

The complaint

Mr M complains that Arthur J. Gallagher Insurance Brokers Limited (“AJG”) recommended an unsuitable insurance policy, which led to a declined claim.

What happened

Mr M held a Property Owner’s policy for a rental property, in which there were two tenants cohabiting. The tenants separated and one of them, who had been employed, moved out. The remaining tenant was in receipt of benefits and was unemployed.

The policy Mr M held at the time was held on the basis that there were tenants in the property whose occupation status was “Professional Let”. In 2021 when the insurance was due for renewal, AJG recommended Mr M take out a policy with a different insurer. AJG completed the information required for the statement of fact on Mr M’s behalf and selected “Private Rental” as the occupant type.

Mr M’s claim for water damage in 2021 was subsequently declined on the basis that he’d made a qualifying misrepresentation about the type of tenant in the property. The policy was avoided and the insurer said it never would’ve provided cover if the tenant’s occupation status had been properly disclosed.

Mr M made a complaint to his insurer, and that has been dealt with in a separate decision. He also complained to AJG, saying he hadn’t been aware he should tell AJG that the information on the statement of fact was incorrect.

In its response to the complaint, AJG said that it hadn’t been notified of the change in occupation status of the tenant, so it couldn’t be held liable for the declined claim or the avoidance of the policy. Because Mr M disagreed, he referred his complaint to this service.

Our Investigator considered the complaint and ultimately recommended that it be upheld. She said there was no evidence that a detailed discussion had taken place between AJG and Mr M at the time of renewal, which would be expected as part of an advised sale of an insurance policy.

AJG didn’t accept our Investigator’s recommendations, so the complaint has now come to me to decide.

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’ve decided to uphold this complaint. I’ll explain why.

AJG conducted an advised sale, which means it had to ensure that the policy was suitable for Mr M’s specific needs. The onus was therefore on AJG to ask clear, unambiguous questions and to ask the right questions, in order to recommend a policy that met Mr M’s requirements. I’m not satisfied it did this.

I say this because, Mr M says there were no phone calls between him and AJG to discuss the renewal in any detail. And AJG hasn't provided evidence of calls in which the renewal was discussed thoroughly and in which the right questions were asked.

I've noted the contents of the call note provided by AJG in relation to the renewal, which says "*no changes required. Still occupied private rental*" – but this doesn't persuade me that a detailed discussion took place in which the broker asked Mr M whether his tenant was working, in receipt of benefits, or any of the other relevant questions I'd have expected, if it was going to offer a policy it knew would be unsuitable for a property with an unemployed tenant. I've also found what Mr M has said to be reasonable in the circumstances, namely that when checking the documents he wouldn't have known to query the selected term "Private Rental" as he had no idea that this was not the correct option, having not seen any of the other options available on the list.

Looking at the list of options AJG could've chosen from, I've found that if AJG had thought there were no changes to the tenant's status since the last policy, it would've likely chosen "Professional Working" which I consider to be a closer match to the option selected for the previous policy, which was "Professional Let". Mr M has made a compelling point, that if he had seen "Professional Working" on the statement of fact, he'd have known to query this with AJG, as he was aware the tenant was not employed. However, AJG selected "Private Rental" which Mr M says did not alert him to the fact that the incorrect information was provided to the insurer.

Had AJG asked the right questions of Mr M, it would've known to select "Unemployed" or "Unemployed with Benefits". I appreciate that I haven't seen information which would suggest that Mr M told AJG about the change in occupation status of his tenant, but more importantly, I've seen no evidence which persuades me that a detailed discussion took place and the right questions were asked. Call recordings haven't been provided and the call notes are brief. And as I've said, because this was an advised sale, it was AJG's obligation to ask the correct questions to obtain enough information to recommend a suitable policy. And I'm satisfied, based on the information provided to me, that it didn't do this. I also can't see that Mr M was provided with the dropdown options until after he made a claim, so he wouldn't have known which of the options best described his tenant.

AJG has said that it is aware of its obligations, but that this did not excuse Mr M of his obligation to make an honest disclosure about the risk. Whilst I agree that an honest disclosure had to be made, I don't agree with what AJG has implied here. This is because there's no evidence to suggest Mr M was dishonest. Indeed, the insurer hasn't treated this as a deliberate or reckless misrepresentation either. I don't consider that the call notes confirm that Mr M said there had been no changes, but even if he had, I find it more likely that this would've been because the information presented to him was whether or not the tenant was still a "Private Rental". As this term is ambiguous I would've expected AJG to check the occupation status of the tenant before proceeding. And I can't see any evidence of a wider discussion on that or any other point.

The only two phone conversations prior to the renewal were when Mr M called AJG. The notes of those calls don't indicate that the right questions were asked to ascertain the occupation status of the tenants, and I don't consider it enough in this case for AJG to have simply asked if there were any changes – because AJG knew it was recommending a policy which wouldn't have offered cover for unemployed tenants.

For the reasons I've given, I'm therefore upholding this complaint and will require AJG to take on the liability of the insurer for the purposes of the claim – and pay Mr M compensation for the distress and inconvenience he's experienced as a result of being recommended a policy which wasn't suitable for his needs.

I consider £400 to be adequate compensation in the circumstances. This is because Mr M has experienced inconvenience and disruption over several months that has required a lot of extra effort for him to sort out, as I can see from the correspondence chains provided.

Putting things right

Arthur J. Gallagher Insurance Brokers Limited must now:

- Take on liability for the claim and settle it subject to the terms and conditions of the policy.
- Ensure that any record of cancellation/avoidance of the policy is corrected to reflect that this was not Mr M's fault.
- Pay Mr M £400 compensation for distress and inconvenience.

My final decision

My final decision is that I uphold this complaint and I direct Arthur J. Gallagher Insurance Brokers Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 September 2024.

Ifrah Malik
Ombudsman