

**November 2009**

**Is your  
Property Insurance  
not worth the paper  
it's written on?**

The recent Court of Appeal case of *Ansari v New India Assurance Limited* provides a salutary warning to Landlords. It concerns (i) the importance of informing Landlord's insurers of any increase in material risk to their premises (where it is a condition of their insurance policy to do so) and (ii) Tenant's compliance with the terms of the insurance cover.

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In 2005 a fire broke out in the Landlord's premises which caused significant damage to both the building and its contents.

The Landlord's insurance policy provided that insurance cover shall lapse in the event of any:

- (1) Material alteration to the premises or the business; or
- (2) Material change to the facts stated on the proposal form completed by the property owner before the policy was created.

Within the insurance application form the Landlord had described the business carried out at the premises to be that of 'wholesaling of kitchenware' and had also claimed that the premises benefited from the protection of a sprinkler system.

Upon inspection the Landlord became aware that the sprinkler system was no longer functioning and not all of the goods being stored on the premises were capable of being described as 'kitchenware'.

The Landlord failed to inform the insurer of these changes to the nature and use of the premises and as such when the fire subsequently destroyed both the property and its contents the insurer refused to cover the damage on the basis that it had not been informed of the material change in the circumstances relating to the non-functioning sprinkler.



Subsequently the Landlord brought proceedings against the insurer. At the Court of Appeal it was held:

- the Tenant had deliberately turned the sprinkler off;
- this constituted a material change which the insurers had not agreed to cover; and
- for this reason, the insurer was not liable under the insurance policy.

Additionally the Landlord was not able to rely on the operation of the non- invalidation clause in his insurance contract due to the fact that he had failed to inform the insurer of the material change in facts when he became aware of them.

This case highlights that it is very important for Landlords keep their Tenants informed of the terms of their insurance policies, and of any changes to the policy during the term of the lease and Tenants should reveal any matters to the Landlord which may affect the validity of the insurance policy as soon as possible. Otherwise, Landlords or Tenants may risk having to pay for damage to the property which would otherwise have been covered by a policy of insurance.