

The complaint

Mrs F and Mrs J are unhappy with the service received from Arthur J. Gallagher Insurance Brokers Limited (Gallagher), their broker, as their insurance policy was cancelled by their insurer.

What happened

Mrs F and Mrs J own the freehold of a block of flats. They held a commercial insurance policy for the block which was taken out via Gallagher in their capacity as a broker. The policy was in place with one insurer, and prior to renewal, Gallagher sent a renewal invite with another insurer.

The policy was renewed. Shortly after, Mrs F and Mrs J, via their representative, contacted Gallagher to query an assumption in the insurer policy documents about the property, and whether it was let or sublet.

Gallagher obtained clarification about the freehold/leasehold arrangement Mrs F and Mrs J had with a housing association and contacted the insurer to see if the risk was acceptable. The insurer said it wasn't and asked for the policy to be cancelled.

Mrs F and Mrs J raised a number of concerns about Gallagher's handling of matters. They are also unhappy the policy has been cancelled by the insurer. But this concern doesn't form part of this complaint, which is solely about the actions of Gallagher.

As Mrs F and Mrs J remained unhappy, they approached this service with a both a complaint about Gallagher and the insurer.

Our investigator looked into both complaints separately. In this complaint about Gallagher, he said that Gallagher accurately gave the insurer the information provided by Mrs F and Mrs J, so he didn't think Gallagher had misled the insurer. He also said the information about the freehold/leasehold arrangement hadn't been volunteered before, and the documents highlighted the importance of disclosing information.

The investigator said that under the terms, Gallagher were entitled to retain admin fees and commission after the insurer had cancelled the policy, but they'd refunded this. He also said there was a delay in arranging a new policy, but Mrs F and Mrs J were already aware their policy had been cancelled and Gallagher had offered £250 compensation, which he thought was fair. He also said that Gallagher had sourced an alternative policy and if Mrs F and Mrs J were unhappy with the price, they could've sought alternative cover elsewhere.

Mrs F and Mrs J didn't agree with our investigators view of this complaint about Gallagher and asked for a final decision from an ombudsman.

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 should be clear that I'm only considering the complaint about Gallagher, the broker, here. And my findings will be in relation to Gallagher's actions only. I'm considering Mrs F and Mrs J's complaint about the insurer separately and will issue my decision on that case separately.

The complaint points I can consider here against Gallagher are:

- Gallagher allegedly misled the insurer that the flat was sub-let, and more questions should've been asked
- The refund provided by Gallagher
- Mrs F and Mrs J were left without cover for around four months
- Mrs F and Mrs J are paying more for a new policy

Gallagher allegedly misled the insurer that the flat was sub-let, and more questions should've been asked

Mrs F and Mrs J purchased the freehold of a block of flats and took out a policy to cover it. The freehold was previously owned by a housing association. As part of the sale of freehold to Mrs F and Mrs J, it was a condition that the housing association would retain a leasehold for one of the four flats in the block.

Mrs F and Mrs J were insured, via Gallagher, between 2019 and 2020 after they purchased the freehold. Prior to the renewal date in 2020, via Gallagher, they were sent a renewal quotation and documents for a policy with a new insurer to that which was on cover previously. The policy was subsequently renewed, via Gallagher, with the new insurer.

After renewal, when further reviewing the documents, Mrs F and Mrs J's representative noticed the following assumptions in the policy documents from the new insurer (which were also in the renewal quotation prior to the policy being accepted and renewed):

*"Your property(ies):
Are not and will not be sub-let;
Are not and will not be let to housing associations;
Are not and will not be let to Local Authorities;"*

Mrs F and Mrs J's representative queried this assumption and provided further details of their freehold/leasehold arrangements with the housing association to Gallagher, who then contacted the insurer to see if the risk was acceptable.

The insurer confirmed to Gallagher that the risk wasn't acceptable due to the freeholder/leaseholder arrangements in place as it was outside their underwriting guidelines. The insurer asked for the policy to be cancelled. Mrs F and Mrs J are unhappy the policy has been cancelled and want it reinstated.

I'm not commenting on the insurer's decision to cancel the policy here in this complaint about Gallagher, the broker. Instead I'll consider whether Gallagher misled the insurer as Mrs F and Mrs J allege.

Mrs F and Mrs J were insured via Gallagher in 2019 when they took out a policy for the block. The insurer at that time was different to the one offered at renewal. Gallagher has commented on the information that was provided in 2019 around the leaseholder/freeholder arrangements, and that it was under the impression three properties were leaseholder and

one was a private rental. But Gallagher says they weren't made aware the housing association would be one of the leaseholders and this information wasn't volunteered during the calls either. And the transcript of the calls, which I've seen, supports that. A policy was then arranged with an insurer for 12 months.

However, the renewal invite was with a different insurer to the year before. The renewal quotation with the new insurer outlined the information they were aware of already, and a number of assumptions, and that included the assumption I've outlined above. It also highlighted the importance of all the information being correct, including the assumptions, and this being the responsibility of Mrs F and Mrs J to check. But this and the assumptions weren't queried with Gallagher at that time, prior to renewal.

The policy was then renewed, and renewal confirmation documentation was provided. The renewal documents also included the same information and the same assumptions present in the quote. Along with outlining the importance of checking everything was correct and confirming that this was Mrs F and Mrs J's responsibility. This documentation then prompted a call to Gallagher by Mrs F and Mrs J's representative after renewal had taken place to question those assumptions.

Mrs F and Mrs J had an opportunity to query the assumptions prior to renewal. Those same assumptions caused Mrs F and Mrs J's representative to contact Gallagher, after they'd renewed cover, despite the assumptions being the same on pre-renewal documents. The fact they queried these assumptions shows they understood the importance of this information to the insurer.

The change in insurers, and renewal invite, are what generated the new assumptions, which were important for the new insurer. The assumptions were highlighted before and after renewal and it was Mrs F and Mrs J's responsibility to check them. The information (and assumptions) differ to those which were important to the previous insurer. The previous insurer was satisfied with the information they obtained from Gallagher for that policy without needing specifics about the leaseholder/freeholder arrangement. That insurer would've had their own conditions, acceptable requirements and assumptions. So, I can't hold Gallagher responsible for the new insurer including or introducing different assumptions or considering them important. Nor can I reasonably hold Gallagher responsible for the sequence of events which followed – Mrs F and Mrs J querying the new assumptions, post renewal, and providing further information which ultimately resulted in the new insurer cancelling the policy.

Mrs F and Mrs J also say that when they then contacted Gallagher about those assumptions after renewal and provided additional information, Gallagher misled the insurer that the insured property was sublet, rather than a lease being held by the housing association. However, I've considered the information Gallagher provided to the insurer after clarification from Mrs F and Mrs J's representative. I'm satisfied they accurately relayed the information they had been provided about the arrangement. And the insurer took this information as presented into account in determining whether it was able to offer cover. So, I can't say that Gallagher misrepresented the information provided to the insurer, as it relayed the details Mrs F and Mrs J had confirmed after clarification.

Here, I'm not specifically commenting on the insurers decision to cancel the policy, but I'm satisfied Gallagher passed on accurate information to the insurer to allow them to consider the circumstances and whether the policy was acceptable.

The refund from Gallagher after the policy was cancelled

Mrs F and Mrs J are unhappy that the original refund after cancellation had deductions and wasn't for the full amount. They say Gallagher deducted fees and retained commission.

Gallagher explained that they weren't retaining commission and clarified the breakdown of the policy and refund. And the difference in amounts was due to the administration fee charged by Gallagher.

The policy terms Mrs F and Mrs J were provided with do outline that Gallagher has the right to retain any commission and administration fees if the policy is cancelled. And I don't think that in principle is unusual or would be unfair.

But Gallagher did ultimately refund the commission and administration fee in any event, even though the terms outlined they were entitled to retain this. So, I don't think Gallagher has acted unfairly.

Mrs F and Mrs J were left without cover for a period time

The policy was cancelled in November 2020 as it was unacceptable to the new insurer.

Gallagher says Mrs F and Mrs J were made aware at that time. But Gallagher accept that it should have done more. Gallagher said they would look to find a new alternative policy that would meet Mrs F and Mrs J's needs. They say they attempted to call Mrs F and Mrs J's representative shortly after cancellation to discuss this but weren't able to reach them. I've seen internal notes which do support that.

But Gallagher accept that they could've done more after this time in sourcing an alternative policy, which was later completed in February 2021. And they accept the cancellation documents weren't sent at the time, as they should have been. But Mrs F and Mrs J's representative had already been told the policy wouldn't be acceptable with that insurer, so would've been on notice from that point in any event.

Fortunately, a claim didn't arise within that period, so Mrs F and Mrs J haven't suffered a financial loss as a result of the gap in cover. But I can see why they'd be concerned when they found out they still didn't have cover in place.

Gallagher recognised this, and the delay in processing a refund, and offered £250 compensation. I think that amount is fair and reasonable in the circumstances so I'm not going to ask Gallagher to increase it.

Mrs F and Mrs J are unhappy the new policy they have is more expensive

The new policy obtained and offered by Gallagher is with a different insurer to that which offered a policy at renewal (which was then subsequently cancelled) and the previous insurer.

Each different insurer is entitled to charge an amount based on their own pricing strategies and assessment of risk. So, I can't hold Gallagher responsible if the new insurer charges more than the insurer which they were renewed with. And I also need to take into account that the renewed policy Mrs F and Mrs J weren't entitled to, as the risk wasn't acceptable to that insurer. So, they never would've been entitled to that policy at that price.

Gallagher offered the best price it could for a policy with an insurer which was willing to accept the risk. Mrs F and Mrs J could've obtained cover elsewhere if they weren't satisfied with that policy offered or the price of it, as they aren't obliged to remain with Gallagher if they don't wish to.

My final decision

Arthur J. Gallagher Insurance Brokers Limited has already offered to pay £250 compensation to settle the complaint and I think that offer is fair in all the circumstances.

So, my decision is that Arthur J. Gallagher Insurance Brokers Limited should pay the £250 compensation, if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mrs J to accept or reject my decision before 18 May 2022.

Callum Milne
Ombudsman