

The complaint

Mr P is complaining that Ageas Insurance Limited has reduced a claim he made on his commercial property insurance policy.

Ageas has used a number of agents to handle the claim and complaint on its behalf. But, for ease of reference, I shall refer to anything the agent did or said to have been done or said by Ageas.

What happened

In July 2022 Mr P's property, along with a number of other property's adjacent to his, were significantly damaged by an extreme fire to the extent they required demolishing and rebuilding. Mr P contacted Ageas to claim for the damage from his insurance policy.

As part of its investigation, Ageas estimated the rebuild cost to be around £225,000, but it said Mr P's sum insured was around £181,000. So it said Mr P was underinsured and it said it wouldn't pay the claim in full and Mr P would have to cover any shortfall personally. Mr P thought this was unfair as he said he'd initially declared the sum insured based on the rebuild cost he was advised when he bought the policy in 2017. He said he made a claim in March 2020, which was declined. But the surveyor advised Mr P that the property was underinsured and estimated the rebuild cost to be at least £161,000. So Mr P said he contacted Ageas to update the sum insured. The sum insured index-linked increased year on year thereafter – leading to the sum insured of £181,000 at the start of the policy term.

Ageas maintained its stance so Mr P referred his concerns to this Service to investigate.

Following this, Ageas acknowledged it should have index linked the sum insured to reflect increased costs over the policy term. In doing so it updated the sum insured to £205,000. Initially Ageas advised this Service and Mr P that the updated sum insured was within its tolerance so it would deal with the claim in full. But it later said it meant that it would deal with the claim in full up to the sum insured – i.e. it said it wouldn't pay more than the sum insured. So Mr P was still liable for the shortfall.

Our investigator upheld this complaint. In summary he thought Mr P's estimate of the sum insured was reasonable at the time, based on what he knew then – which the investigator said included credible and reputable estimates of the rebuild cost. He didn't think Mr P could have been expected to do more than that. So, he didn't think it was fair to limit the claim settlement. By Ageas limiting the claim, he said it left Mr P in a very difficult situation where he's unable to afford to rebuild his house. He set out that Mr P had followed Ageas instructions when setting the sum insured (on the advice of a professional surveyor, appointed by Ageas). And he thought that, if the sum insured was no longer adequate, it's likely to be due to inflation rather than anything Mr P has done wrong. So he thought Mr P being left with a huge proportion of the bill wasn't fair.

The investigator recommended that Ageas dealt with the claim in full and paid Mr P £850 in compensation.

Ageas didn't agree with the investigator's opinion as it maintained it wasn't required to pay more than the index-linked sum insured under the terms of the insurance policy.

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.

I've decided to uphold this complaint and I'll now explain why.

Ageas has set out that it's not required to pay more than the index-linked sum insured on the claim – regardless of what the claim cost is. In essence, it's relying upon the following term in the policy:

“What We will pay

The most We will pay under paragraphs A-E, G, H and L for loss or damage arising out of one incident is the Buildings Sum Insured shown in the Schedule.”

Ageas has said that Mr P is underinsured based on information he provided when renewing the policy in 2021. So I think that's the relevant issue I need to think about. In doing so I will take account the relevant law as well as think about what's fair and reasonable in all the circumstances. Mr P's policy was a commercial policy so the law that applies here is the Insurance Act 2015 (the Act).

When considering a complaint where underinsurance is alleged, before considering the policy terms, I must first consider the Act. Under the Act, a commercial customer has a duty to make a fair presentation of the risk to the insurer. In order to fulfil a fair presentation of risk, the Act says a commercial policyholder must disclose everything they know, or ought to know, that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms. If the insurer can show that the policyholder didn't fulfil this duty then, in order to say there has been a qualifying breach, the insurer needs to show that it would have either not offered the policy at all, or offered it on different terms.

So, I've first considered whether Mr P made a fair presentation of the risk when declaring the sum insured. Mr P has told us that he correctly understood that this meant the rebuild cost of the property. So, I think Mr P needed to provide a reasonable estimate of the cost of rebuilding the property. And he's given a detailed explanation of why he declared the sum insured he did. It needs to be noted that Mr P is not a buildings expert. So I think it's fair that he took into account any expert opinions he was given about the estimated rebuild costs.

Mr P has told us that he was first given an estimated rebuild cost by his mortgage company of £127,000 and this is what he declared as his sum insured. I can't say that this was unreasonable. Following this, Ageas's own appointed surveyor advised Mr P in March 2020 a more accurate sum insured was £161,000 and I can see that Mr P advised Ageas accordingly and the sum insured was updated. Ultimately Mr P has relied upon expert opinions in presenting his estimated sum insured throughout – particularly an expert appointed by Ageas. And I haven't seen anything to show that Mr P has acted unreasonably.

Ageas has index-linked increased the sum insured year on year in line with its contractual requirements. As I said, Mr P's sum insured presentation was based upon guidance by Ageas's own appointed surveyor. So it seems to me that any issue with the property being underinsured after that may stem from Ageas not adequately index-link increasing the sum insured. But, regardless of this, the simple fact is that Ageas hasn't given me anything to show that Mr P acted unreasonably in presenting a fair sum insured.

So, when taking everything into consideration I think Mr P made a fair presentation of the risk. I think he told Ageas everything he knew, or ought to know, that would influence Ageas' judgment in deciding whether to insure the risk and on what terms. As I'm satisfied that Mr P made a fair presentation of the risk, Ageas doesn't have any remedies to reduce the value of the claim under the Act.

I don't think Ageas has ever reasonably engaged on this point and has simply referred to the fact that the policy limits its liability to the sum insured. But, I think the Act supersedes any term of an insurance policy, unless Ageas can show that it contracted out of the Act, which the Act allows an insurer to do so. But, Section 17 of the Act lays out the requirements for insurers to present this clearly if it wants to contract out of the Act. I'll now set them out.

"The transparency requirements

- 1) *In this section, "the disadvantageous term" means such a term as is mentioned in section 16(2).*
- 2) *The insurer must take sufficient steps to draw the disadvantageous term to the insured's attention before the contract is entered into or the variation agreed.*
- 3) *The disadvantageous term must be clear and unambiguous as to its effect."*

16(2) as referred above states:

"16(2) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects any of the other matters provided for in Part 2, 3 or 4 of this Act than the insured would be in by virtue of the provisions of those Parts (so far as relating to non-consumer insurance contracts) is to that extent of no effect, unless the requirements of section 17 have been satisfied in relation to the term.)"

Ageas hasn't indicated that it thinks it's contracted out of the Act. But I think this is because it hasn't fairly and reasonably considered the law when considering the circumstances of Mr P's claim. Clearly the limitation clause is disadvantageous because it put Mr P in a worse position than he would have been in under the Act. Crucially, the explanatory notes of the Act specifies that such terms will only be valid if the insurer has complied with the "transparency requirements".

I've looked at the policy, but I don't think Ageas did enough to meet the requirements for contracting out as laid out in the Act. I haven't seen anything to show that it specifically highlighted its departure from the law and the possible disadvantage this would have to Mr P.

So, as I don't think Ageas did enough to draw the disadvantageous limitation term to Mr P's attention before the policy started, I don't think it can rely upon it. It follows, therefore, that I think Ageas should settle the claim in full without making any deduction for underinsurance.

I also think Ageas's handling has caused Mr P a lot of distress and inconvenience. In particular, I note the following:

- He's had the worry for around a year that he may have to contribute over £40,000 towards the claim, due to no fault of his own.
- Ageas told Mr P and this Service that it would pay the claim in full, but then later retracted that offer to say it was once again limiting the liability to the sum insured. I note it says it always intended to limit the liability to the sum insured, but it didn't explain this. Ultimately, after a prolonged period of unfair worry, Mr P was relieved to find he was no

longer liable for the shortfall, only to be told that this was incorrect.

- Mr P has told us that this matter has caused him high levels of distress and worry. He said he went to the doctor in March 2023, as he was experiencing chest pains and high blood pressure which he said was a direct result of the insurance claim. He also highlighted his brother has been diagnosed with incurable cancer, but he hasn't been able to spend as much time with him due to the fact he needed to spend so much time managing this claim. I don't think I can reasonably attribute all of this distress to Ageas' actions, but I have no doubt it added to his distress.

Ultimately, it's clear and understandable that this matter has had a significant amount of avoidable distress and inconvenience to Mr P. The investigator recommended that Ageas pay £850 in compensation for this and I think that's fair.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Ageas Insurance Limited to:

1. settle the claim in full without making any deduction for underinsurance; and
2. pay £850 in compensation for the avoidable distress and inconvenience this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 January 2024.

Guy Mitchell

Ombudsman