

## The complaint

H complains that Advisory Insurance Brokers Limited trading as Towergate Insurance Brokers (Towergate) failed to provide a suitable insurance policy for its needs.

## What happened

H has brought its complaint with the assistance of its representative. But for the ease of reference throughout my decision, I'll refer to H when talking about any comments made, even if made by the representative.

H approached Towergate to arrange insurance for its commercial property in September 2020. The policy was due to renew in October 2020 and it was looking for continuous cover to be in place with a renewal meeting to ensure the information provided was up to date and any new policy met H's needs.

Towergate recorded information provided to it from H about the property and its business use. The property was leased out and the current tenants were operating this as a restaurant but H explained the tenant was currently completing renovation works on the property and these had been delayed because of Covid.

Towergate, acting as the broker only here, recommended a policy provided by insurer A. Insurer A produced a quotation for the insurance which included a statement of fact about H and the property. Within this, it said:

*"100% of the premises is occupied"*

In June 2021, H notified insurer A of a claim under the policy. This was following a police raid on the premises which identified it was being used as a cannabis farm with extensive damage caused throughout. Insurer A declined to pay the claim and voided the policy from the date of inception. It said it had not been told the property was not operating as a restaurant or that it was not occupied at the time.

Insurer A said, under the provisions of the Insurance Act 2015, H had a duty to make a fair presentation of the risk and make full disclosure of all material circumstances. Its underwriters said that had they been aware of the true nature of the premises at the time of the application, cover would have been declined from inception of the policy. As a result it voided the policy from that date and H was entitled to a refund of the premiums paid.

H complained to Towergate as it felt it had provided the correct information about the property and its use when it discussed the policy with it. And they feel Towergate failed to provide this information to insurer A and it failed to provide them a suitable policy based on H's needs.

H has received an offer to settle some of the claimed damage from its previous insurer, insurer B. This decision was taken with a view that some of the damage may have occurred when the property was on risk with it, ahead of the renewal and policy being taken with insurer A.

Our investigator looked at this complaint and could see that H did discuss the renovation work at the property with Towergate. But the statement of fact produced with the quotation confirmed the property was 100% occupied which it wasn't. H had not been able to provide anything to demonstrate this statement was true and the property was occupied at the time.

However, as the claim had been settled in part by the previous insurer, our investigator didn't think she needed to determine whether Towergate had acted unfairly. This was because they felt there was no claim to answer for Towergate.

H disagreed with the assessment and said it maintained that Towergate had failed to provide a suitable policy for its needs when the renewal of its insurance was discussed. It didn't think it was fair that the policy was voided because of Towergate failing to source a suitable policy and it had lost out as a result. It asked that the complaint be referred for decision with this being considered.

I issued a provisional assessment on this complaint on 11 October 2024 and said the following:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I'm not planning on upholding this complaint. I appreciate H will be disappointed by this, but I'll explain why I don't think Towergate needs to do anything else.*

*The crux of this complaint is, when providing the information to Towergate for the insurance needed, did H provide a fair presentation of the risk and did Towergate source a suitable policy based on this. As I've set out in the background, the Insurance Act 2015 (IA15) provides this obligation on it and to ensure that it makes full disclosure of all material circumstances and to not misrepresent any detail.*

*IA15 sets out that the insurer has the option to take action if a misrepresentation is made. So if the insured has breached the duty to make a fair presentation of the risk, the insurer is entitled to take action to remedy this due to a qualifying breach. The action it can take depends on whether the qualifying breach was deemed to be reckless, or neither deliberate nor reckless. In this case, insurer A has treated the breach as neither deliberate nor reckless, with it avoiding the policy from inception and offering a refund as it would never have provided cover had this happened.*

*The question here is not whether insurer A acted fairly, as the complaint is not against it or the actions it took. But whether, H when providing information to Towergate made a fair presentation of the risk when discussing its needs.*

*There was disclosure to Towergate about the property being refurbished. But the statement of fact also asked H to confirm a number of things about the property at the time of the quote and inception of the policy. This included a statement to confirm the property was occupied. I think at the time this statement was made; H would have been aware the property was not 100% occupied and they didn't take reasonable care not to mispresent this.*

*I say this because, when providing information about the claim and why insurer B has agreed to accept some damage may have occurred when the property was on risk with it, H has provided details about visits to the property. In mid-July 2020, H visited the property and noted a number of units of wall seating had been removed from the property and had been told by the tenant they were being "re-upholstered". There was also damage to the flooring with this having been uplifted.*

*H later attended the property again in September 2020 with the same items still missing and this was ahead of the renewal conversations with Towergate. I think with damage already being apparent and H being aware of this for a number of months ahead of the renewal, it ought to have been clear the property was not being operated as a restaurant or occupied.*

*The policy does not define occupied, but does provide a definition of unoccupied stating the following:*

*“Unoccupied or empty or disused or unfurnished or untenanted or no longer in active use”*

*With fixed furniture having been removed and the restaurant not being in active use, I think it is fair to say the property was unoccupied at the time and H was aware of this. So when confirming in the statement of fact that it was occupied, it was not making a fair presentation of the risk.*

*H had the opportunity to confirm with Towergate the statement of fact was not accurate with this being sent ahead of the renewal date. But it failed to highlight any concerns with the information provided or check to confirm whether the property was now occupied. Nor was there any discussion over whether the property would be defined as occupied or not.*

*Based on the information provided, I am satisfied that H did discuss the renovations with Towergate. But it also confirmed the property was occupied when it was not.*

*Towergate is not the insurer, but a broker employed to source a policy for H and their needs. The statement of fact was produced when it found a policy it believed to be suitable and H in line with its obligations under IA15 needed to make sure they were making a fair presentation of the risk. And I don't think it did this when confirming the property was 100% occupied.*

*I've not seen anything to demonstrate that the policy Towergate provided to H was not suitable for its needs. And but for the misrepresentation and the action taken by insurer A under IA15, it would have provided the cover needed. Towergate was reliant on H providing correct information to ensure what was recorded at inception was a fair presentation of the risk and I don't think it has acted unfairly when it offered the policy it did.*

*I am not going to comment on the later claim and whether insurer A acted fairly when it took the actions it did as this is not the crux of this complaint. But for the reasons I've set out above, I am persuaded Towergate acted fairly when providing H with a policy, relying on the information and statements made by H to be a fair presentation of the risk and it sourced a policy which met its needs based on this.*

*Neither H nor Towergate has responded with any comments following the provisional decision and the case has been passed back to me for review.*

### **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.*

*As I've had no response to my provisional decision, I see no reason to depart from what has been set out in the background of this complaint above.*

*For these reasons set out, I don't think Towergate has acted unfairly when providing the policy it did to H based on the information presented at inception.*

**My final decision**

For the reasons set out above, I don't uphold H's complaint.

Thomas Brissenden  
**Ombudsman**