

## The complaint

Company E complains that Aviva Insurance Limited (“Aviva”) have unfairly declined its theft claim after its business premises were broken into.

## What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. In summary, Company E has a shop premises on the ground floor of which the director owns the freehold of the building, including the basement. The basement was beneath the shop premises and was separated by a trap door that had furniture placed over it.

Company E’s director decided to undertake renovations to the basement in order to underpin the basement and turn the cellar into a liveable space. During the renovations, Company E suffered a break-in to its shop premises, where stock was stolen and items were damaged. It made a claim on its policy with Aviva, who assessed the claim.

It was determined that the thieves broke in through a hole at the back of the building that was routinely used by the contractors to gain access to the basement during the renovations. The hole was covered by a wire mesh, but the thieves were able to gain access to the basement through it, where they used scaffolding to climb up to the basement door and break through it to gain access to Company E’s shop.

Aviva declined the claim as it said Company E had failed to make them aware of the renovations. They said this had materially altered the risk and that they would not have covered its business for theft, as the works meant that the minimum standards of security required under the policy were not met. As a result, Aviva declined to cover the claim. Unhappy with this, Company E referred the matter to our service.

Our investigator didn’t uphold the complaint. He thought it was reasonable for Aviva to decline the claim as Company E failed to inform the insurer about the alteration in risk, which would have led to a different level of cover being offered. Company E disagreed, so the matter has been escalated to me to determine.

## 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 agree with the conclusions reached by the investigator and have decided not to uphold it.

It’s accepted that Company E did not make a misrepresentation or breach its duty of fair presentation on its statement of fact at the point it took out the policy. However, Aviva submit that Company E failed to make them aware of an alteration to the risk *after* the policy had been taken out as is required by the policy terms. They say that if they’d been made aware there were structural alterations being made to the building that would compromise the

overall security and integrity of the risk, they would have restricted cover to FLEA only for the duration of the works.

So, I've considered whether it is fair and reasonable for Aviva to retrospectively alter the cover Company E had in place and decline the claim.

The policy terms and conditions make it clear that there is an ongoing duty of disclosure on the insured:

*"ALTERATION OF RISK*

*You or Your broker must tell us immediately if during the Period of Insurance there is any alteration in risk to the facts which you disclosed when you took out this policy, which materially affects the risk of injury, loss, damage or liability which would fall within the policy cover. **This includes but is not limited to alterations to the business or the premises...** [my emphasis added]*

*If you fail to tell us about an alteration in risk, we may:*

- (a) Terminate the policy back to the date when the alteration occurred, if we would have cancelled the policy had you told us of the alteration in risk.*
- (b) Proportionately reduce the amount payable in respect of a claim; and/or*
- (c) Treat the policy as if it contained such different terms (other than relating to the premium) that we would have applied to the policy had you told us of the alteration in risk..."*

The policy terms further state:

*"WHAT ARE YOUR OBLIGATIONS? – INFORMATION AND CHANGES WE NEED TO KNOW ABOUT*

*You must also tell us about any facts or changes which affect your insurance and which have occurred either since the policy started or since the last renewal date".*

So, I'm satisfied the policy makes it clear that Company E had a duty to notify Aviva of any changes (including those made to the premises) that would serve to ultimately alter the risk to the insurer. The question therefore is whether there was a fundamental change in risk to the insurer, and whether that should have been disclosed.

Company E submits that the works being carried out in the basement did not need to be disclosed as the basement does not form part of the "premises", which is defined by the policy as:

*"The part of the premises including its outbuildings at the address or addresses specified in the schedule which you occupy for the purposes of the Business and otherwise as offices and private dwelling rooms..."*

Company E says that it only occupies the ground floor for the purposes of the business, and that the basement therefore does not form part of that. I accept that Company E may not have carried out its business within the basement. However, the policy terms require Company E to volunteer any alteration in risk to the facts that were disclosed, including any alterations to the business or premises. And in its statement of fact, Company E answered "Yes" to the question *"Does the security at the premises meet the Minimum Standard of*

*Security*".

The policy sets out these requirements, where it specifies certain types of lock that need to be attached to any exit doors, external doors or internal doors giving access to any part of the premises. And I accept that when the basement was sealed and there was no other way to access the trap door, the minimum-security requirement would have been met. But this position subsequently altered when works began. I say this because the works meant there was then an accessible hole in the exterior of the building leading to the basement, which gave access to an alternative point of entry to the shop that was *not* subject to the minimum security requirements (i.e. the basement trap door, which seemingly had no lock but had furniture placed over it).

It's clear that having locks on any doors that access the premises is an important requirement of cover for the insurer, as they provide very specific instructions on what locking mechanisms need to be in place for all types of doors. And in this instance, Company E (by virtue of its director who had organised the basement renovation) ought reasonably to have been aware that the works being carried out in the basement (albeit not part of the shop itself) had compromised the security of the shop premises, such that it no longer met the minimum standard of security.

Therefore, I'm satisfied there had been a fundamental change to the risk as a result of the works, as it provided an unlocked access point to the basement, which itself had an entrance into the shop that was not subject to the minimum security requirement. I appreciate it took time and force for the trap door to be opened by the thieves as it had furniture placed on top of it within the shop premises. But the renovations on the basement ultimately created the access point for the thieves to be able to break through the trap door without fear of being seen or disturbed, as they were able to force their way in within the confines of the basement, which made it much less likely they would be seen breaking into the shop than if they had attempted to go through the main access point, for example.

As a result, I do not think it can reasonably be said that the premises continued to meet the minimum security requirement, of which Company E ought to have been aware, and so ought to have told Aviva in line with the policy terms and conditions. If it had done so, Aviva say they would've restricted cover to FLEA only for the duration of the works. Aviva have also provided a copy of their underwriting guide, which shows that coverage decisions require escalation when the premises does not conform with the minimum-security requirements. And given how specific the insurer has been about this requirement, I'm persuaded it wouldn't have likely offered cover for loss or theft throughout the duration of the works as the underwriter has stated.

So overall, I don't think Aviva have acted unfairly by refusing to cover Company E's claim, as it failed to comply with its obligation under the policy to inform the insurer of any alteration to the risk. I therefore do not intend asking the insurer to take any further action.

### **My final decision**

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Company E to accept or reject my decision before 14 October 2022.

Jack Ferris  
**Ombudsman**