

## The complaint

A company, which I'll refer to as T, made a claim on its business protection insurance policy. The claim was rejected by the insurer and the policy declared void. T complains this happened as a result of failings by PIB Risk Services Limited.

## What happened

T bought a business protection policy, which it then renewed in April each year. The policy was sold by a broker which was acquired by PIB in 2020 and PIB dealt with the policy renewals from then on. The cover was provided by an insurer.

In 2022 T notified the insurer about a personal injury claim being made against it by a former employee. This followed an accident that had happened in June 2021. The insurer looked into this and decided to reject the claim and void the policy as from the renewal in April 2021.

The insurer said this was because there had been a misrepresentation by T in describing the nature of its work and the locations where it undertook that work. The insurer said if it had been given the correct information, it would not have agreed to offer cover.

T complained about the insurer's decision and we have dealt with that complaint separately.

This complaint is about PIB's actions. T says there were a number of failings by PIB including:

- failing to ensure it had the right cover in place,
- failing to follow its instructions, and
- providing incorrect information to the insurer.

PIB accepts it has no record to show it informed the insurer that T's work included repairing potholes at a commercial location. But it says the information it received from T wasn't accurate and it's not responsible for the insurer's decision to reject the claim and void the policy.

Our investigator explained that we did not have jurisdiction to deal with any events before 2019, so couldn't consider the original sale of the policy or any renewals before that date, but could look at renewals from 2020. His initial view was he hadn't seen evidence showing PIB was aware of the work T carried out at the commercial premises or that certain repairs were being carried out using the application of heat. So he didn't think PIB was responsible for the claim being rejected and the policy declared void.

But after considering further information, the investigator said PIB had made an error in not passing on all the information received from T and as a result the policy didn't provide the cover T should have had. So he asked PIB to appoint a loss adjuster or claims handler to assess the claim as if cover was in place and compensate T for any loss it had suffered.

T has accepted the investigator's view but PIB doesn't agree. It has provided detailed comments. I won't set them all out in full but the key points include:

- T had a duty to give a fair presentation of the risk to the insurer.

- The insurer voided the policy because T had breached this duty when it failed to disclose that it carried out work at motorway service stations and/or work that involved the application of heat.
- T repeatedly (over several years) said it didn't carry out any work involving the use of heat.
- Even if a different policy had been taken out in 2021 with another insurer, that insurer would always have been entitled to void the policy due to T's breach of the duty to give fair presentation.
- Even if a different insurer chose not to void the policy, it would still have rejected the claim anyway, because T had breached
  - requirements about notifying the insurer of claims; and
  - conditions requiring it to take reasonable safety precautions – the accident happening after the employee had used equipment which T knew to be faulty.

As no agreement has been reached, I need to make a 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.

We have received detailed submissions on the complaint. We were set up to provide an informal alternative dispute resolution service and our role is to provide an impartial review, quickly and with minimal formality. I use my judgement to decide what's fair, based on the main crux of a case. So I won't comment in detail on every single point that has been raised and will focus on the key points that are relevant to the outcome I've reached.

This was a commercial policy. Under the relevant law (the Insurance Act 2015) T had a legal duty to make a fair presentation of the risk. This means T had to disclose either

- everything they knew, or ought to have known, that would influence the insurer's judgment in deciding whether to insure the risk and on what terms; or
- enough information to put the insurer on notice that it needed to make further enquiries about potentially material circumstances.

The insurer rejected the claim and voided the policy from the renewal in April 2021 on the basis T had failed to provide relevant information and was in breach of this duty.

This was an advised sale, so PIB had a duty to provide appropriate information to enable T to make an informed choice about what cover was needed; ensure the insurance was consistent with T's demands and needs; and ensure the suitability of its advice.

I'm not considering the insurer's decision on the claim. But T says that decision was made on the basis of inaccurate information provided by PIB to the insurer. That's the crux of the matter. T had a duty to make a fair presentation of the risk. If PIB simply passed on to the insurer the information it received from T, and the information T had given was inaccurate, then PIB would not be responsible for the consequences of that.

But if T provided accurate information to PIB, and PIB made a mistake and passed on incorrect information to the insurer which then led the insurer to reject the claim and void the policy, it would not be fair for T to suffer a loss as a result of PIB's error.

As the insurer rejected the claim and voided the policy as from the renewal in April 2021, the key issue is what happened at that renewal.

From the evidence I've seen, I'm satisfied that:

- there were discussions between T and PIB before the policy was renewed in April 2021. The notes from these discussions include that T “*carries out ground maintenance work for industrial estates etc, again mostly gardening with pothole repair / occasional small building work repairs to boundary walls etc. Company carries out above with two schools and [building company] ....*”
- So T told PIB that it carries out pothole repairs, and that it carried out work at two schools and for a building company.
- PIB says when it was told about pothole repairs this was in the context of ground maintenance work but it hasn’t provided evidence confirming this. And if this wasn’t clear, I would expect PIB to have asked T more questions to clarify the work it was doing.
- Since T had said its work included ‘pothole repairs’ I think this would naturally mean working on roads.

The insurer made its decision on the basis that, amongst other things, the answers given to the following questions were inaccurate:

“Does the business use any process involving the application of heat other than soldering irons?” Answered “No”

“Type of properties the business undertakes work on?” Answered “Private Dwellings or Blocks of Flats only”

The insurer has said it would not have offered T the policy had it known about the nature or location of T’s work; potholes are holes in road surfaces and it would not expect T to be carrying out work of this nature.

A different answer to the first question would apparently have led to a referral to an underwriter for consideration. The insurer has said that referral would have led to a decline, but this is less clear than in relation to the second question. It’s clear that if the insurer had been told T carried out work at commercial premises, cover would not have been offered.

T had told PIB that it carried out pothole repairs and work at premises that were not private dwellings or blocks of flats. So PIB was aware of that. I appreciate PIB has commented on various other areas where it says T didn’t provide an accurate presentation of the risk. But I’m focusing on what led to the insurer’s decision. That decision was based on it now being aware T carried out work on potholes, and at places other than private dwellings or flats. And PIB was aware of these but didn’t pass that on to the insurer. In these circumstances I think PIB’s error in not passing on that information led to the insurer’s decision. If PIB had passed on that information, the policy would not have been sold. T could then have sought a policy elsewhere.

As a result, T is now left in a position where its policy was declared void and the claim not accepted.

Even if the policy had not been declared void, it included an exclusion for work other than on private dwellings or blocks of flats. So PIB sold a policy to T that excluded work which it knew T carried out. I don’t consider that was suitable for T.

To put things right, T should be put in the position as if it had insurance that included cover for the type of work it was carrying out, meaning the claim could be considered. So PIB should arrange for that to happen.

PIB says even if the policy had not been declared void, or another policy had been in force, the claim would inevitably have been rejected anyway because T was in breach of other policy requirements. So even if it was at fault, there's no loss.

It's not for me to say whether the claim should be covered. It would need to be considered in line with the remaining policy terms. If there are other terms and conditions that apply, for example in relation to notification of claims or conditions requiring T to take reasonable safety precautions, that may affect whether the claim would be covered. But the claim would need to be considered in line with these terms before that can be determined.

### **Putting things right**

To put things right, PIB should:

- instruct a loss adjuster or claims handler to handle the claim as if the policy was in force, not including the exclusion that meant the type of work T was carrying out was not covered, but in line with the remaining policy terms.
- If T is held liable for any liability or costs from the third-party claim, PIB should compensate T to the extent the loss adjuster or claims handler considers that the policy terms mean these would have been covered.

### **My final decision**

I uphold the complaint and direct PIB Risk Services Limited to take the steps set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 12 April 2024.

Peter Whiteley  
**Ombudsman**