

The complaint

Mr J complains that Arthur J. Gallagher Insurance (AJGI) Brokers Limited mis-sold him a commercial buildings insurance policy as it wasn't suitable to his needs.

What happened

Mr J spoke with AJGI when his buildings insurance on a commercial property he owns was due for renewal. He contacted it to see if it could provide a price for cover and whether it was able to do so at a better price than the previous quotes he had.

AJGI took Mr J's details and some information about his property and provided a quote. The cheapest price was slightly higher than prices Mr J had found elsewhere but the adviser said he could speak with the underwriter and see if this could be reduced. On 9 October 2023, a written quotation was provided to Mr J for a commercial buildings policy at a price of £441.65.

Mr J called AJGI on receipt of this and accepted the quotation and paid for the annual policy.

In May 2024, Mr J's tenant notified him of damage to a window at the front of the property in the shop unit and Mr J contacted the underwriter of the policy to make a claim. On 13 June 2024, the underwriter let Mr J know it was declining the claim and it referenced an exclusion within the policy which explained cover was not provided for loss or damage to shop fronts in the building and the glass therein.

Mr J complained to AJGI that it had mis-sold him the policy. He didn't think it had provided a policy which is suitable to his needs and it failed to highlight the exclusion within the policy which was significant to his circumstances and property. This wasn't made clear when the policy was taken out and the prominence of this term within the policy document meant he was not aware of it.

AJGI didn't think it had done anything wrong when it provided information to Mr J about the policy and level of cover. It provided a written quotation for the policy which directed Mr J to read the policy documents to confirm that the policy met his needs and it said it didn't provide advice on the policy as it was a non-advised sale.

Our investigator looked at this complaint and said they didn't think it was clear whether the policy was sold on an advised basis or not. They felt some of the wording used could be interpreted to be demonstrating advice was provided, but they accepted no fact find or suitability report was completed.

They felt even if sold on a non-advised basis, AJGI didn't do all it needed when providing Mr J with information about the policy. Mr J explained the details of his property to the adviser when taking the policy out and it was clear the adviser was aware this included a shop front with the commercial unit on the ground floor. The exclusion for shop fronts and the glass therein was a relevant and significant exclusion for Mr J and they felt it should have been highlighted.

However, they didn't think even if this was highlighted that it could be shown Mr J would have been covered for the damage claimed for, even if this condition was not in place. The underwriter had not identified the cause of the damage and so it hadn't been shown that but for the exclusion, Mr J would have been successful in his claim.

They felt Mr J would have been distressed and inconvenienced when he tried to make a claim for something which was not covered under his policy and AJGI was responsible for this inconvenience when it failed to provide clear, fair, and not misleading information about the policy when it was sold.

Initially they felt if it could be demonstrated that a claim would have succeeded, but for the exclusion relied on by the underwriter, it would be fair to ask AJGI to cover the costs of this. This is because they believed Mr J had lost the opportunity to have cover in place without the exclusion and he would have looked for this if the information was provided.

AJGI raised concerns about this direction and its role as a broker and the impracticality of looking into the claim now when it hadn't been demonstrated that but for the exclusion, the claim would have succeeded.

Our investigator amended their outcome and accepted it hadn't been demonstrated that the claim would have succeeded. It would be for Mr J to demonstrate there was an insured loss and in the absence of this, it wouldn't be fair to ask AJGI to simply pay the costs claimed for.

However, to compensate for the distress and inconvenience, he said AJGI should pay Mr J £200.

Mr J said he felt the premium should be refunded as well as the compensation paid. AJGI has not commented on whether it accepts the compensation award which has been recommended but has asked that the complaint be referred for 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.

I've decided to uphold this complaint in line with our investigators most recent view. I appreciate both AJGI and Mr J will be disappointed by this as it does not go as far as either side would like. But I'll explain why I've reached this decision.

Mr J called AJGI with a view to obtaining a quote for his commercial property and it is clear from the conversation he had with the enquiry call, that price was a driving factor.

During the call, information was taken from Mr J to understand whether the quotes could be returned from the insurers AJGI had access to. Discussions took place about the property and its location and the adviser explains they are looking at it on street view and know the area and property.

When the price was returned it was higher than Mr J was hoping for and the adviser said they could go back to the underwriter and see if this could be brought down. Mr J was looking to pay no more than £450 for the policy. No advice was provided to Mr J on the policy or information provided about the common exclusions, nor were any unusual exclusions highlighted.

The call was ended with the adviser explaining they would come back to Mr J with confirmation on whether the policy could be found in line with the price Mr J was looking for.

Based on this, I am satisfied at this point it would be fair to conclude the sale was non-advised with no ambiguity on the service provided.

When the written quote was provided, the following was set out under the heading:

“Recommendation”

“I have used information from our conversation to arrive at both our personal recommendation and assessment of the suitability of the contract to best protect your business. Please refer to the enclosed quote and statement of fact for details and read these carefully”

Our investigator said they felt this indicated advice was provided on the sale and the suitability of the insurance for Mr J and his needs. I agree, the use of words like “*assessment of the suitability*” could lead Mr J to believing AJGI reviewed the policy and made a recommendation based on it meeting his needs. And as it was recommending this to him, he may not have felt the need to follow the direction provided to read the policy documents carefully. Overall, I think it is fair to say it's not clear to Mr J whether the policy was sold on an advised basis or not and whether it did meet his needs.

Our investigator said even if accepting the policy was sold on a non-advised basis, they didn't think AJGI had done what it needed to when providing Mr J with information which was clear, fair and not misleading, allowing him to make an informed choice. It still needed to highlight any onerous or unusual terms to Mr J about the policy and this hadn't been done. And this failing resulted in distress and inconvenience which could have been avoided.

I agree that if the sale was made on a non-advised basis as AJGI said it was, it needed to highlight the significant, onerous, or unusual terms of the policy. It was aware from the information it took from Mr J at enquiry stage that his commercial property had a shop front with glass. And while the exclusion was within the policy documents and it directed Mr J to read these carefully, it is not particularly prominent being situated almost halfway through a forty-page document. I think it is fair to say this wasn't highlighted and Mr J has potentially lost out as a result.

It is not clear whether the damage to Mr J's property is something that would have been covered but for the exclusion relied on by the underwriter. Nor is it clear, that but for this being highlighted, he would have taken a policy elsewhere – or whether the price of the policy was the most important thing.

So although Mr J feels a fair resolution to this complaint would be a refund of his premiums together with a payment for the impact of the issue, I don't think a refund is reasonable. He has still benefited from the property being insured in line with the policy conditions and bar the exclusion for the shop window glass, I've not seen this is didn't cover his needs.

But there is a loss of opportunity arising when AJGI didn't highlight the exclusion and allow Mr J the opportunity to find an alternative. I wouldn't expect AJGI to highlight all exclusions within a policy, but any relevant unusual or onerous exclusions should be brought to the attention of the policyholder. And as the seller of the policy aware of Mr J's property and its set up, it should have done this over relying on a direction to the policy terms. It isn't demonstrated a claim would have succeeded but for this exclusion, but it should be recognised this opportunity was missed.

It would not be fair to simply ask AJGI to pay this claim in the absence of an insured loss being demonstrated. The window had been in place for many years and an insurance policy is not expected to cover the normal costs associated with maintenance or wear and tear.

Mr J hasn't shown this isn't the cause of the damage and based on this, I am not asking AJGI to cover the cost associated with repairing the window.

Overall, I think there has been a failing with the information provided and the exclusion not being highlighted and it is right AJGI take steps to put this right.

Putting things right

AJGI failed to highlight the relevant terms to Mr J and this created a loss of opportunity as I've set out above.

In recognition of the distress and inconvenience caused, it should pay Mr J £200.

My final decision

For the reasons I've explained above, I uphold Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 28 February 2025.

Thomas Brissenden
Ombudsman