

The complaint

T, a company, has complained about its property insurer The New India Assurance Company Limited (NIA) which has avoided T's policy (treated it as though it never existed) and, by association, declined its claim.

What happened

T was notified in November 2023 that police had raided its premises which had been let to a commercial tenant. The police found that the premises had been converted into a cannabis factory. There was substantial damage to the premises which T later quantified the repair costs of at nearly £700,000, with loss of rent in addition. T made a claim to NIA.

The claim was made a few days after renewal in December 2023. NIA discovered that a director of T had previously been a director for a company which had started liquidation proceedings in December 2022 (just after T's policy for 2022/2023 had started). NIA, noting the date of the claim to it, in December 2023, post the start date for the 2023/2024 policy year, said T should have advised it at renewal of the liquidation proceedings for the other company. It said, if it had, it wouldn't have renewed the cover. It said it was avoiding the policy for the 2023/2024 policy year and declining the claim. NIA returned to T five years' worth of premiums. T complained to the Financial Ombudsman Service.

Our Investigator, on several occasions, asked NIA for its file. In a complaint like this, it would be important for an insurer to show, if nothing else, its underwriting criteria which supports that it would not have offered cover. NIA did not provide its file. Our Investigator, having seen no evidence from NIA which supported its position of avoidance, upheld the complaint. She said NIA should reinstate the cover, consider the claim and pay T £500 compensation for inconvenience. She said any settlement would be subject to interest but also that our award limit might impact any settlement NIA might make.

T acknowledged the findings. NIA did not reply to our Investigator. The complaint was referred for 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.

Having done so I uphold this complaint. In short NIA has not supported its position on avoidance. It is always up to an insurer to show that the action it has taken is in line with its underwriting criteria. Without that, even if I felt T was in breach of the duty to make a fair presentation to NIA about the liquidation, NIA hasn't shown that breach was a qualifying one. So it hasn't shown its action of avoiding the policy, even just for one year, was fair and reasonable. And it returning five years of premiums makes no sense at all.

I'm satisfied that NIA acted unfairly and unreasonably when it avoided T's policy and, by association, declined the claim. I've set out below what I'm satisfied is required by NIA to put things right.

Putting things right

Where an insurer does not support an avoidance, this Service will usually require it to reinstate the policy, removing the record of the avoidance from its own and any industry database. I'm satisfied NIA should do that here.

We'll also usually require it to reconsider any claim that was made but declined due to the unfair avoidance, with any settlement made being subject to an application of interest* from the date of loss until settlement is made. I'm satisfied that NIA should do that here.

T should note however that there are limits which apply to this Service. Where we require an insurer to consider a claim, if it then looks to settle the claim, that settlement is often subject to our award limit. What that means in practice is that NIA, if T accepts my final decision within the relevant time limit, will be bound to consider the claim and, if it then chooses to settle it, it may decide it will only do so to a value of £430,000, plus interest*. I can, and do, recommend that if NIA's consideration results in settlement, it settles it beyond that value, also plus interest – but NIA isn't bound to comply with my recommendation. If T accepts my decision and NIA doesn't honour the recommendation made, it's unlikely T could ask a court to make any payment beyond our limit which T feels NIA should pay. T may like to seek legal advice before deciding whether or not to accept my final decision.

Having a policy avoided is inconvenient. It's often the case that this Service, where an avoidance is found to be unfair, will award compensation for inconvenience caused. I'm satisfied T was inconvenienced by NIA's unfair and unreasonable avoidance and that £500 compensation is fairly and reasonably due. I require NIA to pay this sum (which is also taken as counting towards our award limit of £430,000). I appreciate T has referenced upset caused to individuals. However, as T is a company, I can't take upset caused to individuals into account.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require NIA to take off tax from this interest. If asked, it must give T a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require The New India Assurance Company Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 4 August 2025.

Fiona Robinson

Ombudsman