

The complaint

Mr J has complained about his motor insurer Ageas Insurance Limited regarding it avoiding his policy (treating it as though it had never existed) and, by association, declining his claim. He's also unhappy that it kept his car and cancelled another policy for a different vehicle.

What happened

Mr J's son, assisting Mr J, went about arranging cover for a Land Rover. A broker was used and cover was arranged with Ageas. Ageas was told of aftermarket alloy wheels, but also that there were no other modifications. Ageas was also told Mr J was the owner and registered keeper.

Following an accident and a claim Ageas became aware that the Land Rover had various modifications, including a roll bar. It said it wouldn't have offered cover had it been told of the modifications. It also noted that Mr J's son was the registered keeper. It said that would also have been a bar to it offering cover. So it said it was avoiding the policy and wouldn't be dealing with the claim. It refunded the policy premium.

Ageas also said it would have to dispose of Mr J's car – or he could arrange for it to be collected for disposal. It said the damage meant it could not be returned to the road.

Regarding a policy it held for a van Mr J owned, Ageas said in light of the avoidance, it couldn't continue to offer the policy for the van. So it was cancelling it.

Mr J was unhappy. He felt Ageas could settle the claim less the cost of the roll bar. He felt if it was arguing it had never insured him, it couldn't reasonably keep or order disposal of his car. He didn't think it was fair that his van policy was cancelled and this had caused him to have to find other cover, losing several months of accrued no claims discount. Ageas wasn't minded to change its view so Mr J complained to the Financial Ombudsman Service.

Our Investigator felt that Ageas had made a fair and reasonable decision regarding the avoidance. She noted the engineer had found the car couldn't be returned to the road due to damage. She considered the policy for the car did allow Ageas to cancel – but she felt it should only mark any cancellation as instructed by Mr J. Ageas advised it hadn't categorised the cancellation on any database. Our Investigator didn't therefore uphold the complaint or require Ageas to do anything differently.

Mr J remained unhappy. He said most of the modifications were standard from the manufacturer or were security/safety upgrades. He still felt the cancellation for the van was unfair. Regarding him getting his car back, he said Ageas' position was effectively that it had never been his insurer – so it wasn't fair for it to dictate what happened with his car. He also felt it hadn't taken all relevant factors regarding the car and damage into account. So he felt the categorisation should be changed from B to N, with all databases updated and his car returned to him. Our Investigator shared Ageas' engineer's report with Mr J which recorded the car as "category B".

The complaint was referred to me for an Ombudsman's consideration. I felt Ageas had acted fairly and reasonably regarding the avoidance, along with the resulting claim decline, and not returning the car to Mr J. But that it had acted unfairly and unreasonably when cancelling the van insurance. So I issued a provisional decision, my findings of which were:

"The Insurance Act

This is a commercial policy. So the relevant legislation to consider is the Insurance Act 2015.

The Act requires the prospective policyholder to make a fair presentation of the risk. They are required to disclose everything they know or ought to know which might influence the provision of the policy. If the prospective policyholder doesn't make a fair presentation the Act, in certain circumstances allows the insurer to take certain action.

So if the prospective policyholder gave incorrect information upon which a policy was based, and which they knew or ought to have known was incorrect, then they'd have failed to give a fair presentation of the risk. And if the insurer can show that it would have done something differently if the correct information had been received, then the Act will allow the insurer to act as it would have done.

Did Mr J make a fair presentation?

Mr J's son filled out some detail on-line, but Mr J then spoke to the broker direct. He was asked if the car had been modified. The only modifications declared were alloy wheels. Even though the car had a roll bar fitted, which Mr J has said he knew about at the time the policy was arranged.

Mr J was also asked if he was the owner and registered keeper. Which he said he was. When Ageas obtained the vehicle documents, Mr J's son was logged as the registered keeper. Mr J said that was because his son had handled the change of documents and didn't understand the significance of who was recorded in that role.

So Mr J provided incorrect information upon which the policy was based. Regarding the modifications, that was despite having been asked a question and knowing the car had been modified with a roll bar. And Mr J could have checked to make sure his son had recorded the registered keeper correctly – as the person insuring the car, I think the correct detail of the registered keeper is something he ought to have known. I'm satisfied that Mr J did not make a fair presentation of the risk.

What would Ageas have done if a fair presentation had been made?

Ageas has shown that the correct information, either about the roll bar or the registered keeper, would have made it do something differently. It's shown it wouldn't have offered the policy to Mr J.

What does this mean for the policy (for the Land Rover)?

As Mr J did not make a fair presentation, and Ageas has shown that, if he had, a policy would not have been offered, the Act allows it to act as it would have done. In this case that means that as Ageas would never have offered the policy to Mr J, it can act as though it never did. Ageas did that by avoiding the policy and, by association, declining the claim. In the circumstances here, I'm satisfied that was fair and reasonable of it.

Why doesn't Ageas have to return the car to Mr J?

Prior to the policy avoidance, Ageas' engineer determined the car was a category B write-off. This categorisation means the car is not suitable for repair and must be broken for parts. Ageas, as an insurer, has a duty to ensure cars like this are not returned to the road. So it will either dispose of it, or only release it to an authorised breaker. I appreciate that Mr J thinks the car can be fixed – but that is not what the engineer found. Ageas has relied on his

expert opinion and the circumstances of the avoidance don't allow Ageas to ignore or set-aside its duty to ensure cars suffering this type of significant damage are not returned to the road. I'm satisfied Ageas has acted fairly and reasonably in this respect.

Cancellation of Mr J's other policy, for his van

Ageas' policy does entitle it to cancel the policy. But this service expects an insurer, cancelling mid-term, to have very good reason to do so. That is because cancelling mid-term can be inconvenient and costly for the policyholder. Here Ageas hasn't shown any good reason. It's merely said that it couldn't continue with the van policy because of Mr J not providing a fair presentation for the Land Rover. But Ageas enacted the remedy allowed in that respect when it avoided the Land Rover policy. And it hasn't shown that Mr J didn't offer a fair presentation regarding the van itself. Nor has it shown that Mr J did anything so significant as to entirely undermine the insurer/policyholder relationship, which is built on good faith. In my view, Ageas just deciding part way through the year that it did not want to insure Mr J anymore for his van, and cancelling the policy, was not fair or reasonable.

I need to think then about what Ageas needs to do to put things right in this respect. I note Mr J said he wanted the van cover reinstating. But that policy would be due to expire soon anyway – and Ageas would be free to choose what it would do for the upcoming year. And I understand that Mr J has been insured elsewhere in the interim. So I don't think requiring Ageas to reinstate the previous policy is a viable remedy.

I know Mr J has said that the replacement policy cost him more. Likely at least in part because he declared the avoidance, and maybe the cancellation too. But it could also just be that the new insurer prices the cover differently to the policy he had with Ageas. In either event, but for Ageas unfairly and unreasonably cancelling Mr J's policy, he'd have continued to only pay its price of cover until renewal. So I'm minded to require Ageas, upon sight of proof of costs from Mr J, to pay him the difference between the cost of cover he had with it – and would have had until renewal in 2024 – and that he's been charged by his new insurer for that period. To any difference, interest should be added.

I'm not going to require Ageas do anything regarding the no claims bonus. The above remedy will resolve the cost of cover until the Ageas' policy should have renewed. And I haven't seen that there's any ongoing financial impact due to the no claims bonus being set back by a few months.

I note Ageas has said it hasn't, to date, made a record of the cancellation on any external database. But it must have recorded it on its own database. And if any update is made to external databases in the future, that might well be taken from Ageas' standard records. So Ageas should amend its own database to show Mr J cancelled the van policy.

I know Mr J was worried about the cancellation and had to shop around to find new cover. I think Ageas should pay £150 compensation for distress and inconvenience."

Ageas' response to my provisional decision

Ageas said that there was more to its cancellation of the van policy. It said, and subsequently evidenced, that it had cancelled the cover, marking it as voluntarily cancelled by Mr J, because he had not disclosed two claims to it when the policy was arranged. It said that if he had, that would have caused it to increase its premium. Ageas said that it had, therefore, cancelled the cover as allowed to under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

I considered what Ageas said. I was mindful though that the relevant legislation in this case is the Insurance Act 2015, not CIDRA. With the Insurance Act not affording the insurer the same remedies as those laid out in CIDRA. I explained to Ageas that the Insurance Act doesn't allow for cancellation – so I said my uphold and remedies regarding the van would still stand, with the exception of my recommendation that the cancellation record was amended which I would remove.

Ageas still didn't agree. It said that whilst this policy was for a van (often viewed as a commercial vehicle), the policy was sold as 'consumer' insurance. So it maintained that CIDRA would apply.

Mr J's response to my provisional decision

Mr J said that too much emphasis had been placed on the van policy. He said his main issues were with what had happened regarding the Land Rover. He said he was waiting for information from Ageas – particularly phone call recordings where the policy set up was finalised. Our Investigator provided the call recording to Mr J which I had relied upon in my provisional findings. Mr J said there were more calls after this which held relevant detail.

I asked Ageas for further recordings. It provided three in addition to the one it had sent before and which I'd relied upon. I listened to the calls and shared them with Mr J. I explained that the calls held no information which would change my view, as provisionally stated, that Mr J had not made a fair presentation to Ageas.

Regarding disposal of the Land Rover, Mr J argued that as Ageas' position was that it was never his insurer, it had no legal right to keep his car. He maintained that the engineer's findings were wrong and questioned the engineer's qualifications. He argued that given the damage (he thinks nothing structural) to the car and it being of 'special interest' it should fall outside the Code of Practice, which requires disposal of vehicles deemed unsafe to repair and return to the road. He suggested I seek legal advice on this issue.

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 understand that Mr J is most concerned about the Land Rover. But he did complain about the van too, so I had to consider both issues.

I note Ageas' view that CIDRA is the correct legislation here. But CIDRA only applies to insurance contracts for consumers – defining a consumer as someone taking out a policy not in relation to their business. As Mr J used his van for work, I'm satisfied that the Insurance Act is the relevant legislation.

As I said to Ageas, the Insurance Act does not offer a remedy, to insurers, of cancellation. Ageas could have told Mr J that, due to his failure to disclose the claims, any future claim would be settled proportionality. Or it might have chosen to ask him to pay the additional premium. I note that Mr J has said on several occasions that he'd have been happy to pay an additional sum to keep the policy live. I remain of the view that Ageas acted unfairly when, mid-term, it cancelled the policy for Mr J's van.

Ageas has shown that it marked the cancellation as voluntary. This means Mr J, in respect of the van, won't have to declare a cancellation by insurers when arranging future cover. As

Ageas has already marked the records in this way, there is not a need for me to require it to amend the records (as I had suggested provisionally it would have to). Otherwise I'm satisfied that the redress, set out provisionally in respect of the van, fairly and reasonably makes up for Mr J's losses caused by, what I've found to be, Ageas' unfair and unreasonable actions.

Turning to the Land Rover, I can see that this is a very important issue for Mr J. I understand he feels strongly about the Land Rover and that he believes Ageas' actions, both in avoiding the policy and disposing of the car, are unfair. I can assure Mr J that I've taken into account how strongly he feels about this and carefully considered everything he's said. However, I remain of the view set out provisionally – that Mr J did not make a fair presentation to Ageas and that it has a duty to dispose of Mr J's car.

Having listened to all the available calls from when the policy was set up, I'm satisfied that Mr J did not make a fair presentation to Ageas. As I said provisionally, he said he was both the owner and registered keeper, which was not true. At no point during the calls arranging the policy did Mr J correct that detail.

I understand that Mr J has made a data request to Ageas and he'd like to wait for everything he has requested from it to be provided before I make a final decision. However, it is my role to decide complaints swiftly, based on the evidence available. Here, particularly in light of the phone calls now listened to and shared with Mr J, I'm satisfied I have sufficient evidence to make a fair and reasonable decision on the complaint. And my final decision, which follows my provisional findings, regarding Ageas avoiding the Land Rover policy, is that it acted fairly and reasonably.

I've noted Mr J's suggestion that I should take legal advice regarding Ageas' action to dispose of his car. I also understand he is unhappy about the engineer's findings and believes the Land Rover should fall outside the Code of Practice. But Mr J is not an expert in respect of the damage to his car, or the Code. Only an engineer could make a decision about what classification, in line with the Code, should be applied to a vehicle and whether the car can safely be returned to the road. As I said provisionally, Ageas relied on its engineer's report in this respect and I remain satisfied that it was fair and reasonable for it to do so.

Having reviewed everything, save for the minor change I've explained regarding my suggested redress, my view on the fair and reasonable outcome for this complaint has not changed. As such, my provisional findings, along with my comments made to both parties following my provisional decision, and my further comments set out here, are now the findings of this, my final decision.

Putting things right

I require Ageas to:

- Pay Mr J the difference in cost of cover between his van policy with it until renewal in 2024 and the replacement cover he found following the policy cancellation. Plus interest* applied on the difference, from the date Mr J paid the increased premium until settlement is made.
- Pay Mr J £150 compensation.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Ageas to take off tax from this interest. If asked, it must give Mr J a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint in part. I require Ageas Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 25 April 2024.

Fiona Robinson
Ombudsman