

## **The complaint**

J complains that Towergate Underwriting Group Limited (“Towergate”) has mis-sold it a public liability insurance policy.

Mr B brings the complaint on behalf of J. Any reference to J, Mr B, or Towergate includes any agents or representatives.

## **What happened**

The background of this complaint is well known to all parties. So, I’ve summarised events.

- Mr B has had a roofing business (J) for many years.
- In 2008, Mr B took out a commercial policy for J through Towergate. He says he explained to the agent the nature of his business.
- In August 2020 Mr B has said it came to light the policy wouldn’t have covered him for the type of work he carries out. So, he complained to Towergate, saying the policy was mis-sold and of no use to him.
- Our Investigator looked into things and said while the information around the sale was limited, it appeared the policy was initially suitable for J’s needs as it appeared to be set up for roofing work – listed as roofers in the schedule. But she’d seen paperwork from 2016 which listed the business type as “Builders (non restricted locations)”, and the policy had a specific restriction on the height of works. She said this meant the policy was no longer suitable for J’s needs given it is roofing business and the insurance was set up for general building work or construction.
- The Investigator said it appeared likely the change to the policy had taken place in 2011 when Towergate had changed offices. And as a result, it meant it was unlikely for J to be able to claim on this policy during this period. So, she directed it to refund premiums between 2011 and 2020.
- J agreed, but Towergate didn’t. Towergate said it had spoken to the insurer (Company A) from 2014 onwards and confirmed J had been charged the appropriate rate for cover across the years. Towergate said Company A understood the situation and agreed in principle to amend the schedules of cover retrospectively to include both building and roofing included. So, it said J had been adequately insured for the life of the policy.
- Our Investigator looked again and said this hadn’t changed her mind. This was because Towergate hadn’t provided any evidence to support this position, and that Company A had not been the insurer for the life of the policy (only from 2014 onwards) so there was still an issue with the previous years.
- Mr B responded to Towergate’s position, saying he had email chains from Company A which stated the policy did not cover J’s roofing needs, and this had led to J being moved onto a specific roofing policy from August 2020 onwards.
- Towergate also prompted Company A to comment – who confirmed the situation arose due to an administration error made by Towergate, but said its policy would

cover roofers but would've carried a higher premium as a result. It said it had not provided any advice about suitability in August 2020 and this would've been a decision of Towergate's.

- The Investigator didn't change her mind, so the complaint was passed to me for an Ombudsman's final decision. I issued a provisional decision on 17 October 2022. I've included an extract of this below.
- *"From what I've seen, Mr B is in agreement the policy initially sold was to his satisfaction and covered J's needs.*
- *J never claimed on the policy, and kept the same policy for many years. This suggests to me Mr B was happy with the level of cover in place, and at the price he was paying.*
- *It has since come to light although the policy was set up correctly, an administration error somewhere between 2011 and 2014 led to the nature of J's business incorrectly being marked as "Builders (non restricted locations)". And as a result, it seems if Mr B had sought to claim on the policy, he may not have had the cover he wanted as the work he carried out was likely to fall within "restricted" locations.*
- *So, there's no dispute that Towergate has made a mistake. I have to consider the impact of this, and in turn what it needs to do, to put things right. That is to say, putting J back into the situation it should've been in, had Towergate not made a mistake.*
- *Towergate said if J did make a claim, that it would've still been covered but additional premiums may have been required as the business type would've carried an additional risk. And while I accept it's possible J may have been covered using the approach Towergate has set out, I can also acknowledge J's concern that a claim may have been declined. But my role requires me to consider the impact of what happened, not what might have happened. And this point becomes academic as J simply never claimed on the policy.*
- *Company A has confirmed that roofing was a covered business type under this policy, and I've seen part of its underwriting guide that supports this. So I'm satisfied Company A would've still insured J if it knew the nature of the business. But it has said the risk would've carried a higher premium. This suggests to me that J has likely paid a lower premium than it would've done.*
- *Company A has agreed to amend the policies retrospectively to reflect J's actual business type, and this means J would have had continuous cover for these years that it sought to insure. And should J need to make any retrospective claims, it would still have the cover it wanted. This seems like a reasonable solution as this was the situation J would've been in, had Towergate not made its administrative mistake.*
- *Company A hasn't said it would be looking to recoup any additional premiums for these previous years. And in light of Towergate's mistake, I would direct it to pay any additional costs if these were required.*
- *I've gone on to think about the impact of Towergate's mistake on Mr B. He's described the distress this situation has caused him and his partner. And I can understand that upon learning he may not have been covered under a policy he's maintained for many years would've been frustrating. In light of this, I'm minded to direct Towergate to pay J £350 for the distress and inconvenience caused."*

Towergate responded to accept the decision. But Mr B disagreed, providing a detailed response, in summary he has said:

- The restricted locations part of the policy wasn't Mr B's concern, and that it meant their cover was limited to roofing work that was incidental to general building works. But here their work was solely roofing.
- He wanted assurances Company A had agreed to this Service it would amend the policies retrospectively and not through Towergate.
- I hadn't commented on the period between 2011 – 2014 and that Towergate should refund the premiums for this period while also agreeing to cover the cost of any retrospective claims should they occur.
- He felt I should focus on the potential impact of the mistake on J's business requesting a compensatory sum of £950.

I reviewed these comments and reached out to Towergate. I outlined that I would be expecting it to apply the same remedy for the period of 2011 – 2014, this is to say it would need to seek assurances from the previous underwriter (Company B) to amend cover as it had arranged with Company A. And if this was not possible, I would be minded to direct it to refund premiums between 2011 – 2014 plus 8% simple interest.

I also contacted Company A, who confirmed the re-issue of schedules would need to be done by Towergate, but it was in agreement this was appropriate.

- Towergate responded to say it could not have the 2011 – 2014 policies reissued in light of the evidence available. And argued that Mr B would still have had some benefit in the policies for non-roofing activities. So, it said it would offer 50% of the premiums charged for this period, totalling £1,876.13.
- This offer was put to Mr B who declined it. He said he'd put to Towergate previously that less than 1% of the work carried out by J was non-roof related works. So, he felt its offer was unfair, and that it should refund the premiums in full for that period. And he said if Towergate was unable to ensure correct policies were in place for the period of 2011 – 2020 it should refund all premiums.

So, the matter has been passed back to me for an Ombudsman's final 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 upholding this complaint. I'll explain why.

- At this point, there's no dispute that the policy in place for J did not cover it appropriately. And it seems this was due to an administrative mistake that took place in 2011 on the part of Towergate.
- For the period of 2014 – 2020, Company A was the insurer. For the reasons I've outlined previously, I'm satisfied Company A would've insured J's business had this administrative mistake not taken place. And I've been given nothing to persuade me this wouldn't be the case.
- Company A has agreed that these policies can be retrospectively amended. And Towergate has agreed to cover any administrative costs or additional premiums that may be charged as a result. So, I'm satisfied this remedy puts Mr B and J back into the position it should've been in for this period, but for Towergate's mistake.
- For the period of 2011 – 2014 Towergate also isn't disputing the policy wasn't set up

correctly. But unlike the proceeding period, it cannot make the same type of retrospective amendments. So, it strikes me that the policy during this time wasn't going to cover J's needs as it should've.

- Towergate has suggested that a 50% refund would be appropriate as it's possible Mr B could've still received some benefit under the policy. And it has suggested given the time that has passed, that any claim that would need to be made for that period is now time-barred.
- Taking into account the nature of J's business, I think the potential benefit it would've received from the policy would've been very limited. Whether or not a claim could now be made retrospectively, I have to consider what is fair and reasonable here. And in the circumstances, it strikes me the policy for 2011 – 2014 wasn't suitable for J/Mr B for no fault of their own. So, I'm directing Towergate to refund the premiums for this period plus 8% simple interest.
- Mr B has argued that his complaint shouldn't be divided into two remedies, so Towergate should refund premiums for the whole period. I disagree and see no fair reason to not direct Towergate to take this approach.
- Mr B has also asked me to reconsider the compensation awarded in the circumstances – namely 26 months of concern as a result of Towergate's complaint handling and mistakes. I've thought about this carefully and I don't disagree with Mr B that Towergate has made a series of mistakes.
- But this Service is not here to punish or penalise firms for mistakes made. My role is to consider the impact on Mr B, and while I don't doubt this experience has been a frustrating one, I'm satisfied a compensatory sum of £350 is fair and reasonable in all of the circumstances and I'm not directing Towergate to increase this.

### **My final decision**

I uphold this complaint, Towergate Underwriting Group Limited must do the following.

- Pay J £350 in compensation.
- For the period of 2014 – 2020, Towergate must arrange for the policies between to be amended to reflect J's business. Towergate will need to confirm this with Company A, and Towergate must pay any additional premiums or administration costs that may be payable for this period.
- For the period of 2011 – 2014, Towergate must refund all premiums paid to J, adding 8% simple interest from the date premiums were paid until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 6 December 2022.

Jack Baldry  
**Ombudsman**