

## The complaint

Mr K complains that U K Insurance Limited ('UKI') avoided two landlord insurance policies, and cancelled/refused to renew another seven policies.

## What happened

Mr K held nine landlord insurance policies with UKI. He made claims under two policies for malicious damage after two of his properties had been used for the cultivation of cannabis, and damage had been caused to the properties.

After assessing the two claims, UKI said that Mr K hadn't completed sufficient background checks on the tenants, or any right to rent checks. It also said he hadn't provided up-to-date gas or electric safety certificates. UKI concluded that Mr K had recklessly provided it with information that was untrue or misleading when taking out the policies. It therefore avoided the two policies and kept the premiums paid.

UKI then decided to cancel five policies that Mr K held with it. And it refused to renew the two remaining policies. Unhappy with this, Mr K brought a complaint to this Service.

Our investigator didn't recommend the complaint be upheld. He thought it had been reasonable for UK to conclude Mr K had breached the duty to make a fair presentation of the risk.

I issued a provisional decision on 28 December 2023. Here's what I said:

### 'Policies ending 820 and 001

*Mr K took out the policy ending 820 in April 2021, and the policy ended 001 in August 2021. For both policies, UKI provided Mr K with a statement of fact which made some assumptions. It explained he had a duty to make a fair presentation of the risk, and should tell UKI if any of the details were incorrect. It also explained that failure to do so may mean the policies wouldn't be valid or that a claim may not be paid.*

*The statement of fact for each policy said:*

*'You, your business or its subsidiary companies:  
owns, leases or are purchasing the property(ies) to be insured;  
have tenancy agreements of at least 6 months;  
meet all of your legal obligations as a landlord.*

*...*

*About your tenants*

*...*

*Only tenants who have signed the tenancy agreement will live permanently at the property...  
At least one of the individuals who have signed the agreement must be either:*

- employed (or have been in the last 6 months),*
- in full time education (or have been in the last 6 months),*
- retired,*

- in receipt of carer's allowance or disability benefit.

at the point of signing the tenancy agreement.'

*The relevant legislation I need to consider here is the Insurance Act 2015 ('the Act'). Under the Act, Mr K was required to make a fair presentation of the risk to UKI when taking out the policies. That meant he needed to tell UKI everything he knew, or ought to have known, that would influence it in deciding whether to accept the risk or not.*

*Given that the statement of fact made it clear that the tenant's employment status was relevant to UKI, I'm satisfied that Mr K ought to have known that this information would influence UKI in deciding whether or not to offer cover.*

*Mr K hasn't been able to provide UKI with any evidence that he checked the tenants employment status for either property. His statement to UKI's agent suggests that he carried out little to no background checks on his tenants. So I agree with UKI that there was a breach of the fair presentation of the risk here.*

*UKI also says that Mr K didn't comply with his legal obligations as a landlord. I don't think I need to consider this as I've already found that Mr K breached his duty to make a fair presentation of the risk.*

*Where a breach of the duty of fair presentation takes place, an insurer has a remedy against the insured if it can show that it wouldn't have entered into the contract at all, or would have done so on different terms. This is known as a qualifying breach.*

*UKI says that if its underwriters had known that Mr K could not comply with the policy assumptions in the statement of fact, it would have refused to provide him with a quote and so he could not have taken out the cover. I've carried out a dummy quote, and this is correct. So I'm satisfied the breach was qualifying.*

*UKI has categorised the qualifying breach as reckless. The Act says this is the case if the insured:*

- a) knew that it was in breach of the duty of fair presentation, or*
- b) did not care whether or not it was in breach of that duty.*

*Mr K is an experienced landlord who rents out multiple properties. I'm satisfied the assumptions in the statement of fact were clearly prominent and Mr K would have known that he should have checked a tenant's employment status. I think it was reasonable for UKI to conclude that Mr K knew that he was in breach of the duty of fair presentation, or did not care if he was in breach of that duty and that the breach was therefore reckless.*

*The Act says that if a qualifying breach is deliberate or reckless, the insurer may avoid the contract and refuse all claims, and need not return the premiums paid. I'm satisfied it was therefore reasonable for UKI to avoid the two policies from the start, and not return Mr K's premiums paid.*

#### *Policies ending 882 and 435*

*UKI decided not to renew these two policies. In addition to the two claims Mr K made to UKI for damage caused by the cultivation of cannabis in his properties, UKI became aware that he'd made a third claim in 2021 to another insurer for the same reason. Despite these losses, UKI said Mr K hadn't enhanced the checks carried out on his tenants. UKI also thought Mr K hadn't taken reasonable precautions to prevent such losses from happening in*

*the first place because he hadn't carried out sufficient background checks. The relationship had therefore broken down, and UKI didn't want to continue to offer Mr K new policies.*

*I think it was up to UKI whether or not it chose to renew these policies. I therefore don't require it to reinstate the cover.*

*Policies ending 137, 632, 319, 626 and 635*

*UKI cancelled these policies partway through their policy years. It told Mr K it did this because it had avoided the policies ending 820 and 001.*

*I asked UKI for more information about this decision. UKI responded and said it was relying on the following policy term to cancel these policies:*

*'We may cancel the Policy by sending seven days/ written notice to You at Your last known-address. We will refund any Premium paid for the remaining Period of Insurance, as long as You have not made any claim up to the date of cancellation.'*

*Cancelling a policy can have long lasting consequences for a policyholder. The cancellation will be recorded against Mr K, and could affect his ability to take out insurance in the future, as well as the price he has to pay. Though I recognise that UKI has already avoided two of Mr K's policies (and I've concluded that it was reasonable for UKI to do so), and he would need to disclose this when taking out a new insurance policy.*

*However, I don't think UKI had sufficient reason to cancel these five policies (and I understand it didn't return the premiums either). It made no enquiries about the background checks Mr K carried out for his tenants in the properties covered by these policies, and so hadn't concluded that he'd breached his duty to make a fair presentation of the risk. Although Mr K had breached this duty for two other policies, it doesn't necessarily follow that he did so for every policy held.*

*Though I don't require UKI to reinstate the policies. I say that because if the policies had continued for the remainder of their policy years, then I think it's likely UKI would have chosen not to renew the cover (as it did for the policies ending 882 and 435), and I think that decision would have been up to UKI. So I don't think there'd be any benefit in requiring UKI to reinstate the policies.*

*Instead, I think the fairest outcome would be to require UKI to remove any record of the cancellation of these policies from any internal and external databases. I also intend to require UKI to pay the difference between the cost of the new policies that Mr K needed to take out and the policies that were cancelled, up to the renewal date for each of the cancelled policies.'*

*I asked both parties for any further comments they wished to make before I made a final decision.*

*UKI responded with the following main points:*

- *It disagrees with my provisional findings in respect of the cancelled policies.*
- *As it has avoided two of Mr K's policies for reckless fraud, then it should be able to exit any other business he has with it.*
- *When taking out insurance elsewhere Mr K would need to declare that he's had policies avoided, claims refused and policies declined, regardless of the cancelled policies. This would have an impact on the quotes.*

- It clarified that it had returned pro-rata premiums to Mr K for four cancelled policies, and that the policy ending 137 hadn't been cancelled and had instead lapsed.

Mr K responded with the following main points:

- When he made the first claim with UKI, the loss adjuster was satisfied with the information he'd obtained from the tenant and offered him a settlement. It was only when the second loss happened, and a further claim was made that UKI disputed the information.
- He thinks the terms and conditions must have been changed by UKI between those dates.
- He carried out his duty with regards to checking his tenants right to rent. He also checked their employment statuses by looking at their payslips, but he didn't keep a copy due to data protection.
- He has suffered immensely both financially and mentally with what UKI has put him through.
- As a gesture of goodwill, he wants UKI to honour the initial settlement that was offered to him for the first claim.

### **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 remain of the same view expressed in my provisional decision. I'll explain why.

UKI says that Mr K has committed reckless fraud, but that's not correct. UKI explained in its final response letter that it thought Mr K had breached his requirement to make a fair presentation of the risk to UKI, and that it was reckless. It did not allege to him that it thought there was any fraud. I also note that UKI had told this Service that it had categorised the breach as reckless rather than deliberate.

I therefore did not make any finding on there being potential fraud, and instead concluded that there had been a breach of the fair presentation of risk. I've explained in my provisional decision why that means UKI was entitled to avoid the policies ending 820 and 001. However, UKI hasn't shown that Mr K breached the duty to make a fair presentation of the risk for the cancelled policies ending 632, 319, 626 and 635 (I've noted UKI's recent confirmation that the policy ending 137 wasn't cancelled and instead lapsed).

I remain satisfied that it wasn't appropriate for UKI to cancel the above four policies by relying on the policy term that allows it to cancel any policy, given the potential consequences for Mr K when taking out insurance elsewhere. I recognise that Mr K would need to declare that he'd had policies avoided (and potentially that he'd had policies refused, depending on the questions asked) when taking out insurance elsewhere. However, having another four policies cancelled when they should not have been could well have a further impact on future premiums. As I've found it wasn't reasonable for UKI to cancel the four policies, Mr K should be put back in the position he would have been in if UKI hadn't cancelled the policies and had instead chosen not to offer him renewal at the end of the policy year.

UKI has now confirmed that it paid a pro-rata premium refund to Mr K for the four cancelled policies. To place Mr K back in the position he would have been in as if UKI hadn't cancelled

those policies, he would have paid the premium for the full year. So UKI can take into account the pro-rata refund it has returned to Mr K in its calculations.

Mr K says that after the first claim, UKI's loss adjuster accepted the information he'd obtained from the tenant, and only disputed this after the second loss. He thinks the terms and conditions may have changed between those dates.

The loss adjuster may well have accepted Mr K's explanation that he had carried out appropriate checks on his tenant for the first loss, but then had concerns when the second loss happened which prompted further enquiries. After UKI found that Mr K had no evidence to support that the relevant checks had been done, it made the decision to turn down the claims and avoid the policies. I've already made a finding on that in my provisional decision, and concluded that this was reasonable. I therefore don't require UKI to make a claim payment on a goodwill basis. Although UKI had made an offer to settle the first claim, I don't think it was required to honour that offer after it became aware there had been a breach of the duty.

### **My final decision**

My final decision is that I partly uphold this complaint. I require U K Insurance Limited to do the following:

- remove any record of the cancellation for policies ending 632, 319, 626 and 635 from any internal and external databases
- pay the difference between the cost of the new policies that Mr K needed to take out and the four cancelled policies (if the new policies were more expensive) up to the renewal date for each of the cancelled policies. This is subject to Mr K providing premium information for the new policies. UKI can take into account the pro-rata premiums returned for the cancelled policies in its calculations. Interest should be added at the rate of 8% simple per annum from the date each premium was paid to the date of settlement\*

\* If UKI considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 19 February 2024.

Chantelle Hurn-Ryan  
**Ombudsman**