

## **The complaint**

Mr J complains that Aviva Insurance Limited cancelled his property owners' insurance policy.

## **What happened**

Mr J owns a portfolio of residential properties, which he lets out to tenants. In March 2023 he took out a policy, underwritten by Aviva, which covered all of the properties. It provided cover for the buildings as well as other insured perils such as loss of rent and public liability insurance.

In June 2023, Mr J made a claim on the policy in relation to damage at two of the properties. Aviva appointed loss adjusters to assess the claims. They said both properties had been unoccupied and in poor condition when the policy started.

In September 2023 Aviva declined the claims and said if it had known the condition of the two properties when the policy was sold, it would not have offered cover. The decision was made to cancel the policy from that date and there was a partial refund of premium.

Mr J complained. In its final response to the complaint, Aviva said:

- the properties had been empty and in poor condition when the policy was sold, and had not been inspected regularly;
- as these were all conditions of the policy, it would not change the decision and the policy cancellation would stand.

When Mr J referred the complaint to this Service, he said he accepted there had been a misrepresentation when he bought the policy, but this was not deliberate or reckless and did not mean Aviva could void the whole policy; it would still have offered cover for the other properties.

Our investigator initially said Aviva was entitled to void the policy and refund the premium from the point the policy was cancelled, which it had done. After considering further comments from Mr J, she clarified that the policy had been cancelled rather than declared void, but she said the policy terms allowed this and it was fair in the circumstances.

Mr J disagrees and has requested an ombudsman's 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.

This was a commercial policy. Under the relevant law (the Insurance Act 2015) Mr J had a legal duty to make a fair presentation of the risk. This means he had to disclose either

- everything he knew, or ought to have known, that would influence the insurer's judgment in deciding whether to insure the risk and on what terms; or

- enough information to put the insurer on notice that it needed to make further enquiries about potentially material circumstances.

The Insurance Act says the policyholder “ought to know” what should reasonably have been revealed by a reasonable search of information available to them. So Mr J should take reasonable steps to check any available information and consider if there’s anything he ought to disclose. He says he relied on his agent to deal with things for him, and wasn’t aware of the condition of the two properties or that they were empty, but these were things he could have checked. He’s accepted there was a misrepresentation but says it was not deliberate or reckless.

I’m satisfied there was a breach of the duty of fair presentation, but this wasn’t deliberate or reckless. Aviva has provided underwriting information that shows, if it had been aware of the correct position, it would not have offered the policy. Under the Insurance Act, that means it could have declared the policy void as from March 2023. It didn’t, however, decide to do that and instead cancelled the policy from September 2023.

I know Mr J says Aviva would likely have offered cover for his other properties and just excluded these two, but this was one policy and from the information Aviva has provided, it would not have offered the policy. In any event, I don’t think that changes the outcome of the complaint, as Aviva didn’t in fact void the policy.

There are conditions in the policy terms for the policyholder to comply with, including to keep the property in a good state of repair and take all reasonable steps to prevent loss or damage. And the terms allow Aviva to cancel the policy by giving notice in writing. If it does so, the premium for the remaining term of the policy will be refunded, provided there have not been any claims on which a payment has been made.

Aviva says Mr J was in breach of the policy conditions because the properties had been empty and were in poor condition, and had not been inspected regularly.

I’m satisfied there were breaches of the policy conditions. I appreciate Mr J says his agent was dealing with the properties on his behalf and he wasn’t aware of those issues, but they were ultimately his responsibility.

Allowing the properties to be empty or in poor condition, and not having regular inspections, is likely to increase the risk of them suffering damage. In these circumstances, I think it was fair for Aviva not to settle the claims and to cancel the policy. Although claims had been made, they were not settled. Mr J was entitled to a refund of premium for the remaining part of the policy, which was paid. So he was only charged for the time he was covered.

Mr J has explained how difficult it is to find insurance if he has to disclose to another insurer that this policy was void. As the policy has not been declared void, he would only have to disclose that it has been cancelled, which may have less of an impact.

He hasn’t had a full refund of premium but, because the policy was not void from the outset, he would still potentially have cover for other claims arising out of something that happened up to September 2023, while the policy was in force. So I don’t think he’s in a worse position as a result of the policy being cancelled.

I appreciate Mr J has been left in a very difficult position. He feels let down by his agent, who wasn’t managing things in the way he expected. Whatever the issues between Mr J and his agent, from Aviva’s perspective the information provided wasn’t accurate and the policy terms were not met. In the circumstances I consider its decision to cancel the policy was fair.

**My final decision**

My decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 4 March 2025.

Peter Whiteley  
**Ombudsman**