fact was provided to him. And I've seen underwriting information which satisfies me HCC wouldn't have offered cover if provided with correct details about the nature of Mr S's business.

HCC has accepted the misrepresentation in this case wasn't deliberate or reckless and has avoided the policy (meaning the claim Mr P and Mr S made wouldn't be covered in any case) and refunded the premiums paid. That's in line with the remedies set out in both CIDRA and the Insurance Act and I think it's acted fairly here.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mr S to accept or reject my decision before 22 November 2023.

James Park
Ombudsman