

The complaint

Mr M complains about Allianz Insurance Plc's handling of a claim made under a Complete Property Owner insurance policy. Mr M also complains about Allianz's subsequent decision to avoid the policy.

All references to Allianz include its appointed agents.

What happened

Mr M held a Complete Property Owner Insurance policy with Allianz which insured several properties.

Around March 2020, Mr M made a claim for a fire at one property. Allianz accepted the claim. As part of its enquires Allianz asked Mr M if he'd ever received any County Court Judgements (CCJ's) or criminal convictions. Mr M didn't respond, and Allianz proceeded with validating the repair costs of the claim.

There followed some discussion around the scope and cost of repairs and the claim increased in value. So, Allianz referred the claim to a major loss team. The team carried out searches and Allianz discovered Mr M had received CCJ's and a court fine.

Allianz said Mr M should've disclosed both the CCJ's and fine as a fair presentation of risk when he took out the policy. So, it said he'd misrepresented his circumstances. And Allianz said that if it had been aware of this information, it wouldn't have offered cover in the first instance. Allianz therefore avoided Mr M's policy, returned the premium, and stopped dealing with his claim.

Mr M was unhappy with Allianz's position and complained. He said Allianz had plenty of opportunity to vet his circumstances; at the point of application and when he claimed. Allianz responded and maintained its position to avoid the policy. Allianz offered Mr M £750 compensation for the delays in the claim.

Mr M referred the complaint to our service and said, in summary:

- He'd always given Allianz permission to carry out checks on his circumstances, so why was this only done when he claimed?
- He's a property landlord and CCJ's are registered against landlords all the time for things such as utility bills.
- He was unhappy at the delays throughout the claim and ultimately, Allianz's decision to turn down the claim and avoid his policy.
- Due to the delay, the cost of building materials required to repair the property had increased significantly.
- Allianz's actions had caused him and his family a great deal of distress and inconvenience.

Our investigator looked at everything and recommended the complaint be upheld. They concluded Allianz had acted fairly in avoiding the policy. But they concluded that the delay

had impacted Mr M because of the increased cost of building materials. So, they recommended Allianz should calculate how much it would've cost Mr M to repair the damage when he claimed in April 2020 and refund him the difference, plus interest.

Allianz disagreed. It said the fact remained that Mr M hadn't disclosed material facts when taking out the policy. And had he done so he would've known his insurance position at the time of the loss.

Allianz added it simply hadn't realised Mr M had ignored their initial enquiries, and it didn't come to light until further checks were done triggered by the increased claim costs.

Our investigator then issued a second opinion and recommended the complaint be upheld. They concluded that Allianz had affirmed the contract by accepting the claim. And they didn't think it was fair for Allianz to use the referral to a new team as another opportunity to carry out the enquiries it made at the start of the claim. So, they concluded Allianz had unfairly avoided the policy and recommended it now settle the claim.

Allianz disagreed and asked for an ombudsman's decision. It said that it hadn't affirmed the contract, as it had acted swiftly once it was aware of the correct information. And it said that once it had *actual* knowledge of the true position it didn't take any actions which could be seen as affirming the contract; instead it halted and withheld a claim payment which was due to be made and took steps in line with its right to avoid the policy.

The complaint was passed to me and on 7 September 2022 I set out my provisional findings where I concluded that I wasn't minded to uphold the complaint. I've attached an extract below.

The relevant law which applies to Mr M's policy is the Insurance Act 2015 (the 'Act'). And it says that before a contract of insurance is entered into, the insured (Mr M) must make a fair presentation of risk to the insurer (Allianz).

This means Mr M was required to volunteer information about his circumstances. And the Act states that Mr M "ought to know" what should reasonably have been revealed by a reasonable search of information available to him.

So I think it's clear that in line with the Act, it wasn't for Allianz to conduct the searches as Mr M says, but rather for Mr M to fairly present the risk in line with what a reasonable search of his information would show. And it was also Mr M's responsibility to give Allianz sufficient information to alert it to the need to make enquiries about his circumstances. I can't see that he did so.

If a policyholder fails to fairly present the risk, the insurer has certain remedies if the failure is – what the Act describes as – a qualifying breach. For it to be a qualifying breach the insurer must show it would have offered the policy on different terms or not at all if the policyholder had made a fair presentation.

The Act sets out the considerations to decide whether the policyholder failed to fairly present the risk. And the remedy available to the insurer depends on whether the breach was deliberate or reckless, or neither deliberate nor reckless.

Allianz thinks Mr M failed to fairly present the risk as he didn't mention any of the CCJ's or the court fine when he took the policy, or at each subsequent renewal. And it says Mr M and his broker failed to respond to its enquiry about CCJ's near the start of the claims process.

The terms of "General Acceptance" in Mr M's Statement of Fact (which formed part of his contract with Allianz) state:

"This insurance contract is based on neither you nor your director(s) or partner(s) having:- ... any convictions that are unspent under the Rehabilitation of Offenders Act 1974 for a criminal offence other than (road traffic) motor offences...been the subject of any county court judgement (CCJ)..."

And:

"If any of the facts, statements and information set out in this form are incomplete or inaccurate, you must contact us immediately. Failure to do so could invalidate your policy or lead to a claim not being paid."

Having considered the terms, I agree that Mr M failed to fairly present the risk to Allianz here.

Allianz has provided evidence in the form of an explanation from its underwriter which shows it would've acted differently and not offered the policy renewal in 2020 had it been made aware of Mr M's true position.

This means I'm satisfied Mr M's failure to make a fair presentation of the risk constitutes a qualifying breach of the Act.

Allianz says Mr M deliberately withheld this information. It therefore avoided Mr M's policy and returned the premiums as set out in its letter around May 2021. The remedy for a deliberate breach of the Act doesn't require Allianz to return the premiums, but as Allianz is entitled to avoid the policy whether the breach was deliberate or not, I consider returning Mr M's premiums a fair and reasonable approach in the circumstances.

Therefore, in line with the Act, I'm satisfied Allianz was entitled to avoid Mr M's policy. And, as this means that – in effect – his policy never existed, Allianz does not have to deal with his claim. And I think allowing Allianz to rely on the Insurance Act to avoid Mr M's policy produces the fair and reasonable outcome in this complaint.

Did Allianz affirm the contract?

Our service's general approach is that when an insurer finds out that information a customer provided was incorrect, it can either retrospectively amend the terms of the policy or carry on with the contract it entered into.

However, if an insurer chooses to carry on with the contract, but then later discovers the incorrect information, we say an insurer still has the option to retrospectively amend the terms of the policy. This is because it wasn't aware the information was incorrect when it decided to carry on with the contract and did so based on the actual information it held about the customer.

In the circumstances of this complaint, I'm not persuaded that the contract was affirmed. Simply put, the actual information Allianz held about Mr M, up to the point its large loss team ran a search, was that he had no CCJ's or convictions. And so, it proceeded on that basis.

I asked Allianz why it decided to proceed with the claim when it didn't get a response to its initial enquiries. Allianz said that a decision was taken to go ahead with the claim based on the information previously provided when the policy was taken out and at subsequent renewals – that Mr M had no CCJ's. And it added to the best of its knowledge it was dealing

with the claim in full until it was made aware Mr M did in fact have CCJ's. Allianz added that it didn't consider this as information it ought to have known, rather information that Mr M ought to have presented to it.

I accept Allianz's position here. And I agree that its actions don't amount to affirming the contract.

Delays

I've next considered whether Allianz's delay in avoiding the policy means it needs to do anything further on a fair and reasonable basis.

The main arguments to consider here are the increased cost of building materials from the time of the claim to the time Allianz avoided the policy, and any distress or inconvenience caused to Mr M because of the delay.

I'm not persuaded Allianz should pay for any increased cost in building materials. As I've concluded, Allianz is entitled to treat the policy as it never existed, and this includes any further dealing with the claim. Given Allianz's decision to avoid the policy was based on a failure to fairly present material information, I don't find there to be a direct causation as to when Allianz discovered Mr M's true position and the overall cost of repairs.

And the same logic applies to any compensation payment for the distress and inconvenience caused. Allianz isn't responsible for either the presentation of the risk or when it ultimately became apparent. So, the only compensation relevant would be for its handling of the claim up to the point it avoided the policy. And having reviewed everything, I find Allianz's offer of £750 fairly and reasonably covers the delays that did occur.

I accept this leaves Mr M in a very difficult situation. But in the circumstances, I cannot fairly or reasonably require Allianz to do anything differently. So, it follows that I don't intend to uphold this complaint.

Developments

Allianz didn't respond to my provisional decision. Mr M responded and said in summary:

- He firmly believed Allianz's actions did amount to affirming the contract; Allianz expressed concerns he was underinsured but proceeded to make payments towards the claim.
- He says Allianz lost its ability to void the policy because it did not act swiftly. Instead their actions took place 12-13 months after he claimed. So, he says that this inaction by Allianz must be inferred as it choosing to affirm the contract.
- Allianz didn't act upon its initial suspicion of underinsurance or CCJ's. He says Allianz was on notice to act when it enquired about CCJ's in April 2020.
- That I accepted he had acted deliberately and recklessly based on Allianz's comments, but there's no evidence to support this.

- His CCJ's and fines relate to planning law, so he questions why these would affect the decision of a prudent insurer? He's been able to get insurance elsewhere at a similar premium, which takes this information into account.
- He maintains he fairly presented the risk to Allianz upon taking out the policy.
- That if I find the risk wasn't fairly presented, the Enterprise Act 2016 has legislated for what should happen in light of the full facts, and that the delays were entirely caused by Allianz and its agents.

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 carefully reconsidered everything, including the additional comments and evidence provided by Mr M, I see no reason to depart from my initial conclusion; that Allianz acted fairly and reasonably in relying on the Insurance Act 2015 to avoid Mr M's policy.

I'll explain why Mr M's additional information hasn't changed my mind about what I've seen below.

Much of Mr M's response is based on his assertion that Allianz affirmed the contract. I previously set out our service's approach to this in my provisional findings (my emphasis in bold):

*“...if an insurer chooses to carry on with the contract, **but then later discovers the incorrect information**, we say an insurer still has the option to retrospectively amend the terms of the policy. This is because **it wasn't aware the information was incorrect** when it decided to carry on with the contract and did so **based on the actual information** it held about the customer.”*

Mr M says Allianz affirmed the contract based on its failure to act on the concerns he says it held about underinsurance and CCJ's. Mr M also says that the courts have stated that inaction by the innocent party (in this case Allianz) must be inferred as it choosing to affirm the contract.

But there's an additional consideration which I set out in my provisional decision, which is that Allianz's failure to act requires knowledge of the “relevant facts”. Or in other words, a failure to act on the *actual information* it held. And I'm satisfied that in the circumstances of this complaint the relevant facts were whether Mr M had any CCJ's or convictions.

I accept Mr M's comment that Allianz had concerns about underinsurance of the property, and these continued through the claim. But based on everything I've seen; I don't find the issue of underinsurance a “relevant fact” linked to the qualifying misrepresentation of the policy.

I say this because in Allianz's letter to Mr M's broker, where it sets out its intention to avoid the policy and the reasons why, there's no mention of underinsurance, rather, the reasons given are linked to the non-disclosure of CCJ's and convictions. So, I cannot fairly conclude that any delay in Allianz acting on concerns for underinsurance were linked to its subsequent decision to avoid the policy.

So, in order to uphold Mr M's complaint, I'd need to see firm evidence that Allianz had concerns about his CCJ's or convictions *and* didn't act on those concerns.

The emails I've seen show that upon receipt of the claim, amongst other things Allianz asked Mr M's broker, "*Has [Mr M] received any CCJ's, criminal convictions or been declared bankrupt?*"

Mr M's broker responded and said, "*With regards to the information you are seeking clarification on, can I ask the relevance please? I can understand the question re CCJ's as I presume this is in order to validate the claim...*"

Allianz responded and said "*The background questions are standard questions asked on all claims...*"

I'm persuaded therefore that this exchange shows two things; that Allianz asked Mr M's broker a standard question about CCJ's and convictions as opposed to highlighting it as a specific concern. And Mr M's broker showed they understood why Allianz was asking but failed to respond in any event.

I haven't seen anything in the correspondence provided by both parties to show Allianz highlighted concerns about CCJ's or convictions, so I don't agree with Mr M that the timescale for any delay in avoiding the policy starts here. Or that Allianz was on notice for asking about CCJ's and convictions. Instead I'm more persuaded Allianz was conducting a standard enquiry which wasn't responded to.

Therefore, I'm satisfied that Allianz didn't have knowledge of the relevant facts for two reasons. Firstly, Mr M didn't disclose them when he took out the policy, and when Allianz asked the question, Mr M's broker didn't respond, even though they acknowledged they understood why the question was being asked.

Having reviewed everything again, I'm satisfied the evidence shows that Allianz acted promptly *when the relevant facts became apparent*. Allianz didn't delay in considering how to proceed and communicated this clearly to Mr M's broker. So, I don't agree that Allianz's actions prior to this amount to an affirmation of the policy.

Mr M has questioned why his CCJ's and conviction should be relevant to a prudent insurer. It's not for our service to decide on what risk an individual insurer chooses to undertake. Nor is it for me to determine why the risk is acceptable to one insurer but not another.

In the circumstances of this complaint, it was for Allianz to show that the risk wasn't acceptable if it had been fairly presented. And I'm satisfied it did so. I can see it explained to Mr M exactly how each CCJ and the conviction affected its acceptability of the risk and why it wouldn't offer cover.

Further, the relevant extract of the Statement of Fact set out in my provisional findings isn't specific about the type of CCJ or conviction it relates to. It simply says "*any*" in both cases. So, I think this was sufficient to show that *any* CCJ's or convictions should have been fairly presented to Allianz.

I've considered Mr M's comments about acting deliberately or recklessly. My provisional findings didn't decide whether he had done so, nor did I intend to. I appreciate I referenced Allianz's comments here, but the test I set out was whether Allianz's actions in relying on the Insurance Act 2015 produced a fair and reasonable outcome.

The “Explanatory Notes” published and to be read alongside the Insurance Act 2015 state, *“In non-consumer insurance, breaches do not have to be careless or deliberate/reckless in order to be actionable. “Innocent” breaches of the duty will also give an insurer a remedy if the insurer can show inducement. [that it would’ve acted differently]”*

So, the finding of whether Mr M acted deliberately or recklessly, or not, doesn’t produce a different outcome in the circumstances of this complaint. Allianz was still entitled to the remedies available under the Insurance Act 2015 in any event. And as I previously concluded, I’m satisfied that the remedy Allianz chose to apply produced a fair and reasonable outcome in the circumstances.

I’ve considered Mr M’s comments about other legislation such as the Enterprise Act 2016, but I don’t agree that this means Allianz’s actions were unfair or unreasonable. I’ve already determined Allianz was entitled to rely on the Insurance Act 2015 in the circumstances. And I’ve also concluded there weren’t any avoidable delays once Allianz became aware of the relevant facts linked to the qualifying misrepresentation.

I’ve reconsidered my findings on the remaining delays in the claim and compensation offered by Allianz. Having done so, I’ve reached the same conclusions as I reached in my provisional decision, and for the same reasons.

It therefore follows that I do not uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint about Allianz Insurance Plc.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 8 November 2022.

Dan Prevett
Ombudsman