

The complaint

Mrs O has complained about HCC International Insurance Company Plc trading as Tokio Marine HCC. She isn't happy that it declined her claim and voided her commercial property insurance policy.

For ease of reading any reference to HCC International includes its agents.

What happened

Mrs O had a commercial insurance policy for her guest house and made an escape of water claim under the policy in December 2022. But when HCC International looked into the claim it turned it down. This was because it was established that Mrs O wasn't using the property as a guest house at the time of claim and hadn't been for a number of years due initially to the pandemic and then because of a personal injury.

As Mrs O wasn't happy about this she complained to HCC International, but it maintained its position. It accepted that Mrs O had acted reasonably and in line with restrictions imposed during the pandemic but said she should've notified it she wasn't using the guest house as a business after this. And had she have done so it would have told her it wouldn't offer cover as she held a commercial policy, but she wasn't operating as such. And as Mrs O remained unhappy about her claim being declined she complained to this Service.

Our investigator looked into things for Mrs O, but she didn't uphold her complaint. Although she accepted Mrs O hadn't acted unreasonably during the pandemic she thought Mrs O should have told HCC International that she wasn't taking guests after this due to her personal circumstances. And she was satisfied from the underwriting criteria provided that HCC wouldn't have offered cover in these circumstances. Given this she didn't think HCC International had done anything wrong.

As Mrs O didn't agree the matter has been passed to me for review.

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.

I have a lot of sympathy for the position Mrs O has found herself. As HCC International highlighted there is no suggestion she deliberately misrepresented her position which is why it returned her premium. However, had Mrs O have told it that she wasn't operating a business after the pandemic due to personal injury then it is clear that it wouldn't have offered cover. So, I can't say it has acted unfairly.

I know it wasn't Mrs O's intention to operate outside the policy for a prolonged period, but the policy is clear that *'if any part of the premises'* is left unoccupied for more than 14 consecutive days then cover isn't provided. So I think Mrs O should have contacted HCC International to tell them about her present position and that she had an injury preventing her from operating her business.

I accept this was an oversight, but I have to be fair to both sides when I consider cases and the policy is clear that the property needed to be in use. Indeed, the escape of water claim took place in the depths of a particularly cold spell, so it is quite possible that the way the guest house was being used contributed to the claim. I say this as Mrs O had turned off all the heating in the upper floors (as she only used downstairs personally) and so it is possible this could have contributed to the burst pipe.

Mrs O has advanced the point that she was sent literature outlining the policy wasn't to run as it usually would during the pandemic - suggesting that she thought she didn't have to do anything further after that point in time. But her claim was a long time after the pandemic restrictions were lifted and HCC International was clear that the cover would revert back to normal a short while after the pandemic restrictions were lifted. So, I think it was clear that Mrs O needed to tell it about any further change in use.

Indeed, there is a greater onus on Mrs O to make a fair representation of the risk as a commercial customer. The *'Guest House and Hotel Certificate'* makes it clear that Mrs O should make a *'fair presentation of the risk that should include a full and unrestricted disclosure including every material fact and circumstance (a material fact or circumstance is material if it would influence the judgement of the Underwriter when considering whether to accept the risk and/or the assessment of the terms, conditions or premium which should be applied).'* And it outlined that she should check with her insurance advisor if she was unsure.

It goes on to say that if Mrs O fails to make *'a full unrestricted disclosure Underwriters may refuse to pay your claim, pay only part of your claim, and/or void your policy.'* And highlights that any change during the period of cover needs to be highlighted to the insurer as soon as possible so the underwriters can decide if they can continue cover. HCC International has also provided underwriting criteria which clearly shows it wouldn't have offered cover to Mrs O had it have known she wasn't operating commercially for a sustained period.

Overall, I don't think I can say that HCC International has acted unfairly here and I'm not upholding this complaint. In line with the Insurance Act 2015 Mrs O had a duty to make a fair representation of the risk she posed in order that HCC International could make an informed choice about the risk. So, Mrs O should have informed it about the fact she wasn't trading since 2020. Indeed, I note that it asked some questions about her trade which she didn't answer and ultimately I'm satisfied that it wouldn't have offered cover so I can't ask it to cover the claim now - as it simply wouldn't have insured her had it have been made fully aware of the risk. HCC felt that Mrs O didn't act deliberately or recklessly in not notifying it of this material change in the use of her guest house, so it returned her premium which feels fair in the circumstances.

My final decision

It follows, for the reasons given above, that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 19 December 2023.

Colin Keegan
Ombudsman