

The complaint

B, a limited company, complains HSB Engineering Insurance Limited declined a claim it made on its Contractors' Plant Insurance policy.

B is represented by its director, Miss W.

What happened

In May 2020, HSB was notified by B's broker of a new theft claim. It said this related to an incident in December 2019 when an extensive amount of plant equipment had been stolen. It explained *"due to some personal matters this was not put forward until more recently when client was reviewing matter with us and the matter was discussed"*.

After investigating HSB declined the claim. It said it was a condition of the policy that *"as soon as you know about any incident or circumstance that may give rise to a claim that you tell the person who arranged your policy (or us), providing full details, as soon after the incident or circumstance as possible"*. In this case the claim hadn't been notified until around five months after the loss took place. So it thought B was in breach of the notification requirement which was a condition precedent of the policy.

And it said, having reviewed information provided by the police, it appeared the plant might have been taken by a former employee. It thought there were inconsistencies between the police information and what B had said. And Miss W hadn't agreed to its request to provide a formal signed statement in relation to what happened.

Our investigator thought the policy notification term was clear and B was in breach of this. While B said the loss had been reported to the broker in December 2019 it also suggested it wasn't able to do that because of ill health affecting Miss W. And the broker had told us it didn't have a record of a December 2019 notification.

He also agreed there were discrepancies in the information provided about the loss and thought it was reasonable HSB had requested further clarification in relation to this including a signed statement from Miss W. He thought the late reporting meant HSB was unable to properly investigate and, taken together with the other discrepancies, he thought it was fair of HSB to have declined to provide cover for the claim.

Miss W didn't agree. In summary:

- She drew attention to evidence she'd provided (including witness statements) which said the matter had been referred to the broker in December 2019. And she thought the broker would confirm this.
- In any case the police had initially said this was a civil matter and she'd sought the return of the assets from B's former employee. So at that point she didn't think the matter would give rise to a claim. It was only when the police suggested in February 2020 the employee didn't have the assets she knew that might be the case. And she then became unwell and was unable to raise the matter with her broker until she recovered.

- She didn't think the condition precedent could be relied on if the breach hadn't caused prejudice. She didn't think that was the case here because she'd informed the police of the incident immediately and sought to retrieve the assets as soon as possible. She didn't think there was any other action HSB would have taken even if it had been aware of the claim earlier. And all relevant information had been disclosed to it.
- She drew attention to how she felt she'd been treated by HSB, inappropriate comments which she thought had been made and the impact of that on her. She said she'd provide recordings of calls with HSB which evidenced that.

Our investigator advised both parties on 29 February 2024 that he'd move the complaint for review by an Ombudsman and that they would need to provide any further points or information they wanted considered by 14 March 2024. Neither party has provided any additional information. 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 HSB has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of B's policy. This does cover damage to contractor's plant and damage is defined as "*total or partial loss, physical damage, or destruction*". So in principle it could cover the theft of B's equipment. But it's a condition precedent of the policy that "*as soon as you know about any incident or circumstance that may give rise to a claim that you tell the person who arranged your policy (or us), providing full details, as soon after the incident or circumstance as possible*".

Miss W says the term doesn't give a specific timeframe in which notification should take place. I appreciate it doesn't, but it says that needs to happen "*as soon after the incident or circumstance as possible*". In this case Miss W has drawn attention to some very difficult personal circumstances which impacted her and which I was extremely sorry to learn about. I can understand why, in that situation, she would have needed to prioritise other matters including her own health and it might not have been possible for her to provide notification until she recovered.

But while I can understand how those issues affected her around February and March of 2020 it does appear that Miss W was aware of the loss in December 2019. I understand she's arguing she didn't notify the claim at that time because it was only later that it became apparent B's ex-employee didn't have the assets in question.

However, taking into account relevant case law, I think it's reasonable to say that for a claim to be notified there should be a real rather than a fanciful risk of a claim being made on the policy. And that a reasonable insured would have understood there was a real risk of such a claim being made taking into account their knowledge of what happened.

In this case while it appears to have been suspected B's former employee had taken the plant based on a previous threat he'd made there doesn't seem to be further evidence to support that was what had actually happened. Miss W may have thought that likely but that in itself could be something which could give rise to a claim on the policy. And in any event I don't think she could have ruled out other options including the plant having been stolen by someone else. As such I think there was more than a fanciful chance that she would need to

claim on her insurance and so this is something that should reasonably have been notified in December 2019 in line with the requirements of the policy.

I've thought about whether that did take place. Miss W says she did tell her broker about the loss soon after she became aware of this in December 2019. And she's provided two statements from individuals who say they were present when this took place (one of whom is a police officer). However, the broker's notification to HSB in May 2020 doesn't make any reference to it having already been told about the claim. I've also listened to a call between the broker and our investigator in which the broker confirmed from their notes that the notification took place at the start of May.

I appreciate the contact Miss W recalls was with a different individual at that broker. She's suggested we speak to him. But I don't think that's something which is required in order for me to reach a decision on this complaint. I'm considering whether HSB fairly declined the claim B made based on the evidence it should reasonably have had available to it.

During the course of its investigation HSB sought to obtain evidence from the individual Miss W referenced but nothing was provided. And Miss W's argument that she couldn't notify the claim because she thought B's ex-employee had the assets in question and she was then unwell doesn't obviously match with her contention that she did notify the claim in line with the policy requirements in December 2019.

Looking at all of the evidence (including the witness statements Miss W has provided) I think she may have had some contact with the broker in December 2019. But the policy terms require that "*full details*" of the incident or circumstance are given. Based on the information that was reasonably available to HSB I don't think it acted unfairly in concluding that hadn't taken place and so the policy terms hadn't been met.

The policy says the notification requirement is a condition precedent to the insurer's liability to provide cover. That means the legal position is HSB doesn't need to show how non-compliance with the condition has adversely affected (prejudiced) its position to turn down the claim. But that isn't the only issue I need to consider. I understand the legal position as it applies to a condition precedent. However, our remit is wider than that and requires me to also take into account what's fair and reasonable in all the circumstances. I think the question of whether HSB has been caused prejudice by late notification is relevant when considering what's fair and reasonable.

HSB has explained what the impact of the late notification has been. And I think it's fair to say it has lost out on the opportunity to undertake a prompt investigation of its own of what happened at the time the incident occurred. I appreciate some investigation may have been carried out by the police but that's for a different purpose to the inquiries HSB would make for the purposes of an insurance claim. Taking into account that the notification clause is a condition precedent I think it was fair of HSB to turn down the claim on the basis that this hadn't been complied with.

I also think HSB in any case had reasonable concerns about other aspects of the information Miss W provided. There does appear to be a question over the circumstances of the loss which was initially treated by the police as a civil matter. The items of plant that formed part of B's claim to HSB weren't referenced in the initial police report and were only subsequently included following contact from Miss W in May 2022 (many months after the loss took place). I appreciate Miss W's position is that was because of an initial error by the police but it's also a condition precedent of the policy that you "*co-operate with us fully and provide in a timely manner all the information and assistance we may require to investigate your claim*".

I think it was reasonable HSB wanted to understand more about this and other issues relating to the circumstances of the loss. And I can see it made attempts to discuss them in

more detail with Miss W. It also sought to obtain a signed witness statement from her. However, those efforts didn't address its concerns. I think it was reasonable of HSB to conclude this wasn't a claim it should in any case accept unless those issues were resolved.

Miss W has also raised concerns about comments made in conversations she had with HSB. I understand she was provided with recordings of those calls by HSB which said it didn't believe they supported the allegations she'd made. Our investigator asked her to provide any evidence she had in support of her position (including the calls themselves) but Miss W hasn't done so.

So, based on the information I've seen, I can't conclude HSB has done anything wrong here. But I don't think this is an issue I should consider further in any event. I say that because I couldn't make an award for any distress caused to Miss W personally even if I was to agree with her. That's because this complaint isn't one she's making in her own right but as representative of B. And it's the 'eligible complainant' in this case.

That means it's only the impact on B I can consider not any distress Miss W may have been caused personally. And a limited company isn't a natural person and so can't suffer distress in the way an individual can. It could be caused inconvenience but Miss W hasn't suggested it was because of anything that was said during these calls. And I haven't seen anything else to show that's the case. As a result I'm not going to consider issues relating to these calls further because even if Miss W is correct in what she says (and I haven't seen evidence of that) there wouldn't be any remedy I could direct HSB to provide.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 17 May 2024.

James Park
Ombudsman