

The complaint

G, a limited company, complains Ageas Insurance Limited has unfairly proposed a partial settlement of a claim on its commercial property insurance policy, following a fire which caused damage to the property. G insures a property made up of four flats.

G is being represented in bringing this complaint by its directors, for ease any reference to G includes any comments made by individual directors in bringing this complaint, unless otherwise set out.

Any reference to Ageas also includes its agents.

What happened

In June 2023, there was a fire which caused damage to the roof of the property. Ageas carried out some initial enquiries and in July 2023, around six weeks after it was notified, it accepted the claim.

G complained to Ageas about delays in accepting the claim. Ageas responded to that complaint in mid-September 2023. It said it had needed to carry out enquiries to validate the claim, and those had been more complex than first thought. But it accepted it had, at times, been poor in its communication for which it apologised.

Unsatisfied with Ageas' response, G brought the complaint to the Financial Ombudsman Service. That complaint has been considered by this Service separately.

Following its acceptance of the claim, Ageas said it would settle it proportionately. It said when taking out the insurance, G had failed to give a fair presentation of the risk. It said CCJs for one of the directors hadn't been disclosed, and the property had a partial flat roof, which hadn't been declared.

G complained about Ageas' decision to settle the claim proportionately. It also said it wanted Ageas to adjust the premium for the 2023 policy year. G said it had increased by around 23% for registering an earlier claim (separate to the fire claim) in relation to a roof. G said it hadn't pursued the claim, so the premium for the 2023 policy year shouldn't have increased.

Ageas didn't provide a response to that complaint, so it was considered by this Service. Our Investigator didn't think it was fair for Ageas to reduce the claim for non-disclosure of a flat roof. She said Ageas had changed its policy terms in relation to the flat roof, and not sufficiently highlighted these to G. On that basis she didn't think G had failed to make a fair presentation of the risk in respect of the flat roof. But she thought Ageas had acted fairly in proportionately reducing the claim for the non-disclosure of CCJs; she didn't recommend it settle the whole claim amount. She also didn't think it had been shown that Ageas had unfairly increased the policy premium for the 2023 policy year by incorrectly recording a claim, and so she didn't ask it to amend the premium.

Ageas accepted the outcome of our Investigator. G didn't. It said it was unfair of Ageas to refuse to allow it to pay the increase in premium it would have charged, in order to secure a full claim pay out for the fire damage. It said by proportionately settling the claim and delaying matters, extreme financial hardship was being caused.

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.

As Ageas accepted the outcome of our Investigator, and G didn't object to what was said about the flat roof deduction, I'm not going to review the position in relation to the flat roof. So Ageas will need to settle the claim without proportionately reducing it for any non-disclosure of a flat roof.

In regards to the CCJs, as our Investigator set out, the relevant law in this area is the Insurance Act 2015. Under this, the policyholder – G – needs to make a fair presentation of the risk to the insurer when taking out the policy. This means it has to disclose everything it knows, or ought to know, that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms.

I haven't seen the initial sale of the insurance, but at renewal in 2022 G's renewal document sets out information about CCJs; none had been declared. G says it didn't know about the CCJs, so it couldn't have disclosed them. The CCJs were against one director. The director in question said he'd moved abroad a number of years ago and hadn't had any communication about the debts since that time. He said he had his mail forwarded for a time and hadn't received any notice of the debt. He also said he'd checked his mail on any return to the UK but hadn't seen any indication of the CCJs being issued. Given the circumstances, I accept G might not have known CCJs had been registered against the director.

However, the Insurance Act also says the policyholder "ought to know" what should reasonably have been revealed by a reasonable search of information available to them. So a policyholder should take steps to check any information available to them and consider if there's anything they ought to disclose. G was asked if any directors had CCJs registered and its recorded answer was no, so G ought to have been aware that this was information important to Ageas.

And with the above in mind, I think G ought to have known that there were relevant CCJs registered. I consider this information would be reasonably revealed after a search for it. This is information commonly captured on a credit file, which I consider can be easily accessed at any time, whichever country someone resides in. And given under the Act, the onus is on G to share everything it ought to know – including that reasonably revealed by a reasonable search, I'm satisfied it ought to have known about the CCJs. And so by not disclosing them, it hasn't provided a fair presentation of the risk.

But for the breach to be considered a 'qualifying one' Ageas needs to show it would have done something differently, had the relevant information been disclosed. Ageas says it would have still offered cover, but it would have charged a higher premium. It's provided its underwriting criteria which shows for a CCJ, it would add a 10% loading onto the premium. Here, as there were three CCJs, it said it would add a 30% loading. G has said it is surprised the loadings would be the same for each CCJ, as they were for differing amounts. However, I'm satisfied, based on the underwriting criteria I've seen, that Ageas has assessed this fairly in line with its criteria. So Ageas has shown there was a qualifying breach of the Insurance Act.

The remedy available to Ageas depends on whether it considers the breach to have been deliberate or reckless, or not. In this case, Ageas hasn't considered the breach to be reckless or deliberate, so it has accepted the claim and did continue the policy. But as it's

shown a higher premium would have been charged, under the Act it is allowed to proportionately reduce the amount to be paid on a claim.

G has said this is unfair as it will leave it with having to fund a significant amount of repair itself, it says Ageas should allow it to pay the increased premium, to benefit from the full claim settlement. I can see the loss adjuster put this option forward to Ageas, but it didn't agree. And I don't think Ageas has acted unfairly or unreasonably in not allowing G to do that. That is because the legislation sets out what is expected from both parties when entering into contract of insurance – and what the remedies are for when things go awry. With the available remedies, as I've explained, taking into account whether the mistake was the result of an unfortunate oversight or something more serious (recklessness or a deliberate act). Ageas, as I explained above, has appropriately applied the remedy available to it under the Act. I'm not persuaded it is fair to make it set the Act aside and provide an alternative remedy i.e. allow G to make up the premium difference whilst it covers the entire claim cost.

G has said delays continue in the claim and it is causing extreme financial hardship. I can understand this is a difficult time for G. But it isn't the role of this Service to audit claims; we review complaints. So I haven't considered how Ageas has acted since September 2023. This is an ongoing matter, and the line has to be drawn somewhere in terms of what issues I can review as part of this complaint. G has alluded to other ongoing issues with Ageas as the claim progresses. If it hasn't already and wants to, it will need to raise a formal complaint with Ageas before we can review matters. So as not to prejudice any future complaint, I want to make clear I haven't assessed Ageas' handling of matters since its complaint response of mid-September 2023.

G also complained that Ageas increased the policy premium for the 2023 policy year, following an earlier (unrelated) claim. It said that claim, also made in relation to a roof, had been abandoned. So the policy premium shouldn't have increased. Ageas said it didn't apply any loading for that claim – which it had registered in October 2022. I haven't seen anything to suggest Ageas incorrectly recorded the claim, and given Ageas' comments, I'm not persuaded it added any specific loading onto the policy premium following that claim. There are a number of factors which influence how a policy is priced, I haven't seen anything to suggest G's was done incorrectly at the start of the 2023 policy year. As a result I'm not asking Ageas to do anything about that premium increase.

My final decision

My final decision is that Ageas Insurance Limited needs to settle the claim without making any proportionate deduction for a flat roof.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 26 July 2024.

Michelle Henderson
Ombudsman