

The complaint

M complains that Allied World Assurance Company (Europe) dac, has unfairly voided its commercial buildings insurance policy and refused to provide cover for a claim made in April 2023.

M says Allied has failed to fairly demonstrate that cover would not have been provided if a fair presentation of the risk had been made, and it doesn't accept the cover would not have been provided.

What happened

M notified Allied of damage to its insured property in April 2023. Allied reviewed the claim and said it was unable to provide cover for the damage. It said it believed M had failed to make a fair presentation of the risk when the policy was inception in 2021 and this obligation was set out within the renewal documents each year in 2022 and 2023.

Allied said M had failed to disclose that any of the directors had previously been declared bankrupt or insolvent either as private individuals or in connection with any business. And M had said the property had been free of any malicious damage in the last five years, and this was incorrect.

Allied said that had M made a fair presentation of the risk at inception, it would not have provided cover. Based on this it treated the policy as being voided from the date of inception and returned the premiums to M.

Our investigator looked at how Allied handled this claim and voidance of the policy and didn't think Allied needed to do anything else. They explained the relevant law is the Insurance Act 2015 and this sets out that the insured must make a fair presentation of the risk. A qualifying breach is where the insured has breached their duty to make a fair presentation of the risk and the insurer, can show it would have acted differently.

They felt M had failed to make a fair presentation of the risk and it was a qualifying breach with Allied demonstrating it would not have provided the insurance had a fair presentation of the risk been made. So he didn't think Allied acted unfairly when it treated the policy as voided from the point of inception and refunded the premiums paid.

M disagreed with the assessment and didn't think it was fair that Allied was stating it would have declined to provide cover, had the disclosure about the previous insolvency been declared. It asked to see the evidence relied on to satisfy this point, but it was explained this was commercially sensitive and not something that could be shared with M.

As M disagreed with the outcome, the complaint was referred for 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.

I've decided not to uphold this complaint, for much the same reasons as our investigator. I know M will be disappointed by this, but I'll explain why I don't think Allied needs to do anything else and has acted fairly when voiding this policy and declining the claim.

M, as a commercial customer has a duty to make a fair presentation of the risk. This means it needs to disclose everything it knows, or ought to know, that would influence the judgement of the insurer in deciding whether to insure the risk and on what terms. Or enough information to put the insurer on notice that it needs to make further enquiries about potentially material circumstances.

When the policy was taken out, the risk presentation included a statement which confirmed that the proposers, any directors or partners in the business had:

"Never been declared bankrupt or insolvent either as private individuals or in connection with any business."

Together with this, it was confirmed that the property was free of malicious damage in the last five years.

When the claim was made, Allied identified that its directors were previously both directors of another company which was wound up by way of voluntary liquidation with insolvency practitioners appointed in 2016.

It was also identified that the insured property has previously suffered from malicious damage within the last five years. And although no claim had been made for the damage, Allied felt this should have been declared as the statement was not to confirm if a claim was made, but if any incidents had occurred and it believed they had in 2019.

It isn't disputed that the information provided was not a fair presentation of the risk. And I am satisfied that the statements made by M when the policy was incepted were not a fair presentation of the risk with answers and statements made, not being correct to the facts. So there was a breach of their duty and I've considered whether this is a qualifying breach.

Allied has said if the correct information was provided, and a fair presentation of the risk made, it would not have offered to insure the property. It said its underwriting criteria supports this would not be offered and it has demonstrated where it has previously refused to provide cover to companies where the directors have previously been bankrupt or insolvent.

I've reviewed the information provided by Allied and I am satisfied that it would not have provided cover had a fair presentation of risk been made. I appreciate M would like to see everything relied on here, but when information is commercially sensitive, it is not right that this is shared. But I am satisfied the position as explained by Allied to M is correct and it is being treated fairly and inline with how it treats other customers. And the breach is a qualifying breach with Allied demonstrating it would have acted differently.

As Allied would not have provided cover, it treated the policy as being voided from the point of inception and refunded the premiums paid and refused to accept the claim made. This is something it is entitled to do and I don't think its acted unfairly, when taking these steps.

It follows that I don't think Allied has done anything wrong with how it has handled this claim and the steps taken to void the policy. Information obtained in the claim process showed M had failed to make a fair presentation of the risk when the policy was incepted. This was a qualifying breach as Allied has shown it would have acted differently and Allied is entitled to take the steps it has.

My final decision

For the reasons I've explained above, I don't uphold M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 29 July 2025.

Thomas Brissenden
Ombudsman