

The complaint

Ms S complains about the information she was given when she bought a landlords' insurance policy through Arthur J Gallagher Insurance Brokers Limited.

What happened

Ms S has a landlords' insurance policy to cover a property she owns and rents out. She first bought the policy in 2012, through AJG.

In 2021, Ms S made a claim after an escape of water. Her insurer agreed to settle the claim in part, because they felt poor workmanship had been a contributory factor. Ms S agreed to that.

The insurer also made Ms S aware that they were going to reduce the claim payment because, at the relevant time, she was underinsured. They said the Sum Insured was in fact just under 80% of the actual cost of rebuilding the property. And this meant they reduced the claim payment by £759.93.

At that point, Ms S made a complaint to the insurer. And then brought her complaint to us when they maintained their position.

She felt it was unfair for them to reduce the claim payment proportionally when she had estimated the cost of rebuilding the property, in 2012, in good faith.

We didn't uphold that complaint. We felt the insurer was entitled to reduce the claim payment because the estimate of the total rebuild cost presented to the insurer at inception and/or at annual renewal was not within the reasonable range.

Ms S accepted that outcome. And because all parties agreed the outcome, I'm not going to go back into that complaint again here. I am taking the outcome of that complaint as read.

But Ms S then raised *this* complaint against AJG, the broker who sold her the policy. This was on the basis that they hadn't provided her with appropriate or sufficient support and/or detailed guidance about what the Sum Insured meant and/or about how she might make a reasonable estimate of the rebuild costs.

Our investigator looked into and upheld the complaint. They thought AJG *had*, in 2012, properly indicated exactly what the Sum Insured meant – that it was the rebuild cost for the property – and what the estimated rebuild cost should include.

However, in their view, AJG had provided no advice or guidance to support Ms S in coming to a reasonable conclusion about the estimated rebuild cost.

On that basis, they asked AJG to cover Ms S's consequential losses – the £759.93 the insurer had taken off the claim payment – and to pay her a further £150 to compensate her for the trouble and upset she'd experienced.

AJG didn't agree 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.

It might be useful for me to start by setting out what legislation is relevant to this case.

The Insurance Act (2015) covers the sale and purchase of commercial insurance policies. Clearly, landlords' insurance policies are commercial policies. The Act requires commercial customers to make a "*fair presentation of the risk*" to the insurer when seeking to buy a policy.

Obviously, the Insurance Act (2015) didn't apply when Ms S first bought the policy in 2012, but it would have applied at every renewal after 2015. The previous legislation – the Marine Insurance Act (1906) – however had similar requirements. Specifically, that the customer should disclose anything affecting the insurer's decision whether to provide cover – and if so on what terms – in "*utmost good faith*".

AJG have told us that when policies are due for renewal, they recalculate the Sum Insured (in this case, the cost of rebuilding the property) to include an uplift based on the annual rate of inflation in the cost of building materials.

This is very helpful. It means the policyholder should not be underinsured at any point in the life of their policy – assuming of course that the original estimate of costs at inception was within the reasonable range.

Looking at the increases in the Sum Insured on Ms S's policy over the years between 2012 and 2021, I'm satisfied AJG's inflation-proofing did what it was supposed to do. The rebuild costs increased substantially in that period, in line with what one would expect given the building materials inflation rate.

So, I think all parties would agree that what happened in this case was that Ms S's estimate of the rebuild costs in 2012 was outside (and under) the reasonable range. That then led to her paying premiums which were cheaper than they ought to have been over a number of years. And ultimately it led to her being underinsured at the time of the claim in 2021.

The question for me then, in deciding this case, is a relatively simple one. Can Ms S's failure to provide the insurer with an estimate of the Sum Insured (rebuild cost) within the reasonable range (which is why we didn't uphold the complaint against the insurer) fairly and reasonably be said to be AJG's responsibility?

In other words, did AJG – providing a service to Ms S in finding her an insurance policy – do what they ought to have done to support her to come to a reasonable conclusion about the likely costs of rebuilding her property?

In 2012, AJG told Ms S they wanted her to provide for the insurer a Sum Insured, which was in effect the cost to rebuild the property – and they said exactly what that cost would include, in some detail. There was no other guidance given as to how Ms S might go about finding out or calculating the rebuild costs of her property.

At later renewals – most relevantly in June 2021, the last renewal before the claim was made – AJG sent Ms S various policy documents. These clearly ask Ms S to check all the

information in the policy schedule, which included the Sum Insured, and contact AJG if anything had changed.

These documents though refer simply to a Sum Insured. There is no explanation (or reminder), in those documents, of the fact that the Sum Insured should be the rebuild cost. There's little or no explanation of the increase in the Sum Insured over the previous year and how that has come about (which is set out in the policy terms). And again, there's no indication of how Ms S might check or estimate the rebuild costs.

As a landlord, Ms S *is*, as outlined above, a commercial customer. And different legislation - and standards of fairness - apply than if Ms S were a non-commercial consumer.

For non-commercial customers, we take the view that insurers and/or brokers selling policies should be very clear about what they're asking the potential customer to provide. If they refer to a Sum Insured, it should be clear what they mean - and if they're looking for the rebuild cost, they need to explain that.

We also think insurers or brokers should recognise that non-commercial customers are unlikely to be experienced in estimating rebuild costs. So, it would be particularly difficult for them to estimate accurately unless the insurer or broker provided detailed information or guidance explaining how a non-expert could estimate the amount.

It's reasonably common now for insurers or brokers to provide a link to a reputable online rebuild calculator which will help the consumer reach an estimate based on details like the postcode, footprint area and standard of decoration. Providing this kind of support helps the consumer to reach a reasonable answer more than merely asking for the rebuild cost and leaving the consumer to try to estimate it without support.

Some commercial customers might not need or expect this level of support. A full-time landlord with several properties, possibly operating as a company, might be expected to know what the term 'Sum Insured' usually meant. Or at least know to seek clarification from the insurer or broker if it wasn't made entirely clear.

They might also be expected to know where to find – and how to use – on-line rebuild calculators and/or other tools and guidance to help them come to a reasonable estimate of the rebuild cost of their properties.

However, Ms S isn't a full-time landlord. And she doesn't own and rent out a large number of properties. Her knowledge, skills and expertise in this area are more akin to a non-commercial customer.

I absolutely accept AJG's assertion that Ms S *is* a commercial customer. However, I think they ought to have recognised that, in all the particular and specific circumstances of this case (as outlined above), they ought to have done more to support her. Specifically, by providing her with sufficient information to allow her to answer accurately the questions they'd asked.

In other words, I'm satisfied on balance AJG did not provide Ms S with enough guidance and support – particularly at the recent renewals, but also at inception in 2012 – to put her in a position to make a reasonable estimate of the rebuild cost of her property.

And for that reason, I'm going to uphold Ms S's complaint against AJG.

Putting things right

Given my reasons for upholding the complaint – as set out above – it follows that I agree with our investigator about the redress.

I'm satisfied on balance that it was AJG's errors or omissions that led to Ms S being underinsured. And that she would likely not have been underinsured had they provided appropriate support and guidance to her about how to calculate or estimate the rebuild costs for her property.

That being the case, AJG must reimburse Ms S for her consequential losses and cover the £759.93 reduction in the claim payment made by the insurer.

It's also evident that Ms S has suffered a degree of inconvenience as a result of the lengthy discussions with the insurer and AJG about her claim. She has also had the distress and worry – over a prolonged period of time - that she would lose a not insignificant amount of money as a result of being underinsured.

Bearing that in mind, I agree with our investigator that AJG should pay Ms S £150 in compensation for her trouble and upset.

My final decision

For the reasons set out above, I uphold Ms S's complaint.

Arthur J. Gallagher Insurance Brokers Limited must pay Ms S £759.93 to cover the shortfall in her claim payment and pay her £150 in compensation for her trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 25 June 2024.

Neil Marshall
Ombudsman