

The complaint

Ms C and Mr S complain that ERGO Versicherung Aktiengesellschaft trading as ERGO UK Branch didn't pay the full amount of their insurance claim.

What happened

Ms C and Mr S entered into a contract with a developer to buy a property being built as part of a new development for £139,000. They paid an initial registration fee of £5,000 to secure their property and then a deposit which, including the registration fee, amounted to around 30% of the purchase price.

ERGO provided an insurance policy in relation to the development which included Ms C and Mr S as policyholders and provided cover for them under which if, due to insolvency or fraud, the developer didn't complete the building ERGO would repay their deposit up to a maximum of 10% of the purchase price or £100,000, whichever is lower.

When the developer became insolvent Ms C and Mr S made a claim on the policy. ERGO accepted the claim but made a deduction of £5,000 from the amount paid in respect of the registration fee. Ms C and Mr S complained that the deduction should not have been made but ERGO said this was in line with the policy terms, as there was an exclusion which meant they could not recover anything relating to the registration fee. So they referred the complaint to this Service.

Our investigator said it was unfair to make the deduction as the policy terms weren't clear how fees would be deducted when the deposit was greater than the amount that could be claimed. He said ERGO should pay the full 10% deposit value. ERGO disagrees and has requested 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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

The policy provides cover for the deposit Ms C and Mr S paid and that's not in dispute. The issue is whether it was fair to deduct £5,000 from the amount paid.

ERGO relies on a policy term which says "*The Policyholder cannot recover under this Section in respect of any registration fee, administration fee or booking fee paid to the Developer.*"

Ms C and Mr S paid a registration fee of £5,000 and a deposit of £40,200. ERGO considers the registration fee forms part of the deposit, since it was deducted from the sum Ms C and Mr S paid for the deposit.

The total deposit was more than 10% of the purchase price. The policy will pay up to 10% of the purchase price, which in this case amounts to £13,900. So the starting point is that's the amount Ms C and Mr S would reasonably expect to be paid. Although the policy says they can't recover the registration fee it's not clear how that is to be calculated when the amount of the deposit is more than the amount they can claim.

If the £5,000 is deducted from the deposit, the amount left is still more than 10% of the purchase price. And since Ms C and Mr S are entitled to 10% of the purchase price, that is the amount that should be paid. If the registration fee is deducted after the 10% has been calculated they would never be able to claim 10% of the purchase price which would not be fair.

ERGO says this policy was intended to cover the first 10% of the deposit and there was another policy in place (with a different insurer) to protect a further 10%, with the final 10% at the purchasers' risk. And it says the registration fee forms part of the 'bottom' 10% layer so it should be deducted from the first part of the deposit. Even if that was the intention it isn't set out in the policy. If ERGO intended the policy to work in that way it could have set it all out clearly in the policy terms, so the policyholder would know that was how the payment would be calculated.

This policy simply says ERGO will pay up to 10% of the total purchase price. And as I've explained, after deducting the registration fee the amount of the deposit is still more than 10%. So ERGO should pay up to 10%, which is £13,900. As ERGO deducted £5,000 from that amount it should now pay this to Ms C and Mr S..

My final decision

I uphold the complaint and direct ERGO Versicherung Aktiengesellschaft trading as ERGO UK Branch to pay £5,000 to Ms C and Mr S.

ERGO Versicherung Aktiengesellschaft trading as ERGO UK Branch must pay the compensation within 28 days of the date on which we tell it Ms C and Mr S accept my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C and Mr S to accept or reject my decision before 11 January 2024.

Peter Whiteley
Ombudsman