

The complaint

A limited company, which I will call B, has complained that Arthur J. Gallagher Insurance Brokers Limited mis-sold its commercial combined insurance policy and a commercial legal expenses insurance policy.

Mr F, as director of B, has brought the complaint on its behalf. B went into voluntary liquidation in September 2025. The liquidators have consented to our consideration of the complaint.

What happened

In 2023, B purchased the insurance policies through Arthur Gallagher, acting as a broker. The policies renewed in 2024.

B is a pub and restaurant and occupied the ground floor of a building. In early 2024, there was a water leak that meant B was unable to operate. I understand B's business interruption claim was met by the insurer of the combined commercial policy. B also wanted cover for a legal dispute with the landlord about the repairs, rent and other losses. However, when B contacted the legal expenses insurer, there was an issue with B's name on the policy and the insurer also initially said there was no cover for tenancy disputes. This was resolved and the insurer considered the claim but decided that there were no reasonable prospects of the claim B wanted to bring against the landlord succeeding (a pre-requisite of the policy) and declined the claim.

Mr F is very unhappy that the claim was not met and says it has caused him significant financial difficulty. He complained to Arthur Gallagher that the policy was mis-sold. Mr F also complained that B should have been provided with "*tenant's improvements*" cover in the main commercial combined insurance policy.

Arthur Gallagher does not accept that it did anything wrong. It says the legal expenses policy sold to B included tenancy cover but B's claim was rejected due to it not having reasonable prospects of success, which is a common term in such policies.

Arthur Gallagher also said that the assessment of B's demands and needs was done over the phone. It says that during the call, the branch would have discussed B's needs and, based on this, would have recommended cover to meet those needs. Arthur Gallagher says it has no recording of the sales call but sent the full terms of the cover it was proposing to B and it had the opportunity to review the terms of the cover before agreeing to it on the basis that it would meet its insurance needs. Arthur Gallagher says B did not request tenant's improvements cover and, in any case, the leak was the landlord's responsibility, so B would not have been able to claim under any such section of cover for the events that happened here anyway.

Mr F remained unhappy, so referred his complaint to this service. Mr F has said that during the initial sales call, he asked questions regarding each policy. He says he would not have refused the tenants' improvements cover, as he knows this was important. The leaks caused damage to fixtures and fitting, however the policy is not clear and when raised with the

insurer, it changed its view.

One of our Investigators looked into the matter. The Investigator did not think the legal expenses cover was unsuitable for B, so did not think this was mis-sold. However, he said there was no evidence that tenants' improvement cover had been discussed with B when the policy was first sold. He considered that it should have been recommended to B and there is no evidence that it was. The Investigator therefore recommended that Arthur Gallagher provide three loss adjusters for Mr F to choose from to assess the claim against policy terms, and, if they recommend a claim be settled, Arthur Gallagher should settle that claim, with 8% interest. The Investigator also recommended that Arthur Gallagher pay B £200 compensation.

Arthur Gallagher did not accept the investigator's assessment. It made a number of points in response. I have considered everything it has said and have summarised its main points below:

- the policies in question were first sold in February 2023. It does not keep call recordings from this long ago due to data protection obligations and it is not reasonable to penalise it for this.
- The Investigator's assessment effectively mandates that no insurance broker can carry out an advised sale entirely over the telephone because it won't be able to prove that a client chose not to take certain cover that they later say they wanted.
- If this decision were to be upheld, it would represent a significant shift in how it does to do business and would lead to the customer experience suffering, as those with smaller risks would have to complete a full suite of risk assessment paperwork as opposed to doing so via the telephone.

As the Investigator was not able to resolve the complaint, it was been passed to me.

I issued a provisional decision on the matter earlier this month. I provisionally determined that the complaint should not be upheld. I have set out my provisional findings below:

"The Insurance Conduct of Business Sourcebook says that those selling insurance have a responsibility to provide clear, fair and not misleading information about the cover being provided, in order to put the customer in a position where they can make an informed choice about the insurance they are buying. This includes providing clear information about the main cover and any significant terms. If the seller is also making a recommendation or advising a customer to take a particular policy, then they should specify the customer's demands and needs and propose a policy that's consistent with them and take reasonable care to ensure the suitability of its advice.

Arthur Gallagher has confirmed that this was advised sale. Therefore, Arthur Gallagher needed to give B clear information about the policies recommended and take reasonable care to ensure the suitability of the policies it recommended to B.

Tenant's improvements cover

Arthur Gallagher says the discussion about B's insurance demands and needs was carried out over the telephone and it was not able to keep the recording of this call from 2023, as it would breach its data handling obligations. I have not seen any reliable evidence as to why a summary record of what was discussed could not have been held. However, I can only consider the evidence that is available.

The evidence about the discussion and what was advised is limited. I therefore cannot say with any certainty whether tenant's improvement cover was discussed or

not during that initial sales call, or at renewal or any other time. I have therefore considered everything carefully, to determine what I consider is most likely to have happened.

Mr F says everything about his business, including the fixtures and fittings of the premises, was discussed. And he has recently said he would have had no reason not to agree to the tenant's improvements cover if it was recommended to him, as he knew it was important. Mr F has not said he asked for this element of cover.

Arthur Gallagher says all insurance needs would have been discussed and the cover proposed to meet B's insurance needs would have reflected that discussion.

The schedule of insurance provided to B after the sale, and at renewal, lists all the elements of cover and this included cover for "*contents including trade fixtures and fittings, machinery and plant*". So, B's trade fixtures and fittings were covered for damage.

Tenant's improvements cover would provide additional cover for the reinstatement of work done to the premises by B, in the event of material damage. It is defined in B's policy as follows:

"Tenants' Improvements – All improvements, alterations and decorations effected by or on behalf of the Insured as occupier of the Premises, for which the Insured is legally responsible to insure, excluding Property in the Open, satellite dishes, Signs and tenant's fixtures and fittings."

"Tenant's improvements" is listed in the policy schedule issued to B and it says:

"Tenant's improvements sum insured £0."

I therefore think this document made it sufficiently clear to B that it did not have cover for tenant's improvements.

Mr F has said he would not have declined this element of cover, if it had been recommended. However, there is no reliable evidence that this cover should have been recommended. In saying this, I have borne in mind that the claim Mr F wants to make against the landlord (as set out in the draft pre-action letters he has provided) includes for damage to the bar, section of wall and a section of the kitchen. I have seen no evidence that would support that these would amount to tenant's improvements, rather than trade fixtures and fittings. And [so there is] no evidence that B did make tenant's improvements that it would have wanted insured.

Having considered everything carefully, I agree with the Investigator that tenant's improvement cover should have been discussed with B in the sales call. I also agree that there is no reliable evidence that it was discussed. However, there is also no reliable evidence that it wasn't. And there is also no reliable evidence that it was something that B reasonably required cover for. What is clear is that the tenant's improvement cover was not included in B's policy and it was made aware of this at the time and did not query it.

Overall therefore, I am not persuaded the policy was mis-sold.

In addition, even if I am for argument's sake wrong about this, there is no reliable evidence that B would have had a valid claim under any tenant's improvement cover. The Investigator recommended that Arthur Gallagher obtain the evidence about that by appointing loss adjusters but I do not think this ... [is] reasonable.

As mentioned above, B's claim against the landlord does not in my opinion set out a claim for items that would be considered to be tenant's improvements, as opposed to trade fixtures and fittings. So there is no evidence that any loss has occurred, even if Arthur Gallagher should have advised B to take tenant's improvement cover and failed to do so.

I do not therefore consider I can reasonably make any award against Arthur Gallagher.

Legal expense cover

With regard to the legal expenses cover, B was unhappy with the handling of his legal expenses claim but this is not something I can consider in this complaint, which is only about the actions of Arthur Gallagher, as a broker and not the legal expenses insurer.

I have not seen any information that would suggest the legal expenses policy sold to B by Arthur Gallagher was unsuitable for it and I do not therefore consider that there is any award I can reasonably make about this cover."

Responses to my provisional decision

Arthur Gallagher has not responded to my provisional decision.

Mr F is very disappointed with my provisional decision.

He has raised a number of issues which relate to the handling of his insurance claims (including inadequate payment for loss of stock; his loss of licence cover; delays in responding to his legal claim and delay in a payment from the loss adjuster) and difficulties he has had getting alternative insurance cover due to the defects with the building. Mr F says that he had fixtures and fittings, loss of stock, business interruption and premises closure cover. If these had been paid out correctly, he could have rebuilt his business. Mr F has also stressed the impact this claim has had on him financially and physically.

Mr F says that with tenants' improvement cover, he would have been able to recover *"Premises closure £100,000 Loss of stock - up to £15,000 Fixture and fittings -£15,300 Business Interruption - percentage of profit. Legal cover to reclaim loss of business due to landlord's negligence and landlords violations in the lease."*

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.

Mr F has raised a number of issues that relate to how his claims were dealt with by the insurers. I can see the extent of the issues Mr F has been facing, and the impact this has had on him. However, as explained in my provisional decision I cannot consider these issues in the context of this decision, which is only about the sale of the policies by Arthur Gallagher to B. Arthur Gallagher is not responsible for how the claims were dealt with, or the amount paid out for any part of the claim.

The complaint I was asked to consider was whether the legal expenses policy sold to B was suitable and whether Arthur Galalger should have included tenants' improvements cover with B's commercial combined insurance policy.

I set out in my provisional decision that there was no evidence, as far as I could see, that the legal expenses insurance cover sold to B by Arthur Gallagher was unsuitable. Rather the claim had been refused because it did not meet the policy terms. Mr F has said there were delays in dealing with the legal expenses claim but has not provided any further evidence about the suitability of the policy in response to my provisional decision. I therefore see no reason to change my mind about this part of the complaint.

I also provisionally determined that there was not enough evidence that Arthur Gallagher should have recommended that B have tenants' improvement cover. I said this because there was no reliable evidence that B had made any alterations to the property that would be considered to be tenants' improvements, rather than trade fixtures and fittings.

Mr F has not provided any further information that would establish that he has a loss as a result of tenants' improvements that has not been covered. He has said he would have been able to recover other losses (stock, premises closure and more) if he'd had tenants' improvements cover, but these are separate elements of cover under the policy. None of these would be covered under tenants' improvements.

Given this, I remain of the opinion that even if Arthur Gallagher should have advised B to take tenant's improvement cover and failed to do so, there is no evidence that B has not been able to claim for any loss that would have been covered if it had been provided with tenants' improvements cover with the policy. There is no award therefore that I can reasonably make against Arthur Gallagher.

While I am sorry to disappoint Mr F, and despite my natural sympathy for his situation, I therefore remain of the opinion that the complaint should not be upheld.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 26 January 2026.

Harriet McCarthy
Ombudsman