

The complaint

Mr M complains on behalf of “R”, a limited company, that Allied World Assurance Company (Europe) dac (“Allied World”) unfairly voided and terminated R’s buildings insurance policy.

What happened

R is a company which was formed by the leaseholders of a residential building, in order to manage the property after experiences of poor service from previous managing agents. In March 2020, R instructed its brokers to seek renewal of its building insurance policy. An underwriting agent was contacted and a Property Owner’s policy with Allied World was taken out, commencing in April 2020.

In June 2020, R sought registration with the government’s Building Safety Fund, due to the building not holding an External Wall Fire Review certificate. This was making it difficult for leaseholders to sell or remortgage their properties.

Following this, a report was issued in October 2020, confirming that a number of remedial alterations to the external construction of the building would be required in order for the certificate to be granted. These findings were shared with Allied World, after which the insurer decided to cancel and void the policy with immediate effect, in November 2020. Allied World said it had made clear in communications that cover was conditional upon there being no EPS material in the external construction of the building. R says it made it clear which materials were used in the construction when it passed on information to its brokers – and that same information was passed on to Allied World before inception of the policy. Unhappy with Allied World’s response to its complaint, R referred the complaint to this service.

Our investigator considered the issues but didn’t think the complaint should be upheld. He said the level of developed commercial knowledge of the management company meant it should’ve known it’d need to provide further detail about the presence of combustible materials. R didn’t agree with our investigator’s assessment and so the complaint was referred to me.

I considered what both sides had said and issued my provisional decision on 17 September 2021, explaining that I intended to uphold the complaint. In that provisional decision I wrote:

The determination I need to make here is whether Allied World acted fairly in voiding R’s policy due to non-disclosure. In order to do that I need to decide whether it was reasonable for Allied World to conclude, based on the available evidence, that R misrepresented the risk to Allied World when taking out the policy.

The relevant law that applies to this situation is the Insurance Act 2015. And the test within that legislation, which I must apply to the facts of this case, is whether the policyholder (in this case R) discharged its “duty of fair presentation” – that is, whether R made a fair presentation of the risk to the insurer when it took out the policy.

In order to discharge that duty, R would’ve had to disclose either:

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

Allied World voided the policy on the basis that the construction type of the building (the risk) was misrepresented to it before inception of the policy. It says it highlighted to R's broker on two separate occasions that cover would be subject to the panels not being made from polystyrene or combustible materials. It then received a report following R's registration with the government Building Safety Fund, which confirmed that the panels contained expanded polystyrene – a combustible material. The policy was therefore voided and a full refund of premiums was given to R.

Mr M says, on behalf of R, that a document was provided to its brokers – and I can see that the same document was also passed on to Allied World in an email dated 16 March 2020. The document contains numerous references to “EPS” or expanded polystyrene, as well as references to “polystyrene”. I appreciate that the document is 24 pages long – however in the email from the broker to Allied World, the broker specifically points to pages 18, 19, 21 and 22 as the pages containing information about the relevant materials. I cannot therefore see how it hasn't met the test of providing “enough information to put an insurer on notice that it needs to make further enquiries”.

I also don't consider that Allied World then took this information to make further enquiries. I can see it mentioned EPS by email on the two occasions it refers to. However, it didn't ask any questions which needed to be responded to. If it did not receive sufficient information from the broker in response to the emails mentioning EPS, that is an issue it should've taken up with the broker at the time, asking further questions to clarify this (even though I consider the information to have been readily available in the document that was sent across).

I don't have any evidence that Allied World sought to clarify the existence of EPS with the broker, instead making statements such as “It is a risk we can potentially consider on the basis the exterior panels are not EPS”. And I haven't seen any evidence that it received positive confirmation that there were no combustible materials – despite telling us the broker confirmed this. As far as I can see, R met its obligations in providing sufficient information that could've influenced the insurer's decision to offer cover, because the information was contained within the document and on the specific pages highlighted to the insurer. So I don't currently think the decision to void the policy on the basis that there was a misrepresentation is fair and I intend to require Allied World to reverse this decision.

I've thought carefully about Mr M's request that I consider the immense stress and anxiety which he says Allied World caused to the leaseholders of the building. However, this complaint is brought by R, a limited company and therefore not a natural person, and so I can't make an award for distress, pain or suffering as these are not things a limited company can experience, even if its directors and employees have experienced the impact of the insurer's actions individually.

However, Mr M has made the point that the leaseholders were left without cover in the event of what would've otherwise been insured perils, and were also left potentially in breach of their mortgage terms and conditions. I can consider the fact that R has been caused reputational damage by the allegation of misrepresentation and the voidance of the policy. Leaseholders in the building which R manages would have understandably been worried and anxious about the lack of insurance and I can appreciate how this would've resulted in a lack of trust in the management company and damage to its reputation. For this I think Allied

World should pay R £250 in compensation.

I've also considered the inconvenience of R's repeated attempts to obtain alternative cover, which I'm pleased to hear have led to R being able to secure cover with another insurer. I can consider the inconvenience caused to a company, as it's clear to me that in this case, time and effort was diverted from its normal activities. The inconvenience spanned over the course of several months, from November 2020 when Allied World cancelled the policy until recently this year when R was able to source alternative cover. So I think for this level of inconvenience, and because I think the decision to void the policy was unfair, Allied World should pay £500 compensation to R.

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.

In response to my provisional decision, Allied World said, in summary:

- It would pay the compensation set out in the provisional decision, without prejudice to the following points.
- It had no underwriting risk appetite for buildings with any fire safety issues – such as the use of combustible materials.
- If Allied World had been aware of what it considers to be newly disclosed facts in relation to those fire safety issues, it would not have provided cover in the first place.
- The insured only disclosed those facts eight months into the period of cover.
- The report referenced in my provisional decision is generic and carries little weight as it is over twenty years old, but was reviewed by Allied World's underwriter. Allied World has also said such reports are often unreliable due to various discrepancies found within them – including in relation to materials used in construction.
- The report contains a significant error – which is that the construction of the walls used rockwool boards which is not a combustible material and that this was central to the underwriter's assessment of the risk.
- References to expanded polystyrene (or EPS) are confusing and the test certificate does not mention EPS or combustible material.
- The insured selectively held back and then drip-fed material facts to the insurer.

Mr M also said, on behalf of R, in response to my provisional decision:

- He agreed with my provisional findings.
- R was no longer seeking reinstatement of cover as the policy has expired and it had obtained alternative cover.
- He was concerned that if Allied World does reverse its decision to void the policy then R may be held liable for repayment of the premiums which were refunded when the original decision to void the policy was taken.

I've considered what both parties have said in response to my provisional decision, but I haven't seen anything which makes me think the complaint shouldn't be upheld. So, I've decided to uphold the complaint in line with my provisional findings. I'll explain why.

Allied World has said the report produced before inception of the policy shouldn't be relied on, as it's twenty years old, generic and contradictory. However, as I said in my provisional decision, the test I have to apply in this case is whether R disclosed *enough* information to put the insurer on notice that it may need to make further enquiries. And, looking at the specifications document which was sent to Allied World prior to the inception of the policy, I

can see that although the test certificate on page 18 does not refer to EPS or combustible materials, pages 19, 20 and 21 of the same document – pages which were specifically highlighted to the insurer – contain numerous references to EPS.

Based on the knowledge and experience of the policyholder, which I consider to be less than the developed level of commercial knowledge many management companies might hold (R was made up of private individuals/homeowners who had taken over management of the building) I think the information highlighted within the specification document constituted enough information to put the insurer on notice in this case that it may need to ask further questions or obtain further details. So I don't agree that R only disclosed material facts eight months into the period of cover.

I also can't see that Allied World asked any direct and clear questions once its underwriter had reviewed the specifications document, despite telling me the references to EPS were contradictory or confusing. I would think it reasonable for Allied World to have asked further questions about the existence of combustible materials prior to arranging cover, if it wasn't certain about this, rather than making the statements it made in subsequent correspondence, which were not positioned in such a way to require an answer from R's broker at the time.

It follows therefore that I think the second part of the test in the Insurance Act 2015 was met and that R discharged its duty of fair presentation by providing enough information to Allied World. So I'm going to require Allied World to put things right as I've set out in my provisional decision and below. I should also clarify that I don't think it would be fair for Allied World to seek to recover any of the premiums it refunded when the policy was voided, as R hasn't benefited from the policy.

Putting things right

Allied World Assurance Company (Europe) dac must now:

- Overturn its decision to void R's policy. In doing so it must also remove any record of an allegation of misrepresentation by R and update its reporting accordingly so that R will no longer need to disclose to insurers that a misrepresentation occurred or that the policy was cancelled. It should confirm to R in writing when records have been updated and it should also write off any premiums owed to it in light of the policy no longer being cancelled.
- Pay R £250 compensation for damage to reputation.
- Pay R £500 compensation for the inconvenience caused to it.

My final decision

I uphold this complaint and I direct Allied World Assurance Company (Europe) dac to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 5 December 2021.

Ifrah Malik
Ombudsman