

The complaint

H, a limited company, complains about the decision by American International Group UK Limited ('AIG') to turn down their commercial insurance claim and avoid the policy.

Mr M has brought this complaint on behalf of H.

What happened

H held a commercial insurance policy with AIG that was taken out through a broker. H made a claim to AIG after a theft took place.

AIG turned down the claim and avoided the policy because it thought H hadn't made a fair presentation of the risk when taking out the policy. Unhappy with this, H brought a complaint to this Service.

Our investigator didn't recommend the complaint be upheld. He thought AIG's actions had been reasonable.

Mr 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.

As this is a commercial policy, the relevant law that applies is the Insurance Act 2015. When taking out the policy for H, Mr M had a duty to make a fair presentation of the risk to AIG. In other words, he needed to tell AIG everything he knew, or ought to have known, that would influence it in deciding whether to accept the risk or not.

I've read the statement of facts that formed part of the policy schedule. This said:

'Please review the facts shown below. You provided this information when requesting your insurance. If any of these facts are not correct, you might find you're not covered if you have to make a claim.'

A number of statements were then listed, including:

'Windows or skylights that can be reached (either from the ground or via roofs, pipework, or other structures) are locked with a key or are permanently screwed shut.'

And

'The main door to your business is secured by a five-lever mortice deadlock. All other doors are secured by a five-lever mortice deadlock or key-operated security bolts.'

Mr M's response to the above statements was '*I agree*'.

Windows

AIG says Mr M told the broker when making the claim that the windows weren't secured at the property. Mr M disputes this and says the windows are screwed down and secure.

Mr M has provided a photo of a window, but this is from the outside and doesn't show that it's locked with a key or permanently screwed shut. However, AIG hasn't provided any evidence from the broker which supports that Mr M said the windows weren't secured. So I don't think AIG has shown that Mr M breached his duty to make a fair presentation of the risk in respect of the windows.

Doors

The photos I've seen of the doors show that the above statement wasn't complied with.

Mr M has provided a photo of the main door to his business. This is the same door that's in AIG's photos, and it doesn't have a five-lever mortice deadlock. My understanding is that only timber doors can have this fitted, and the main door appears to be uPVC. Whilst a uPVC door can have a multi-locking mechanism in the door, I understand this usually has three locking points, which is less secure than a five-lever mortice lock.

Mr M says the other doors belong to his landlord, so I assume he means that he isn't in control of the locks used. But if that's the case, then it seems to me he shouldn't have said he agreed with the statement in respect of the doors.

So I think Mr M breached the duty to make a fair presentation of the risk in respect of the doors.

Under the Insurance Act 2015, in order for AIG to take any action, it needs to show that the breach was 'qualifying'. In other words, if it had been given the correct information, it either wouldn't have offered the policy at all, or the policy would have been offered on different terms.

AIG has provided a statement from its underwriter which says that if AIG had known the door had a Yale lock, it wouldn't have accepted this as adequate security. However, the door with the Yale lock isn't the main door to the business.

Though AIG also said that if Mr M hadn't agreed with the statement in respect of the door locks, it wouldn't be able to offer a quote and so no policy would have been offered. I've carried out a dummy quote to check this, and this is correct.

I'm therefore satisfied there was a qualifying breach of H's duty of fair presentation. As AIG wouldn't have offered the policy unless H had agreed with the statement in respect of the door locks, it was entitled to avoid the policy.

It isn't clear how AIG has categorised the breach, but since it has offered to return H's premiums, I'll assume it thinks it was neither deliberate nor reckless. That seems reasonable to me.

I recognise Mr M will be disappointed with my decision, but I find that AIG acted reasonably by turning down the claim and avoiding the policy.

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 H to accept or reject my decision before 16 January 2024.

Chantelle Hurn-Ryan
Ombudsman