

The complaint

M complains about how Ageas Insurance Limited has settled its claim on its commercial property owners insurance policy.

Mr C, as a beneficiary of M's policy, has brought this complaint on M's behalf. For ease of reading I'll refer to Mr C throughout.

What happened

Mr C owned a property that was covered by a commercial buildings insurance policy which was taken out through a broker. In February 2022 he raised a claim following damage caused by a storm. Ageas accepted the claim, however in the process of investigating it, Ageas found that the property had a completely flat roof of timber construction. It said this didn't match the information that had been provided when the policy was inception. And if it had, Ageas would have charged a higher premium for the policy with a higher applicable excess.

On discovering the error Mr C made a complaint to his broker. As he said he'd provided the correct information to the broker, but this hadn't been accurately passed on to Ageas. The broker upheld the complaint and agreed to pay the difference in premiums directly to Ageas. And, after Mr C brought it to this service, it also agreed to reimburse him the difference between the excess he now had to pay and what he would have paid.

Following this Ageas cash settled Mr C's claim for the storm damage. However it said that due to the misrepresentation that was made at inception, it would only offer a proportionate settlement of around 63% of the total claim cost because that's the proportion of the total premiums Mr C paid compared to what he should have paid had it known the construction of the property. It said it was entitled to do this under the Insurance Act 2015.

Mr C wasn't happy with this. He said it had already been established that the misrepresentation was the fault of his broker, and the full premiums had now been paid. So he didn't think it was fair that he was being penalised for the broker's error. He brought the complaint to this service.

Our investigator considered the issues and recommended it be upheld. He said as the broker had already paid the full premiums that should have been charged at inception it wasn't fair to apply the remedy available in the insurance act and therefore thought Ageas should pay Mr C the full claim amount.

Mr C accepted our investigator's outcome, however Ageas didn't. It asked for the complaint to be reviewed by an ombudsman.

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.

There is no dispute here that a misrepresentation was made when the policy was taken out. Ageas asked the following question:

"Are the walls constructed solely of brick, stone or concrete and roofed with slates, tiles or concrete?"

Which was answered as 'yes', but it was subsequently found that the roof was 100% flat timber and felt construction.

As this is a commercial policy, the relevant law is the Insurance Act 2015. Under which a customer is required to provide a fair presentation of the risk when they take out a policy. And if they don't, and the insurer can show that it would have provided the policy on different terms or not at all if they had, then the insurer is entitled to apply a number of remedies. Such as proportionately settling a claim based on the difference between the premiums paid and how much should have been paid. So I understand why Ageas has come to the settlement amount it has.

However in the circumstances, I don't agree it has acted fairly by applying the Insurance Act here. This is because the broker has accepted the error was its own and paid the difference in premiums to Ageas. While this isn't a remedy this service would usually direct, as Ageas has accepted the difference in premiums, it now wouldn't be fair for it to also settle the claim proportionately. As it has already accepted an alternative remedy to the issue and as received full payment for the policy. I therefore agree with our investigator that Ageas should now settle the claim at the full amount, without reducing it proportionately.

I appreciate that Ageas may wish to discuss its original acceptance of the additional policy premiums with the broker if it no longer sees that as an appropriate remedy. Or to pursue any costs it considers to be additional to what it is required to pay. However this process should not impact Mr C or the settlement he receives. It is agreed that Mr C was not responsible for the error here, so he is entitled to a full settlement. It will then be between Ageas and the broker to discuss any allocation of costs.

My final decision

For the reasons I've given I uphold M's complaint. I require Ageas Insurance Limited to pay Mr C's claim in full. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C, on behalf of M, to accept or reject my decision before 17 January 2023.

Sophie Goodyear
Ombudsman