

The complaint

A trust that I will refer to as S, complains about the decision of Aviva Insurance Limited to avoid its commercial buildings insurance and so decline its claim.

What happened

The following is intended only as a brief summary of events. Additionally, whilst a number of individuals have been involved in the claim and complaint process, I have largely just referred to S and Aviva for the sake of simplicity.

S owns commercial property, and had a property owners policy underwritten by Aviva. The policy was due for renewal and a renewal invitation was sent to S on 8 June 2022. The policy renewal date was 24 June 2022.

S was asked to check the property risk presentation document, and let Aviva know if anything was missing or incorrect. The risk presentation document listed the property as being occupied. However, part of the property had been unoccupied for a number of months at that point. S has said that it informed its broker that of the unoccupancy, but this information was not passed to Aviva.

On 21 June 2022, Mr M – at the time a beneficiary of S and the party apparently responsible for managing the property – became aware that the property was being used by squatters. However, this information was not passed onto Aviva either.

In May 2023, the property was heavily damaged as a result of a fire. S submitted a claim for this damage under the policy. However, on discovering that the property had been unoccupied and was being used by squatters when the policy was renewed, Aviva said that there had been a breach of the duty of fair presentation. Aviva considered this to be a deliberate or reckless breach, and so avoided the policy and retained the premiums. As the policy was voided, S's claim was not covered.

Aviva also said that even if the breach had not been deliberate or reckless, it was highly likely that – had it been made aware of the information – either the renewal would not have been offered or cover would have only been granted for a short period to allow S to source alternative cover or to address the issues above.

S was unhappy with this. S said that the contract had been agreed and entered on 8 June 2022, so the lack of disclosure in relation to the squatters took place after the commencement of the contract. As a result, this should not be considered as a breach of the duty of fair presentation.

S also said that it had told its broker of the unoccupied nature of the premises, so – although it acknowledged this had not been passed onto Aviva – this should not be considered as a deliberate or reckless breach of the duty. And that S considered Aviva would have provided cover, so it should not be entitled to avoid the policy.

S brought its complaint to the Financial Ombudsman Service. However, our Investigator

considered that Aviva had acted fairly and reasonably in the circumstances. So, he did not recommend the complaint be upheld. S remained unsatisfied, so its complaint has been passed to me for a 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.

Having done so, I am not upholding this complaint. I'll explain why.

As the parties are aware, as the relevant policy is a non-consumer insurance contract, the applicable law is set out in the Insurance Act 2015 ("the Act"). Essentially, this says that before the contract is entered into, the customer must disclose to the insurer every material circumstance which the customer knows or ought to know. A circumstance is material if it would influence the judgement of a prudent insurer in determining whether to take on the risk and, if so, on what terms. This requirement is known as the duty of fair presentation.

It isn't disputed that S was aware the property was unoccupied. It also isn't disputed that Mr M was aware on 21 June 2022 that the property was being used by squatters.

I consider both of these facts would be material circumstances. A prudent insurer of a property would consider each of these to be relevant to the risks posed. It does not appear that this is disputed either.

S has raised two arguments, dealing with each of the circumstances. However, given my findings, I consider it is necessary for me to only consider the first circumstance.

In terms of the non-disclosure of the unoccupied nature of the property, S does not consider this should be considered as a deliberate or reckless breach of the duty of fair presentation. S has said that, by informing its broker of this information, it had the intention of Aviva being informed also.

I do appreciate the argument that S has made here. However, I am not persuaded that this means the breach was not deliberate or reckless. S has, by its own comments, confirmed that it was aware of this information and seemingly that it was aware that this was a material circumstance. So, S had an obligation to ensure that Aviva was made aware of this and knew that if Aviva was not made aware this would be a breach of the duty. And it should have checked that Aviva had been made aware.

I would also add that, based on S's testimony, its broker would also have known about this information. And I consider they also would have known that it was a material circumstance. The broker ought to have known that this information was not passed onto Aviva. And its failure to do this in the circumstances set out by S would lead to the breach being deliberate or reckless. When acting in this capacity, the broker would have been S's agent. And I do not consider it would be fair or reasonable to say that S is able to avoid its responsibilities by passing these onto its agent.

Ultimately, I consider that, as Aviva was not made aware of a material circumstance there was a breach of the duty, and I consider Aviva is fairly and reasonably entitled to consider this to be a deliberate or reckless breach, whether through a failure of S or by S's agent.

The remedies available to Aviva under the Act to these circumstances means that Aviva would be entitled to avoid the policy and retain the premiums. This is what Aviva has done, and I consider this was fair and reasonable in the circumstances. As I consider it was fair

and reasonable to avoid the policy, it follows that S did not have cover at the time of the claim and so it is fair and reasonable for Aviva to decline S's claim.

Given these findings, it is not necessary for me to consider whether there was a further breach of the duty of fair presentation in relation to the presence of squatters at the property.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 26 November 2024.

Sam Thomas
Ombudsman