

The complaint

M, a limited company, complains about the decision by Allianz Insurance Plc to avoid their commercial insurance policy and turn down their claim because of this.

The director of M is represented in this complaint by her husband, Mr S, who is involved in the day-to-day running of the company.

Any reference to Allianz includes the actions of its agents.

What happened

On 7 January 2024, M took out a commercial property insurance policy with Allianz to cover their commercial premises. It was taken out via a broker. M made a claim after a fire caused significant damage to the property five months after the policy started.

Allianz assessed the claim and concluded that M had breached the requirement to make a fair presentation of the risk when taking out the policy. This was based on its view that the property wasn't in a good state of repair at the time. It avoided the policy, which meant the claim was also declined, and said it would return the premium. It also reserved its right to rely on various other clauses within the policy terms as to why it thought the claim wouldn't be covered anyway. Unhappy with this, Mr S brought a complaint to this service on M's behalf.

Our investigator didn't recommend the complaint be upheld. She agreed with Allianz that M had breached the requirement to make a fair presentation of the risk, as she thought the property hadn't been in a good state of repair when the policy was taken out.

Mr S, on behalf of M, didn't accept our investigator's findings, and so the matter 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.

Allianz has referred to various alleged breaches of policy terms in its communications with M. However, I don't need to consider these points as it ultimately decided to avoid the policy because of its view that M breached the duty to make a fair presentation of the risk when taking out the policy. I've therefore only considered Allianz's decision to avoid the policy and turn down the claim based on this.

As M holds a commercial policy, the relevant law I need to consider is the Insurance Act 2015 ('the Act'). This says that before a contract of insurance is entered into, the insured must give a fair presentation of the risk to the insurer. That means disclosure of every material circumstances which M knew or ought to have known.

Allianz has provided a copy of the policy schedule which includes a statement of facts. The document says that the schedule should be read in conjunction with the statement of facts, additional terms and conditions, endorsement wordings and the policy wording.

The statement of facts included a number of assumptions, and one of these, to which M agreed, says:

'The Business Premises / Buildings of the Business are in a good state of repair and kept in a like manner.'

The policy defines 'Business' as:

*'The Business specified in the Schedule conducted solely from within the **Territorial Limits** including*

*a) the ownership repair and maintenance of the **Premises***
...'

The policy defines 'Premises' as:

*'The **Buildings** and the land inside the boundaries at the risk address stated in the Schedule'*

The policy defines 'Buildings' as:

'The Building or Buildings at the risk address(es) stated in the Schedule including

a) Outbuildings attached to or detached from the main Building
b) Walls gates and fences around the Buildings and belonging to them
c) Landlord's fixtures and fittings
d) Car parks yards paved areas roads pavements and footpaths
*All belonging to the **Insured** or for which the **Insured** is legally responsible'*

I've first of all considered whether M breached the duty to make a fair presentation of the risk by agreeing with the assumption that the business premises/buildings were in a good state of repair.

Mr S had plans to build an extension at the property. The budget for this was between £180,000 and £220,000. Planning permission was obtained in 2021, but then work was put on hold whilst he raised the funds. In October 2023, Mr S said he demolished a garage and also levelled and tested the ground. He explained work then stopped as he'd spent the money he had and needed to look into the chimneys that were affecting the kitchen.

The photos of the property are particularly relevant here, as these show the state of repair the property was in. I appreciate Mr S's point that these photos were taken after the fire, though Allianz hasn't relied on the fire damaged areas shown in some of the photos to avoid the policy.

The photos show the following:

- A children's play area with a significant amount of rubble and building materials, including timber, scaffolding pipes, a ladder, chipboard and black bags.
- A significant amount of bricks and rubble in the car park.
- A large exterior chimney had been removed that previously went up the side of the property. This left the cavity wall exposed and some of the roof.
- The garage had been demolished.

I think it's apparent that the removal of the chimney alone would mean the property wasn't in a good state of repair, given that it left part of the building exposed.

However, Mr S has provided a witness statement from the sole trader of a scaffolding company (Mr E). Mr E says that he removed the chimney the day before the fire and stored the building material in the children's play area, which he intended to remove over the following few days.

I asked Mr S for evidence of this and gave the example of any email or text message correspondence between him and Mr E arranging the work, as well as any invoices, receipts and bank statements showing money transferred to Mr E's company for the work.

In response, Mr S has provided a letter written by Mr E. This repeated his earlier assertion in his witness statement that the chimney was only removed a day before the fire. He said he had charged £3,650 for the removal, but the amount had yet to be paid due to the owner's financial situation. He referred to an enclosed invoice.

I've looked at the invoice. This says the description of the work was '*removal of chimney*' and the total due for this was £3,650. However, the invoice is undated and doesn't have the company name on it, nor is it on headed paper. Mr S also hasn't provided me with any evidence to show when he and Mr E arranged the removal of the chimney. I would have expected there to be a correspondence trail about this, but I haven't seen anything in support of this.

So, overall, I'm not persuaded that Mr S has shown that the chimney removal took place a day before this fire. Also, I note Mr S didn't mention the removal of the chimney in his own witness statement to Allianz, despite outlining what construction work had taken place at the property in that statement.

There was scaffolding in place at the property at the time of the fire. Mr S's wife said the reason for this was for minor repairs, which form part of the periodic maintenance of the property. And that there were no works of a construction nature. Though given how large the exterior chimney was, it doesn't seem reasonable to say the removal of this was a minor repair.

Whilst I'm not persuaded Mr S has shown the chimney was removed the day before the fire, I can't be sure that the chimney removal took place *before* the policy started. Though even disregarding the chimney removal, Allianz still considers the property was in a poor state of repair. I've carefully thought about the points it has raised, and on balance, I'm persuaded by this. I'll explain why.

Allianz says that when the garage was demolished, it thinks this left the property in a poor condition because of the following:

- The cavity between the two skins of brickwork was exposed.
- The brickwork on the remaining walls was ragged and unfinished; and there are several bricks which appear to be broken and/or dangerously loose.
- The roof joists and the plywood deck of the flat roof had been left unprotected and exposed to the elements.

I think this is a reasonable summary of the area where the garage was demolished, based on the photos I've seen. I find it was reasonable for Allianz to say that that the building in this area was in a poor state of repair.

I've also thought about the materials stored in the children's play park and the car park.

Allianz says the building materials in the children's play park don't seem consistent with a recent removal of the chimney, and foliage growing through the building materials suggests they had been there for some time.

Mr S told our investigator that he and his friends knocked down the garage before the policy was taken out and kept the old bricks in the children's play area and sealed this off with a fence.

So, we know that at least some of these materials had been stored in the children's play park for some time and they were there when the policy was taken out.

In terms of the rubble in the car park, Mr S said this was from damage to an outer boundary wall broken by someone from the council when the grass was being cut in 2023.

It appears from the photos that there's a small amount of damage to the boundary wall, however there is a significant amount of broken bricks and blocks in the car park. Allianz has provided historical street view images of the car park from 2021 and 2022 which shows that waste and bricks were kept there then too. So, it does seem that Mr S has used the car park as an area to store building waste materials.

Allianz's position is that the storage of building materials and waste in a children's play area and the car park means the premises (as defined) were in a poor condition. On balance, I think that's a reasonable position to take.

I'm therefore persuaded that the business premises and buildings weren't in a good state of repair, even if I were to accept that the removal of the chimney happened after the policy started. That means I agree with Allianz that M breached the requirement to make a fair presentation of the risk.

The next point for me to consider is whether the breach was 'qualifying' according to the Act. In other words, whether Allianz can show that, but for the breach, it wouldn't have entered into the contract at all, or would have done so on different terms.

The underwriting guide I've seen says that if construction work is taking place, then cover is reduced to fire, lightning, earthquake and aircraft only. This would mean a fire damage claim wouldn't be affected if construction works were taking place and a property wasn't in a good state of repair. However, I could also see that Allianz had acknowledged this but noted that, in practice, it only permits general maintenance or decorating. I therefore asked Allianz for further information about this.

Although the policy is underwritten by Allianz, another company (that I'll call U) decides whether to accept the risk. In other words, Allianz has delegated its underwriting authority to U.

The head of underwriting at U (Mr D) has provided a statement which confirms he would only agree to minor works taking place at a property and wouldn't agree to construction or demolition works. He has confirmed that he would not have agreed cover for the works in question at M's premises. Mr D says that if M had confirmed the property wasn't in a good state of repair when taking out the policy, the application would have been automatically declined. If M had said it was in good condition but then gave further information (which the system allows) the trading underwriter could decline it, or it would be referred to him to make a decision.

Mr D says that even if the chimney removal had taken place *after* the policy had taken out, he would still consider the premises to be in a poor condition before this and wouldn't have offered cover. That's because the garage had already been demolished (leaving a poor state of brickwork and exposed roof timbers), there was rubble in the car park and building debris in the children's play area. He said he categorically would not have accepted the risk on this basis.

Allianz has also provided evidence to show that in 2024 and 2025, it refused to continue offering cover to customers that were having structural work completed. It has also provided evidence from 2024 where customers had suffered a loss, claim or incident in the previous five years. In those circumstances, it was clear that Allianz wasn't prepared to offer cover where the properties weren't in a good state of repair. Whilst these second examples related to previous losses, claims or incidents, I think Allianz has reasonably shown by these examples that it wasn't prepared to offer terms when a property isn't in a good state of repair. So, this supports Mr D's statement.

Overall, I'm persuaded by this evidence that Allianz wouldn't have offered M cover at all, if it had known the premises weren't in a good state of repair. It therefore follows that the breach is qualifying, for the purposes of the Act. That means that Allianz is entitled to avoid the policy and turn down the claim.

Allianz has confirmed that it does not consider M's breach of the fair presentation of the risk to be deliberate/reckless, and so the premium would be returned. I'm satisfied this is in line with the Act.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 28 October 2025.

Chantelle Hurn-Ryan
Ombudsman