

The complaint

Mr A and Mrs K complain that Aviva Insurance Limited unfairly voided their commercial property insurance policy and didn't deal with their claim following a fire.

Mr A and Mrs K are joint policyholders, but for ease of reading, and because he's done most of the communicating with us, I'll refer to Mr A in the remainder of the body of this decision.

Reference to Aviva includes its agents.

What happened

Mr A held a commercial property insurance as a landlord covering the building of one of his properties.

Following a fire, he made a claim for the damage.

Aviva said Mr A hadn't told it the true nature of what the property was being used for. As a result, it said it was voiding his policy from when it was taken out. Because there was effectively then no policy in place, Aviva didn't deal with Mr A's claim. It did however return his premium to him.

Mr A didn't think this was fair. He said the statement of fact he was provided – which Aviva said showed the incorrect information he gave – wasn't given to him when he took the policy out and he thinks this has been fabricated afterwards. Ultimately, he doesn't think it's fair Aviva took the actions it did.

Aviva didn't change its stance, so Mr A brought his complaint to the Financial Ombudsman Service.

Our Investigator initially recommended Mr A's complaint be upheld. He thought the relevant law was the Insurance Act 2015 (IA). He thought Mr A had failed to make a fair presentation of the risk as set out in the IA. But he didn't think Aviva had shown this was a qualifying breach. So he didn't think it was fair that it voided Mr A's policy and didn't deal with his claim.

Aviva subsequently sent in further information. And on review of that information (the relevant part of Aviva's underwriting criteria), our Investigator changed his mind and didn't recommend Mr A's complaint be upheld.

Mr A didn't agree with this second assessment and asked 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'm not upholding it. I understand this won't be the answer Mr A was hoping for. And I understand his frustration with our change in stance following Aviva's submission of further information. However, my role is to look at everything that's been provided to us at

the time I make my decision.

With that in mind, like our Investigator, I'm satisfied the relevant law here is the IA. And I'm satisfied that Mr A failed to make a fair presentation of the risk when taking the policy out.

Mr A hasn't really disputed this – he accepted our Investigator's first assessment and that too made a finding that he'd failed to make a fair presentation of the risk. But I'm also conscious he may have accepted the *outcome* of that assessment, without necessarily accepting all the points made within it.

In any case, I've considered whether I think he failed to make a fair presentation of the risk to Aviva when he took the policy out. And I'm satisfied he did.

I've not been provided with the exact details of how the application began. But I've been provided with a call which confirms the policy being taken out. It's clear from that call that Mr A entered the details himself and then had difficulty making the payment – hence the need for the call.

I'm satisfied this call completed Mr A's application – importantly, during the call the call Aviva goes through the answers Mr A gave and checks they are still accurate, setting out the importance of them being so. I've no reason to suspect that any details that were checked came from anywhere other than Mr A initially.

Key to this dispute, when clarifying the use of the property, Aviva says Mr A said the property is a residential let and that the tenants are either employed or retired. During the call Mr A confirms this to be correct.

This wasn't the case. The property was let to a limited company, who in turn used the property to house young people.

Later in the call, Aviva confirms its understanding/asks Mr A to confirm the property is *not* used for business purposes. And again, Mr A says this is correct.

I can understand the answers Mr A gave, ultimately the property was to be lived in, it wasn't a shop or any other facility. So, I can see why he thought it was a residential property and wasn't used for business purposes. But I don't think this was correct, I think it was essentially being used for business purposes and the purpose of that business was to house young individuals (not all of whom were employed).

During the call it's clear he says the property will be rented to tenants via a managing agent or letting agent. But I'm not persuaded that's the true nature of the relationship between who was living at the property, Mr A and the business with which were ultimately his tenants.

So while I understand the answer Mr A gave, I have to consider that his duty was one of fair presentation. And unfortunately for Mr A, it's a duty I don't find he fulfilled here. The IA sets out that a fair presentation is one *"in which every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith."* Whilst there is no doubt Mr A's representations were made in good faith, they were not substantially correct.

I appreciate Mr A's points about the statement of fact, but I've not looked into this because I'm not persuaded it's pivotal to the complaint in that I don't think it influences what was said in the call noted above. Nor do I think it influences what Aviva would have done had Mr A made a fair presentation, which I'll go on to explain now.

I've considered whether Aviva has shown this was a qualifying breach of the IA. And again, I'm satisfied it has. In other words, I'm satisfied Aviva would have done something different had a fair presentation of the risk been made.

It's shown the relevant part of its underwriting criteria which shows that had it known about the true use of the property, it wouldn't have offered cover to Mr A. I understand Mr A hasn't seen these criteria, but I can assure him I have and I've considered its content. It's not something I'm able to share because it's commercially sensitive data.

So, that means I'm satisfied Mr A failed to make a fair presentation of the risk, and that that failure was a qualifying breach of the IA. Consequently, Aviva has remedies in the IA to rectify that breach.

Where cover wouldn't have been offered were the breach not made, such as the case here, Aviva is entitled to avoid the policy from the point of the breach. But it must return the premium paid to the policyholder. I can see it's done that here. So, I'm satisfied its actions are in line with what the IA allows it to do.

It follows that because the policy was voided from the point it was taken out, there was effectively no policy in place at the time of the fire, and no policy for Mr A to claim from. As a result, Aviva doesn't need to deal with the claim either.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs K to accept or reject my decision before 19 September 2025.

Joe Thornley
Ombudsman