

## **The complaint**

J, a limited company, complains about what U K Insurance Limited (UKI) did after it made a claim on its 'Farm Combined' insurance policy.

Mr M, who is a director of J, is bringing the complaint on its behalf.

## **What happened**

J's 'Farm Combined' policy with UKI renewed in February 2023. The policy schedule listed the sum insured for livestock as £26,000. In October 2023 Mr M made a claim as nine pure breed cattle had been stolen with a value of around £16,650. Having reviewed the claim UKI said J was underinsured based on its herd list and the estimated value at risk. It said the policy allowed it to apply 'average' in this situation so it would be paying £4,590. Mr M said at renewal the sum insured was adequate. And he was told he didn't need to tell UKI if, within the policy term, he bought or sold cattle. UKI didn't change its position.

Our investigator said the policy terms didn't require J to tell it about any change in risk during the term. And he thought the evidence showed the sum insured was adequate at renewal. He didn't think J was in breach of the duty to make a fair presentation of risk. Nor did he think the valuation UKI had subsequently placed on the herd was logical or supported by other evidence. And while the policy did contain an 'average' clause he didn't think it was fair to apply that given the transparency requirements the Insurance Act contained hadn't been met. He said UKI should reconsider the claim without applying 'average'.

UKI didn't agree. It drew attention to the policy wording as it related to 'average' and said if the size of the herd increased after renewal it would follow the sum insured should also have been increased. And it said as its policies were sold through a broker it wasn't able to draw the policyholder's attention to a particular term. It didn't think the Insurance Act prevented the application of 'average' if, as in this case, it was written into the policy. 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 UKI 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 J's policy. I don't think it's in dispute the loss resulting from the theft of J's animals is something the policy covers. The issue is UKI has applied 'average' to the claim settlement because it says J's sum insured wasn't sufficient to cover the actual value of its herd. And the policy says:

*"For the purpose of this Section, the General Definition of Average except where otherwise stated shall mean:*

*The total value of all Livestock owned by the Insured or in transit at any one time has been declared by the Insured to be as stated in the Schedule and if at the time of any loss that sum is less than 75% of the Market Value of the Livestock, the Insured shall be considered as being his own Insurer for the difference and shall bear a rateable share of the loss accordingly.”*

At renewal in February 2023 the policy schedule included a sum insured for the herd of £26,000. I understand the composition of the herd subsequently changed and the overall size increased. UKI believes that value at the time of loss was around £87,000. However, it doesn't appear to have any independent evidence in support of its valuation. And that calculation doesn't in itself appear to have been carried out correctly. UKI appear to have applied the average value of the nine stock bulls which were the subject of the claim to other elements of the herd which are categorised separately. In the absence of evidence from a professional valuer in support of its position I can't conclude that's a fair way of assessing the overall value of the herd.

In any event, although UKI thinks if the size of the herd increased after renewal it would follow the sum insured should also have been increased, it's not referenced any policy terms that require the insured to increase the sum insured. And I've not identified anything in the policy which says an insured has to do that. So UKI appears to be imposing a requirement on J that falls outside of the policy terms and which it didn't explain to it prior to the loss taking place. And I'm mindful of the fact J's broker told it *“there is no necessity for you to notify [broker] when you add animals to your herd, but you must however be accurate when providing the value at risk at renewal”*.

So I don't think UKI can fairly argue in this case that J should have told it about changes to the herd after renewal. I think it's appropriate to consider whether J provided an accurate sum insured based on the value of its herd when the policy renewed. And as J's policy is a commercial one the law that applies here is the Insurance Act 2015. That says a commercial customer has a duty to make a fair presentation of risk to the insurer. In order to do so the Act says a commercial policyholder must disclose everything they know, or ought to know, that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms.

In this case I don't think there is evidence to show J didn't make a fair presentation of risk at the point the policy renewed. The herd list it's supplied shows it was clearly smaller at that point and didn't include the larger number of pure breed cattle which subsequently increased the value. And UKI hasn't provided any clear evidence to show the £26,000 sum insured didn't reflect the value of the herd at that point.

The Insurance Act sets out the remedies available to an insurer when it's found a policyholder didn't provide the information they ought to have done when the policy was taken out or renewed. But as I'm not satisfied J didn't do that, those remedies aren't open to UKI. And, while I appreciate the policy terms do allow it to apply average where the sum insured is less than the actual value at risk, the Act says a term which puts the insured in a worse position in respect of matters covered by the Act has no effect unless the transparency requirements it contains are met.

Those requirements are that the term must be clear and unambiguous in effect and the insurer must take sufficient steps to draw the attention of the insured to the disadvantageous term. In this case I've not see any evidence to show UKI did make this term clear to J prior to it entering into the insurance contract. And while UKI says the policy was sold through a broker the law is clear that it's for the insurer to draw the term to the attention of the insured. So regardless of how the policy was sold it would need to have met those responsibilities if it wanted to rely on this term when dealing with J's claim. For the reasons I've explained it didn't and so I don't think it is fair of it to do so.

### **Putting things right**

For the reasons I've explained I don't think UKI has fairly calculated the claim payment due to J and can't apply the policy terms as they relate to 'average' in doing so. So it will need to recalculate the claim in line with the remaining policy terms.

### **My final decision**

I've decided to uphold this complaint. U K Insurance Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 29 July 2024.

James Park  
**Ombudsman**