

complaint

Mr and Mrs J have complained that Towergate Underwriting Group Limited failed to correctly record information when setting up their property insurance. This resulted in problems when they came to make a claim to the insurer following a fire at one of their properties.

background

As well as running a business from commercial premises, Mr and Mrs J own a number of residential properties that they rent out. They contacted Towergate to arrange insurance for their residential properties.

An advisor went to meet Mr J on 5 April 2013 to discuss insurance for all of the rental properties. They initially met at an outbuilding connected to one of the properties. Towergate provided a quote for the cover and it came into effect on 14 April 2013. In December 2013 the outbuilding was destroyed by a fire and so Mr and Mrs J made a claim on the policy. But the insurer has indicated that it may decline the claim because of inaccuracies in the information provided when the policy was set up. Mr J says that Towergate are to blame for not passing on the correct information.

Our adjudicator didn't think that Towergate could be held responsible for the incorrect information that had been provided to the insurer. So he didn't uphold the complaint. Mr and Mrs J disagree and so the complaint has been passed to me for a decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The insurer has indicated that it may decline the claim for three reasons:

- that the outbuilding was being used partly as a commercial premises
- that the outbuilding was of timber construction
- that Mr J had criminal convictions

The insurer says that none of these things were disclosed when Mr and Mrs J obtained the cover. The Statement of Facts document lists the questions that would have been asked and the answers that were given. The relevant questions and answers were:

- Proportion (%) of premises occupied by this tenant? **Answer: 100.**
- Construction? **Answer: Non-combustible walls, timber upper floors and timber roof supports.**
- Has any principal, director, partner or family member involved with the business or any other business ever been convicted of or charged (but not yet tried) with any criminal offence other than motoring offences? **Answer: No.**

Mr J says that all of the correct information was known by the Towergate rep but that he failed to record it properly.

He says that the rep met him at the outbuilding. So it would have been obvious that it was of timber construction. The rep would also have seen that it was being used to store a motorbike and mechanical parts. Mr J had been to court earlier in 2013 and had been

convicted of two offences. These were to do with the repair and sale of a motor vehicle. He said that he told the Towergate rep about this and queried with him whether or not they would be classed as motoring offences. He says that the rep wasn't sure himself whether the offences needed to be declared. He says that the rep filled in the Statement of Facts document for him.

Towergate has a different version of events. It says that the rep met with Mr J at the outbuilding and it was clear that it was being used to run a thriving business. It was so busy that they ended up going to Mr J's home address in order to be able to discuss his insurance needs properly. It says that the discussion was about providing landlord cover for the properties that Mr and Mrs J rented out. So as the outbuilding was obviously being used for commercial purposes outside of the lettings business, it was clear that it would not be included in the cover that was being discussed. It also says that at no time did Mr J tell the rep about his criminal convictions.

Both Towergate and Mr J actually agree that the rep knew about the timber construction of the outbuilding and the contents that were stored there. But Towergate's point is that the outbuilding never formed any part of the properties that were being covered under the residential landlords' insurance policy. On that basis, the questions about occupancy and construction were answered correctly – because the house on the same site as the outbuilding was being 100% occupied by the tenants. And this house is constructed of non-combustible walls etc.

The insurer has said that its enquiries found that Mr J used part of the outbuilding to work on motorcycles. It says there were 10 motorcycles in the building at the time of the fire. It also says that there were 20 motor vehicles being stored at the address.

From the evidence that I've seen, I think that Mr J was using the outbuilding for business use. Mr J did have business premises elsewhere that were subject to different insurance arrangements. I'm not sure what discussions did or didn't take place about the outbuilding. But overall I think it's reasonable that Towergate understood that the outbuilding was an extension of that business and that Mr J wasn't seeking cover for this as part of the landlord's insurance that he was trying to arrange.

Mr J has said that he did mention his convictions to the Towergate rep. But besides this, they were motoring convictions anyway that didn't need to be disclosed. But Mr J's convictions were quite recent and he would have understood that he was being prosecuted under consumer protection law and not for a motoring offence. He says that the rep wasn't sure if they needed to be declared. But I think that if the rep had been told about these convictions, he would have erred on the side of caution and either disclosed them or contacted the insurer for clarification.

Our adjudicator has spoken about viewing Mr J as being a sophisticated commercial consumer when looking at the circumstances of this complaint. Mr J had a number of rental properties, as well as another business. So he is someone that would be more familiar with insurance products. He says that he used Towergate as a broker to take care of things for him. But he still needed to ensure that the information Towergate had was accurate.

In summary, it's slightly unclear what was discussed, if anything, about the outbuilding during the period when Towergate was getting the quote together. But overall I don't think that Towergate can be held responsible for the information in the Statement of Facts about usage and construction.

Even if there is some doubt about these issues, Mr J's non-disclosure of his criminal convictions would probably be enough on its own for the insurer to cancel the policy and decline the claim. My view is that Mr J didn't tell Towergate about his convictions. So Towergate can't be held responsible for the incorrect information that was given to the insurer when the policy was set up.

It follows that I don't uphold Mr and Mrs J's complaint.

my final decision

My decision is that I do not uphold Mr and Mrs J's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs J to accept or reject my decision before 2 November 2015.

Carole Clark
ombudsman