

The complaint

Mr S complains that a claim on his commercial property insurance policy was not settled in full because Arthur J. Gallagher Insurance Brokers Limited (“AJG”) failed to provide the correct information to the insurer when the policy was taken out.

What happened

Mr S has a commercial property held within his personal pension. The rent is paid to his pension which is managed by trustees, but he manages the property as landlord and collects the rent and service charges from the tenants. He’s responsible for maintaining and insuring the building.

Mr S uses brokers to place the insurance. He previously instructed a property management company to manage the building and tenants. In around 2020 they introduced him to AJG. Mr S took out a policy underwritten by an insurer (which I’ll call “R”) and renewed the policy in following years.

When the insurance came up for renewal in 2023, it remained with R but instead of renewing the existing policy, a new policy was set up. Shortly after this, Mr S made a claim following a theft from the building.

The claim was accepted but it wasn’t paid in full because R said Mr S had not provided accurate information about the construction of a flat roof on part of the building, and the building value was higher than the figure he had given, so he was underinsured.

Mr S has complained about R’s decision on the claim, and that complaint has been dealt with separately. He also complained that AJG was responsible for the property not having adequate insurance and had sold a policy that didn’t meet his needs.

AJG did not accept responsibility for any underinsurance. It said it had sold the policy based on the information Mr S provided – and he had given inaccurate information about the roof and about the value to be insured, despite being asked to check the information carefully to ensure it was accurate.

Our investigator thought AJG had acted unfairly and the complaint should be upheld. He asked AJG to reimburse a proportion of the claim.

AJG did not accept the recommendation and asked for an ombudsman’s decision. It made a number of points, including:

- R didn’t ask whether there was a flat roof – it asked whether the building was of standard construction, and defined what that meant.
- Mr S said the entire building was of standard construction but the roof is not standard construction, as set out in the definition. So the information he provided was not accurate.

I issued a provisional decision saying I did not intend to uphold the complaint. I set out my reasons as follows:

Provisional decision

AJG is a broker. It didn't provide the insurance, which was underwritten by R, but it was responsible for the sale of the policy. This was an advised sale, which means when advising Mr S about taking out the insurance AJG had a number of duties under the relevant rules and guidance, including to:

- assess his demands and needs and recommend a policy that was consistent with those demands and needs;
- ensure the suitability of its advice; and
- provide the information Mr S needed at the right time and in a way he could understand, so he could make good financial decisions, with information that was clear, fair and not misleading.

So AJG had to provide clear information to Mr S and ensure the policy it sold was suitable for him – but this was based on an assessment of his demands and needs. And that assessment was informed by the information Mr S provided.

This was a commercial policy. Under the relevant law (the Insurance Act 2015) Mr S had a duty to disclose either:

- everything he knew, or ought to have known, that would influence the insurer's judgment in deciding whether to insure the risk and on what terms; or
- enough information to put the insurer on notice that it needed to make further enquiries about potentially material circumstances.

The Insurance Act says the policyholder "ought to know" what should reasonably have been revealed by a reasonable search of information available to them. So the policyholder should take reasonable steps to check any available information and consider if there's anything they ought to disclose.

Mr S says AJG was aware there was a flat roof and if that information wasn't passed on, that's AJG's responsibility; he was never asked about the construction of the roof or its materials and had no reason to suspect that either a flat roof, or its construction, would be a problem.

However, Mr S was asked to provide information about the property. In particular, he was asked to complete a statement of fact, which included the following statement:

- *The Premises are built of brick, stone or concrete with slate, tiles, concrete, metal or asbestos roof*

I think it was clear from this Mr S was being asked to confirm what the premises were built of – and that the roof was "*slate, tiles, concrete, metal or asbestos*". I don't think there is any ambiguity in this statement. The roof wasn't made of any of these materials. So the information Mr S provided was not correct.

Mr S has also commented that R's concern changed from the issue of not disclosing the flat roof to the issue of its structural composition, but that's not the case. The issue was always what the roof was constructed of. This is what he was asked to confirm.

This was included in the statement of fact each year. Mr S had made comments and

requested amendments to other points in the statement of fact, but didn't mention anything about the roof. He ought to have disclosed that the roof wasn't made of any of the standard materials listed.

Mr S had arranged for contractors to refurbish the flat roof so it's likely he would have known what sort of roof it was. If he wasn't sure about the materials, he should have taken reasonable steps to check.

With regard to the declared value, this was set out in the policy schedule each year. In the 2021 policy year, the declared value was £508,277. In 2022, Mr S asked for this to be increased by 10.3%, and that was done. In 2023, he didn't ask for any increase.

I've seen correspondence where Mr S said

"Each year it increased in value by whatever was CPI rate but this year, at renewal, it stayed the same. Isn't CPI applied automatically?"

This indicates he thought it would be increased automatically. He has also said

"[AJG] did not mention the declared value, it was not automatically index linked and I did not pick this up which was an oversight on my behalf.

On the basis that the initial declared value was set by a RICs Surveyor I felt we had a good basis moving forward."

Looking at all the evidence, this indicates Mr S thought the declared value would increase automatically as a result of index-linking each year. That wasn't the case.

It's not entirely clear why a new policy was issued without any indexing. But AJG gave very clear information to Mr S about underinsurance and how to be fully insured. So he was made aware of the need to consider it properly and increase as necessary. And he had asked for an increase the year before, so was aware of the need to do something and didn't do so this time, which he seems to have accepted was his oversight.

Mr S also thought that simply applying an increase each year would be enough, because the original valuation had been provided by a surveyor. However, it was a number of years since the original valuation. Values don't necessarily increase by a similar amount each year. Even if there had been an increase in 2023, the value would still have been well below what an accurate valuation would have been by that point.

The letter AJG sent to Mr S for the 2023 renewal included the following:

We have assessed the information about your business circumstances that you have provided to us to help us to identify your requirements and make recommendation(s). We have based our understanding of your requirements on this information.

Enclosed with the letter was the new policy schedule, which showed the declared value as £559,257.

In the correspondence, AJG said

"Underinsurance is an increasing problem within the insurance industry and we recommend that the Sums insured are reviewed every year in line with the document which gives some tips on ensuring adequate cover is in place should the unexpected occur."

There was a leaflet enclosed about underinsurance, which included the following:

"Tips to help ensure adequate cover

- *Get an up-to-date property valuation – do not rely on simply applying a nominal increase in value at renewal.*
- *Your valuation should reflect the total rebuild cost of the property, not its market value.”*

Finally, the covering email said:

“Please read the attached documents carefully to ensure that the policy meets your requirements. If you would like to make any changes, please do not hesitate to contact me.”

I appreciate Mr S is not a professional landlord, and there was a lot of information for him to consider. But there was an onus on him to provide accurate information. In addition to the legal requirement to give a fair presentation of the risk, he was specifically asked to check the value, warned about the risk of underinsurance, and advised to get an up to date valuation.

Taking all of this into account, I'm satisfied AJG passed on to R the information Mr S had provided, and the sale of the policy was based on that information. It's not a case of Mr S providing accurate information and AJG then making a mistake and passing on incorrect information to the insurer.

Mr S was advised about the information he needed to provide, that the recommendation was based on that information, and the risk of not providing accurate information. In these circumstances I don't consider AJG was responsible for any shortfall there may have been in the claim settlement.

Replies to the provisional decision

AJG has not provided anything further that I need to address. Mr S has provided further comments and documents for me to consider. The key points include:

- Brokers must ensure key contractual changes are clearly explained and ensure clients understand their obligations and receive clear advice.
- AJG's failure to communicate changes clearly caused confusion and led to the property being substantially underinsured without his knowledge.
- Instead of renewing the existing policy in 2023 a new policy was issued, which didn't include the automatic index-linking previously applied. AJG didn't explain that the sums insured would not increase automatically. The underinsurance would likely have been avoided if he had been told this.
- AJG was aware of the flat roof construction and failed to ensure this was disclosed to the insurer – it was aware contractors had carried out work on the flat roof, which confirms AJG knew about the roof type. AJG did not specifically request information regarding the flat roof construction.

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 appreciate this will be very disappointing for Mr S but, having considered his additional comments carefully, I haven't changed my provisional decision, for the following reasons:

- It's not clear why a new policy was issued in 2023, instead of renewing the existing policy, and AJG hasn't been able to explain the reasons for that.

- Mr S says this caused the problem, as the new policy didn't include index-linking; if the existing policy had been renewed, index-linking would have been applied automatically. But as I explained in my provisional decision, index-linking each year would be not enough.
- Although the original valuation had been provided by a surveyor, it was some years since that was done. Mr S says construction industry inflation for the period 2022 - 2023 was 16.7%. and if this been applied the value would have increased by almost £100,000 to £652,652.
- R gave a valuation of around £914,000, and a valuation provided to Mr S in December 2023 (following the claim) gave a similar figure. So even if there had been index-linking, it's likely the property would still have been under-insured by a substantial amount.
- AJG explained to Mr S the importance of obtaining an accurate valuation, and the information it provided included a specific recommendation to get an up-to-date property valuation and not rely on simply applying an increase to the existing value at renewal.
- So, even if there was an error in issuing a new policy rather than renewing the existing policy, I'm not satisfied that means AJG is responsible for the property being underinsured. There was a legal requirement for Mr S to give a fair presentation of the risk. He was warned about the risk of underinsurance and specifically asked to check the value and obtain an up to date valuation. I think the communication from AJG around this made it sufficiently clear what was needed from Mr S.
- With regard to the flat roof, Mr S says he had disclosed there was a flat roof during 2021 and there were no questions about nature of construction; and in December 2023 AJG contacted the insurer with a query about the flat roof disclosure as there was no question asking if any part of the roof was flat, only about non-standard construction, which is ambiguous.
- The email in December 2023 was after the claim had been made, so I don't find that very persuasive in relation to what happened at the time of the policy renewal.
- In any event, I think the question Mr S was asked was clear – he was asked to confirm that the roof was “slate, tiles, concrete, metal or asbestos”. I don't think that was ambiguous.
- Having arranged for the flat roof to be refurbished, it's likely Mr S would have known what sort of roof it was but, if he wasn't sure about the materials, he should have taken reasonable steps to check.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 June 2025.

Peter Whiteley
Ombudsman

