

complaint

Mr P is unhappy about his fire claim not being settled by his broker Towergate Underwriting Group Limited.

background

Mr P had a fire at his site and he claimed from his insurance company. After inspecting the damage the insurer declined to deal with the claim due to the non-standard construction of the outbuilding. It highlighted numerous issues of non disclosure (not providing the correct requested information). Mr P brought a complaint about the insurer to this service but it wasn't upheld. Instead a new complaint was set up against the brokers Towergate as it had sold the policy and asked the original questions.

In my recent provisional decision I didn't uphold the complaint. I said that the central issue was the questions asked and the answers given. The claim was declined due to the construction of the outbuilding that caught fire. Although it was on the same site as Mr P's main business this building was separate and used for a different business purpose. When insurers had declined the claim it also highlighted other matters it hadn't been told about. This included previous claims, previous policy cancellations and county court judgements. I said that within the sales call Mr P answers had shown he was focused on the main business only.

I said once a claim had occurred Mr P expected the claim to be paid for the damage to the outbuilding. But during the sales call the conversation was purely about the main property and the business that was going to be run from there. I noted that Mr P confirmed the property was of standard construction and that he wanted Towergate to arrange insurance cover for *"three bedrooms and associated rooms, meaning conservatory, kitchen, dining room."* Mr P made no mention of any other businesses or parts of the site. The claim inspection confirmed the non-standard construction of the outbuilding and that it wasn't used for the same business as the main house.

I said Mr P was clearly just looking to insure the main building and the business within it. He never mentioned any other outbuildings or businesses that were run from the other parts of the site. Towergate confirmed it was "90% certain" it could only cover the main property and the business within it. Mr P accepted this and agreed that the extension wouldn't be covered until the works were concluded. No other parts of Mr P's site or businesses were discussed for the purposes of this insurance.

I felt the sums insured and level of cover taken out was low and that this showed the policy was only being set up for the main property and business. This was noted in the loss adjuster's report which said if all the structures on site were included within the policy it would be underinsured by 75%.

During the sales call I thought it was important that Mr P said *"I also do outside selling, right, but that's got nothing to do with this insurance. Ok?"* Towergate confirmed this back to Mr P. To me Mr P was clearly differentiating between what he wanted to insure on this policy and his other businesses, premises, and policies. I said that Mr P went on to highlight this further when he pointed out that he had separate cover for his other business interests and he even confirmed other premiums he was paying for these. So even though Towergate accepted it could've done a better job around questions about claims, convictions and cancellations it

said these weren't central to the case and the questions it had asked had been answered "no" by Mr P anyway.

When all of the sales discussion concluded Mr P said no decision would be made about taking out cover until he'd reviewed all of the details and the price. Towergate said it was clear that Mr P should review the documents and make any amendments that were needed. The details included the construction of the property and that it was used solely for the business to be insured or as a private dwelling. Mr P never changed these details to note any other business or any non-standard constructions elsewhere on his site.

The loss adjuster's report confirmed the site had: *"several structures of varying construction....which are used for a variety of commercial and domestic purposes."* The report went on to confirm the fire occurred in a part of the site: *"utilised by the policyholder as a domestic dwelling and commercial kitchen for his off site...business."* The report then mentions several other businesses that Mr P also runs from the site. The adjuster concluded by pointing out the main business in the main property would be unlikely to suffer any loss of profit due to the claim. I accepted that Mr P had wanted only to insure the main building and business as he'd said himself he had cover elsewhere for other businesses. I said Towergate hadn't been made aware of any need to cover the rest of Mr P's properties or businesses. I felt the sale of the policy and the decision to decline the claim was reasonable.

In response Towergate accepted the provisional decision.

Mr P didn't accept the provisional decision and raised a number of further points. Mr P provided several responses and documents but the main ones included:

- a schedule noting outbuildings as included under the policy;
- details of the disclosures and representations act April 2012;
- a copy of this service's online technical resource with areas highlighted about misrepresentation and non-disclosure;
- details of what happened when his previous policy elsewhere ended;
- reasons why his external business was shut down;
- consumer affairs points about disclosing convictions and when they become spent;
- a copy of the provisional decision marked to show where abbreviations and words were used that Mr P doesn't think is appropriate or correct;
- and a letter stating Mr P's reasons for being unhappy with the way the provisional decision is written and further details of why the complaint should be upheld. He picked out grammatical issues with the provisional decision.

I will summarise the main key points Mr P made:

- not all of the evidence was taken into account;
- not all the call recordings have been listened to;
- he won't be providing any further evidence but reissuing evidence that he said had been ignored;
- the schedule included outbuildings;
- the act meant insurers or agents needed to ask questions there was no duty on the consumer;
- there's no such thing as the main property – it's all the property;
- the building subject to the claim isn't part of any business. This building was to provide accommodation for the family whilst the extension work was taking place;

- Mr P accepted that he didn't mention outbuildings but neither did Towergate – he said Towergate should've done;
- no other businesses operate from any of the buildings on the site;
- it was a mutual decision between Mr P and his previous insurers to cancel his previous policy due to his health meaning he couldn't pay his monthly premiums;
- he didn't disclose his criminal conviction as this was spent as far as he was concerned;
- the outbuilding kitchen wasn't being used for any other business. Mr P had "*voluntarily deregistered*" his business for health reasons and due to the low scores for hygiene;
- Mr P did make a further statement that was signed and hand delivered to the loss adjuster;
- the brick/stone dwelling was the only building being used for joint commercial/residential purposes;
- the sign confirming the businesses ran from the site was heavily obscured and due to health issues Mr P hadn't taken it down;
- the schedule didn't note cover was just for the main building and the business inside it;

my findings

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

Even though these are the main points raised by Mr P I'm not going to review all of them as several of them aren't connected to the reason why I've not upheld his complaint.

The claim was declined due to the non-standard construction of the other buildings on the site. Mr P still hasn't explained why he said the buildings were of standard construction if he did want to include these when he set up the policy. Mr P didn't take the policy out straight away he wanted to review the paperwork beforehand. These documents confirmed the property was of standard construction and used solely for the main business purpose or as a private dwelling. Mr P never asked for these to be changed before he took out the policy.

I've reviewed all the further points made by Mr P. Our adjudicator also provided Mr P with details of the evidence reviewed and specifically the sales call recording. Mr P wanted to see this evidence and have the call recording forensically checked. I understand why as I was clear in my provisional decision that the call was the key element of the case due to the questions that were asked and the answers that were given. But Mr P hasn't said any more about this issue in his responses. So he hasn't cleared up the points that were key to the provisional decision.

Mr P has now said there were no other businesses run from the site. But in the original call he clearly stated that he did "*outside selling*" and that this shouldn't be included on the policy he was asking Towergate to arrange. In the call he also confirmed how much he was paying for other business insurances. I still accept the evidence of the call recording as being most likely the correct details. I think the phone call shows Mr P did have other businesses, was paying separate premiums for them, and was looking only to insure the main building and the business within it. The statement produced by the loss adjuster did refer to other businesses owned by Mr P and at the start of the sales call the discussion talked about another business of Mr P's. This particular business was overseeing the extension works. Mr P now says that he did produce an amended statement and gave it to the adjuster but again I see no reason to dispute what Mr P said in the sales call or the first version of the statement from the loss adjuster after the fire claim had been inspected.

Mr P wanted Towergate to arrange insurance for him in relation to a specific business and the building that housed this business. Mr P hasn't addressed this in his further comments. He's reiterated that he wanted cover for the whole site. This isn't what the sales call said. Further, the insurers, the loss adjuster's report and Towergate have all been clear that if they'd known the true facts about the site they never would've been willing to offer cover. The only person fully aware of the facts was Mr P and he was clear that he only wanted to cover this particular building and business.

Despite what Mr P has said in response to the provisional decision about living in the outbuilding there was no mention of that when he took out the policy. In fact the sales caller said *"You're living there"* in reference to the main building and at no point during the call did Mr P say this wasn't the case. Mr P gave no indication he wasn't living in the house or that he would need to move out. He referred to the extension as actually being a separate building and giving the impression the work was going ahead with no impact on the main building.

Mr P hasn't explained why he referred specifically to the parts of the property that he wanted to insure and the specific business at the time when he now says that Towergate and the insurer should deal with his claim.

Mr P did make a valid point when he said the word outbuilding is included within the schedule. But the insurer and Towergate have been clear that none of them were expecting to insure a non-standard commercial construction with a different business being run from it. And if Mr P had confirmed that such premises did exist at the start then no cover would've been offered. I accept that Mr P now says no business is being run from the other building but his comments in the sales telephone call and the loss adjusters report say otherwise.

I've no evidence to suggest Towergate acted unreasonably when it set up the policy based on the questions it asked and the answers it was provided. Mr P said I haven't reviewed all the evidence but that he wasn't going to provide anything new. I've looked over all of the points he's made but none of them change the central issue. Mr P asked for a specific policy with specific cover for a particular business. Mr P made it clear he had other business and other policies to cover these separately. That's the evidence of his sales call and he hasn't produced any more persuasive evidence to refute what he said then. I see no reason to change my provisional decision.

my final decision

I don't uphold this complaint.

I make no award against Towergate Underwriting Group Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 6 April 2017

John Quinlan
ombudsman