

The complaint

Two charities, which I will collectively refer to as C, complain about the sale of its commercial insurance policy by Arthur J. Gallagher Insurance Brokers Limited (AJG). C has experienced an event that is not covered by the policy it was sold, and considers AJG mis-sold the policy.

What happened

The following is intended only as a brief summary of events. Additionally, although a number of individuals have been involved in the circumstances, I have largely just referred to C and AJG.

C primarily operates to provide services relating to land. This includes allotments and a playing field. C took out insurance to cover its risks and renewed this over several years through AJG. AJG sold and renewed the policy on an advised basis. Various changes were made to the policy over the years, as C sought to reduce the cost of the policy. Of note in this regard, for the 2022 renewal, cover for buildings damage was removed from the policy. And in 2023, C questioned whether the removal of the business interruption cover would lower the price of the policy. The policy did renew with this business interruption cover in place. And the policy for the 2023 to 2024 period included cover for business interruption and various liabilities cover (for example, public liability).

In 2024, a third party dumped a large amount of what I will refer to as construction waste onto C's land. This fly-tipping was on the carpark serving the playing field. As a result of this, C says it was unable to use the field for various activities and the football team that rented the field on an annual basis did not renew for the following year.

C approached AJG with a view to a claim for the cost of removing the waste from the land, and for its business interruption losses to be covered. A formal claim was not submitted. AJG advised C that it wasn't possible to claim for these costs, as removal of fly-tipping was not covered by the policy and because a claim for business interruption required there to be damage to the land itself. AJG advised that the fly-tipping had not caused "damage".

C complained about this, and felt that it should have been sold a policy that would indemnify it against these risks. As AJG did not agree that it had done anything wrong when selling the policy, C brought its complaint to the Financial Ombudsman Service. Our Investigator did not recommend that the complaint should be upheld though. She didn't think AJG had been required to explain to C that the policy would not cover fly-tipping. And that even if this had been made clear, C had not demonstrated it would've been able to find this cover elsewhere.

C said that it would have been able to get this cover. And also said AJG were aware that the purpose of the insurance policy was for the Trustees to mitigate risks associated with public use of an area of land. With the benefit of hindsight, it does seem that fly-tipping was most definitely a foreseeable risk.

As our Investigator was unable to resolve this complaint it was passed to me for a decision. I issued my provisional decision on 1 May 2025. The following is an extract from that decision:

“No claim was actually made to C’s insurer. However, it seems the policy required there to have been damage to insured property before the business interruption section of the policy would respond to circumstances such as this. Whilst waste was deposited on C’s land, it does not appear that this caused damage as such. The waste merely needed removing and this needed to happen before the land could be effectively used. The land itself was seeming not altered/damaged, and any loss of use would not constitute damage itself.

AJG sold, and renewed, the policy on an advised basis. This means it needed to identify C’s demands and needs, and then recommend a policy that was suitable for those demands and needs. If the policy being recommended did not meet these demands and needs for some reason, AJG ought to have explained this and what this might mean for C.

AJG has said that C asked for cover for buildings to be removed. The inference here seems to be that even if AJG had recommended a policy that might include cover for fly-tipping as part of the buildings insurance element, C had asked for this to be removed. However, the request C made in 2022 was “[We] no longer want cover for the changing room please”. It is notable that C does not own any of the buildings on the land, including this changing room. So, it isn’t clear what the policy was covering prior to the 2022 renewal.

However, the policy would cover other parts of the land that C owned. And the policy that C was sold would have covered the car park and outdoor playing surfaces (i.e. the football pitch) that C owned. I haven’t seen anything that demonstrates C asked for any cover relating to these areas to be removed – or that it did not want cover for these areas.

And even if C had said, for example, “We no longer use the changing room, so don’t need Buildings Insurance cover”, AJG ought to have highlighted the removal of such cover would also mean the car park and playing surface also would not be covered.

No evidence has been provided that AJG discussed C’s need for Buildings Insurance cover, other than the brief mention of removing cover for the changing room. I am therefore unable to conclude that AJG has shown it adequately determined C’s demands and needs in respect of this generally.

Furthermore, C has raised the point that fly-tipping posed a very real risk to its activities. And I find this persuasive. The level of fly-tipping in the UK is apparently rising, and this often leads to a financial impact on landowners. I think AJG ought to have appreciated that, as a landowner, this posed a risk to C.

AJG ought also to have been aware that cover for fly-tipping was available on the market. AJG has referred to this needing to be a stand-alone policy. But it is unclear why. There are a number of policies available which provide cover for the cost of removing fly-tipping as part of a package of different covers, similar to those C was sold. A number of these other policies are specifically designed for landowners or farmers. Given C’s activities included both owning land and providing space for agriculture, I think AJG ought to have recognised the need for relevant cover for this.

AJG’s recommendation does say that, for the type of policy it recommended, it only had one insurer on its panel. This insurer may not have offered cover for fly-tipping as part of the policy AJG recommended. But even if AJG was unable to source such cover itself, it ought to have explained to C that this would leave it potentially exposed to an uninsured risk. C would then have been able to make an informed

decision about whether to take out the policy AJG was recommending or to look for alternative cover elsewhere.

I do note that it is clear that C was trying to reduce the cost of the insurance it was paying for. Its request for the removal of business interruption cover was made on the proviso that this reduced the cost of the policy. However, I also consider that, had C been advised that its demands and needs included cover for fly-tipping, given the potential risk this posed, C would most likely have paid for such cover.

Ultimately, the nature of C's activities mean its risks were limited largely speaking to liabilities it might incur to other people (for example a liability to the member of the public using its land), and events which would damage or impede its use of the land. I consider fly-tipping to have been a risk associated with this that AJG ought to have identified and advised on. As it failed to do so, I consider that AJG mis-sold the policy to C.

The next step is to consider the impact of this.

As I say, had C been appropriately advised, I think it most likely would've taken out cover for fly-tipping. C has not provided any evidence of the policy that it would have taken out. However, having had a brief look at the market, there are a number of easily identifiable policies that would most likely have met its needs.

These include the Zurich Property Owners policy, NIG FarmWeb Policy, NFU Farm Select, and BIBU (AXA) Farm and Estate policy. The exact terms of these policies differ. Cover for fly-tipping is often for £10,000 toward the cost of removal of the waste. Excesses vary from £250 to £1,000. A higher excess would likely lead to a lower premium, so I have assumed C would've opted for the £1,000 excess based cover. None of these clauses are dependent on the fly-tipping causing damage to property though.

That said, the business interruption cover provided by these type of alternative policy would most likely have required there to be damage. So, the business interruption sections of these policies would have been unlikely to respond in the event of C's claim.

It follows that the counterfactual in this case is likely to be that AJG ought to have advised that C was exposed to a risk relating to its land – including fly-tipping. And C would have opted to go elsewhere to purchase appropriate cover. This cover would have responded in the event of its claim, and paid the majority of the cost of removing the waste from C's land. C would not have been able to claim for any business interruption as a result of this fly-tipping, but would have been able to fully use the land within a month or so of making the claim (to allow for the claim to be handled and settled, and the waste removed).

The consequences on C of AJG's failure in the selling of the policy is therefore the loss of the payout allowing for the removal of the waste, and the inability to use the land from around a month after the claim would've been made. Whilst the policy C would mostly have taken out, would most likely not have covered business interruption losses, the interruption of its business from a time a month after the claim would've been made is the result of AJG's failure.

I have noted that C has said the estimated cost of removing the waste is around £12,000. A claim on the policies I have identified would not have covered this in full. But I think C would've been able to mitigate its loss here by paying the additional sum

required. Whilst a payment of £12,000 might be beyond its means, I think it would most likely have been able to raise £3,000.

This cost has not yet been incurred. So, I think C ought to arrange for the waste to be removed, and obtain a formal quote for this. And then for AJG to pay £9,000 toward this (the £10,000 likely claim amount, less the likely excess). Should the costs be less than £10,000, AJG would only need to pay this lower amount, less the deduction of the 'excess'.

C has also referred to other consequences of not being able to fully use the land. However, whilst I note that the having the waste in its car park would've been inconvenient, it isn't clear to me that this made the site unusable in the long-term. It seems the location of the waste was near to the entrance of the site (it is actually visible using online "street view" services). But this could have been navigated, allowing access to the remainder of the site and allowing parking in other areas – potentially around the changing room building.

The site was closed for a period whilst the waste was tested for toxicity. But this is unlikely to have been different had AJG recommended a suitable policy. And, as above, that policy wouldn't have covered business interruption loss in the circumstances of this claim event.

Additionally, I note that there were unrelated issues experienced in the lead up to the fly-tipping event – such as flooding. And it has not been shown to be more likely than not that the football team that had occupied the pitch would've renewed had it not been for the fly-tipping.

I appreciate the ongoing situation has caused C inconvenience, but I am unable to agree that there has been a financial loss above the cost of removing the waste.

As a charity, C is a legal entity in its own right. So is unable to suffer distress or frustration. It has been inconvenienced. However, I have also thought about the fact that it most likely would've cost more for C to take out a more comprehensive policy that would've covered the removal of fly-tipped waste. Whilst I am satisfied that C would most likely have paid this additional sum had it been given clear advice about the risk posed to it, I do need to take this 'saving' into account.

Taking things in the round, I think this additional cost that C has saved on making offsets any award I would be minded to make to address the inconvenience it has suffered."

I asked both parties to respond. C said that it had received a quote for the removal of the waste in excess of £20,000. It also said that the cost of removal and disposal had increased since the time of the fly-tipping.

AJG did not agree that it would have been appropriate for it to recommend the alternative policies suggested. It questioned whether these would be suitable for a customer with C's needs, and said that recommending such policies purely because they offered cover for fly-tipping would not be appropriate.

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 am upholding this complaint, largely for the same reasons set out in my provisional decision. I have set these out above, and do not intend to repeat what I have said again, as my reasoning has not changed.

In terms of AJG's response to the provisional decision, I do agree that it would not be appropriate to recommend an unsuitable policy purely because it offered one area of cover that a customer might need. However, there are two issues with this in the current circumstances.

Firstly, regardless of what it was recommending, I consider that – given this was an advised sale – AJG ought to have identified the risk of fly-tipping and either found cover for this or explained to C that it was going to be left exposed to this risk if it went ahead with the policy AJG was recommending. AJG did neither of these.

Secondly, I do not consider the policies I have referred to above would be unsuitable for C. AJG has said that a land-owner or farmer's policy would not be suitable for C. But C is a land-owner that had agricultural activities taking place on its land. So, I am unsure what AJG's justification is here. I do note that C is two charities. But plenty of charities have commercial insurance policies, so I don't consider this to be an inherent problem.

It is true that some of the alternative policies may include elements of cover that C might not need. And it is also true that these policies might cost more – and I note C's apparent desire to keep costs down. But, effectively, the cover C needed was liability cover and cover protecting its ability to use its land. I consider these alternative policies would have offered this. It would then have been for C to weigh up how much more it was willing to spend to ensure it had the cover it considered it needed – based on clear information that ought to have been provided as part of an advised sale. Overall, I am persuaded that C would have chosen to take out one of these other policies.

In terms of C's response, the overall cost of the removal is not really something that has a bearing on the outcome. I note that the quote received is far in excess of the amount I consider AJG should pay. However, this amount is based on what I consider C would have received from the type of insurance policy I consider ought to have been recommended and that would most likely have been taken out.

There are no guarantees such a policy would have been sold to C though. Whilst I am satisfied it is more likely than not that C would have selected such a policy and that it would've been able to take this out, this would be dependent on the actions of a third party – i.e. the alternative insurer. In situations where the outcome is dependent on a third party, the correct legal position in calculating a settlement is to apply the doctrine of loss of chance. This would lead to the respondent only having to pay a proportion of the total sum that the claimant otherwise would have received – depending on the likelihood of the circumstances arising.

My role is to consider all of the circumstances of the complaint though. This includes taking into account the legal position, such as the doctrine of loss of chance, but also the rest of the situation. In all the circumstances of this complaint, I don't consider applying this doctrine would lead to a fair and reasonable outcome. But, I also don't consider it is reasonable that AJG be required to meet any additional costs that are now required to remove and dispose of the waste. Whilst the two elements likely do not balance each other out exactly, in the round, I consider it is fair and reasonable for AJG to just meet the sum I consider it is likely C would have received under the alternative policy.

Putting things right

Subject to C providing Arthur J. Gallagher Insurance Brokers Limited with an invoice for the removal of the waste that exceeds £10,000, Arthur J. Gallagher Insurance Brokers Limited should pay C £9,000.

Should the costs be less than £10,000, Arthur J. Gallagher Insurance Brokers Limited would only need to pay this lower amount, less the deduction of the £1,000 'excess'.

My final decision

My final decision is that I uphold this complaint. Arthur J. Gallagher Insurance Brokers Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 17 June 2025.

Sam Thomas
Ombudsman