

The complaint

P, a limited company, complains that Ageas Insurance Limited (Ageas) unfairly declined a claim it made on a commercial insurance policy, and voided the policy.

What happened

Where I refer to P within this decision, this includes its representatives, who are for the purposes of this matter its directors Mr T and Mr F.

P, whose main business is the sale and maintenance of motorcycles, took out a commercial insurance policy to cover its liabilities, premises and property through a broker, who I'll refer to as B. The policy arranged was underwritten by Ageas.

Following a break-in at P's premises, a claim was made with Ageas for tools which had been stolen. After undertaking enquiries, Ageas declined the claim. It said that the value of tools kept at the premises was much higher than the value it had been given when the policy was incepted.

P complained to Ageas. It said that the value of tools at the premises relied on by Ageas was incorrect. It also said that the value of tools insured on the policy should have been changed before the break-in as it had spoken to B about doing this (P has made a separate complaint to B about this). Ageas rejected the complaint. It was satisfied P hadn't given a fair representation of the value of the tools when the policy was incepted. It said if the correct value had been disclosed, it would have charged a higher premium and required additional security measures to be in place.

P referred the complaint to our service. Our investigator didn't think Ageas had done anything wrong. She thought it had fairly declined cover for the claim and voided the policy as P hadn't properly disclosed the value of tools. She thought Ageas' actions in light of this had been in accordance with its rights and obligations.

P didn't accept this and asked for an ombudsman's decision.

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.

My starting point here is that Ageas has made its decisions to decline the claim and void the policy based on the declared value of portable hand tools owned by P as being £2,500. I know that P argues that it had asked B to increase the value of the portable hand tools to £25,000 before the claim, but I'm satisfied that no such amendment was made with Ageas.

There's no evidence of Ageas ever being asked by B to increase the value of portable hand tools prior to the claim. The matter of whether P did ask B to make the amendment is the subject of a separate complaint and not a matter I'll address in this decision. Ageas were

entitled when the claim was made to rely on the £2,500 value as being what P had presented as the value of the tools owned by P.

Ageas' position is that, while the value of hand tools insured was £2,500, the value of all the tools owned by P at the time of the claim was in the region of £65,000. In support of its position, it relies on its loss adjuster's report. The loss adjuster visited the premises and spoke with Mr T and Mr F. Their report said that following a discussion with P's representatives "we concluded that the value at risk for the time of loss should be no less than £65k, this included the £20k of tools stolen... it was acknowledged by both policyholders [Mr T and Mr F] that the sum insured was grossly inadequate and should be no less than £65k."

P disputes the accuracy of the loss adjuster's report. It says that the loss adjuster was only present for a few minutes and that the additional value of between £35,000 and £40,000 for tools which hadn't been stolen included tools which were removed from the premises at the end of each day. P hasn't provided any itemised list of the tools which weren't stolen, their values and details of where they are stored.

I note as well that the value of the tools stolen from P, and which were claimed, is in excess of £20,000. It seems to be accepted that at the time of the loss adjuster's visit, a number of tools remained in P's possession and were at the premises. The value of these was mentioned in telephone calls between P and B as being in the region of £40,000. When combined with the value of the stolen items, this gives a figure of around £65,000. This supports, I think, that the loss adjuster's figure of £65,000 was reasonable.

On the balance of the evidence available to me, I think it was reasonable for Ageas to rely on the loss adjuster's report as reflecting that, at the time of the theft, P had portable hand tools with a value in the region of £65,000.

As I've said above, Ageas provided cover on the basis of the value of P's hand tools being £2,500. And it acted reasonably in concluding that the actual value of these tools at the time of the break-in was £65,000. As this was a commercial insurance policy and the policyholder is P, a business, the relevant legislation which covers this situation is the Insurance Act 2015.

The act requires that the insured party (in this case P), make a "*fair presentation*" of the risk to the insurer. This means that they have to disclose either everything they know (or should know) that would influence an insurer's decision on whether to offer cover and on what terms, or disclose enough information to put an insurer in notice that it needs to make further enquiries about potentially material circumstances.

What this means is that P had a duty to disclose an accurate value of the portable hand tools to Ageas. The evidence I have is that the value given to Ageas by B for these was £2500. And the evidence also indicates that this was the value given by P when the policy was taken out – P's account is that the increased value of £25,000 was discussed with B when the policy was already in force, with the intention of amending the existing policy.

P gave a value to B for portable hand tools, so I think it's fair to say that P would reasonably have known that Ageas wanted to have this information. And, as I've already concluded, the value given was much lower than the actual value.

Mr T and Mr F had a extensive combined knowledge of the motorcycle industry and the tools used and so, I think, would have been aware of the value of the portable hand tools owned by the business. I conclude that P did not make a "*fair presentation*" of the risk to Ageas when taking out the policy.

As the value wasn't accurate, I next need to consider what Ageas would have done if the correct value of tools had been declared. And I'm satisfied that the evidence provided by Ageas suggests that if the value of £65,000 had been declared (the evidence suggests Ageas can reasonably say was the case) then it's shown that the premium charged to P would have been higher and that additional security measures would have been required.

So Ageas has demonstrated that it would have acted differently if P had properly disclosed the value of the portable hand tools. This means that P's actions are a "*qualifying breach*," as set out in the act. It's voided the policy and declined the claim.

This is what the act says the insurer can do if a failure to disclose is made deliberately or recklessly. So I finally need to consider whether it was reasonable for Ageas to conclude that P's failure to disclose an accurate value for the tools was deliberate or reckless.

As I've said above, P's directors had extensive experience and knowledge of the motorcycle industry. The value P gave to B, which was passed on to Ageas, for the hand tools was £2,500. But the actual value was, even by P's own account, at least 10 times this – with the potential value (according to the loss adjuster, and which I've said Ageas can reasonably rely on) being more than 25 times the amount disclosed at inception.

I haven't seen a reasonable explanation from P as to why the value given when the policy was incepted was so much lower than the actual value of the tools held. I think Ageas acted reasonably when it concluded that P had given a much lower value for the tools than was correct, based on the experience and knowledge of those representing P, was either done deliberately, (presumably to secure cover with less conditions and/or a lower premium than would otherwise have been the case), or without taking reasonable care to ensure that they were providing accurate information, in other words recklessly.

As I'm satisfied that Ageas fairly concluded that the qualifying breach was deliberate or reckless on the evidence available to it, it's acted in accordance with the provisions of the Insurance Act 2015 when it voided the policy, declined cover for the claim and retained the premium. I won't be asking it to do anything further.

My final decision

It's my final decision not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 28 May 2021.

Ben Williams
Ombudsman