The complaint

Mr N and Ms B complain about the amount Ecclesiastical Insurance Office Plc has offered to settle a claim they made under her home insurance policy.

Reference to Mr N or Ecclesiastical includes their respective representatives and agents.

What happened

The circumstances aren't in dispute, so I'll summarise the background:

- Mr N bought an item of contents from an auction. Upon delivery, he found the item was damaged and got in touch with Ecclesiastical to make a claim.

- Ecclesiastical accepted the damage was covered by the policy. It offered around £23,500 to settle the claim on the basis this was similar to the amount Mr N had paid for the item, including delivery and associated costs, and it therefore represented the market value of the item.

- Mr N didn't think this was a fair offer. He said a replacement item would cost much more than that, potentially around £85,000 - £100,000. And, as the policy covered the replacement cost, Ecclesiastical should make a payment along these lines to settle the claim fairly.

- Ecclesiastical maintained its position. It said the policy covered the market value or replacement cost, where the latter phrase meant a like-for-like, rather than an as-new, replacement item.

- Our investigator thought Ecclesiastical had acted in line with the policy terms and fairly overall. He said the purpose of the policy was to indemnify Mr N and Ecclesiastical's offer had done that. And, even if he thought otherwise, there was a £50,000 limit to the relevant section of the policy.

- Mr N accepted this limit applied to his claim and, given the likely cost of a replacement item, he thought he should receive the full limit to settle the claim fairly. After further discussion, an agreement wasn't reached, so the complaint has been referred to me.

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.

- In summary, Ecclesiastical has accepted the claim and the dispute is solely about how much it should pay to settle the claim. So that's what I'll focus on. I'll start by considering the relevant policy terms and then go on to whether Ecclesiastical's offer fulfils them and treats Mr N fairly and reasonably in the circumstances.

What does the policy say?

- Both parties agree the relevant section of the policy is the 'new acquisitions' sub-section of the wider 'art, antiques and personal valuables' section. That section sets out how Ecclesiastical will settle a claim, depending on whether an item has been specified. As this item wasn't specified, the 'unspecified items' part is the one relevant to this claim. The key wording says:
  - *Ecclesiastical will pay the* ***market value*** *immediately prior to the damage or the replacement cost of the items, up to £50,000 for art and antiques.*
- The phrase 'market value' is defined within the policy to mean:
  - *The price a willing buyer would pay to a willing seller with good title immediately prior to the loss, after a reasonable period of marketing, taking into account the state of the market for goods of that type and the size and condition of the goods.*
- The phrase 'replacement cost' isn't defined. So it could be interpreted to mean on a like-for-like or an as-new basis.
- In summary, for this claim, the policy will pay the market value or the replacement cost of the item. Mr N has noted that where such an option exists, it's common practice in the insurance industry for the policy to specify how one option will be chosen. Usually that means setting out which party can choose the option or whether it will be based on something objective, such as the lowest or highest value option. Here, no such specification appears in the relevant policy sections.
- I agree with Mr N that this leaves a degree of ambiguity. It means this section of the policy doesn't give Ecclesiastical an automatic right to choose the settlement option. However, nor does it give Mr N that right either. And, as it doesn't set out any other method for choosing the settlement option, I don't consider the policy dictates which settlement option must be taken – only that there are two settlement options.
- Ecclesiastical has based its offer on one of those settlement options, so I'm satisfied it's acted in line with the policy terms. It's then a question of whether that offer treats Mr N fairly and reasonably in the circumstances.

Is Ecclesiastical's offer fair?

- I'll set out a summary of the key arguments the parties have made about this.
- Ecclesiastical's offer is to pay Mr N around £23,500. It considers this amount is representative of the market value, in line with the policy definition, and is similar to the amount Mr N paid. I don't think Mr N disagrees with this. I understand the amount is based on what Mr N paid through a reputable auction, shortly before the damage occurred. So I'm satisfied the amount fulfils the policy definition of market value.
- I understand Ecclesiastical also considers this amount is representative of the replacement cost. It notes the item was bought second hand, through an auction. So it would likely cost a similar amount to buy another of the item second hand – if such an item were available.
- Mr N's main argument is that the policy covers the replacement cost, as well as the

market value. And this cost is much greater than Ecclesiastical's offer and the relevant policy limit of £50,000. In part because the item is very rare and isn't currently available through an auction or similar, so the only replacement option is as-new. And because the item was bought in a very good condition, replacing the item as-new would effectively be a like-for-like replacement.

- I don't think Ecclesiastical disagrees that the cost to replace the item as-new exceeds the £50,000 limit. However, Ecclesiastical doesn't consider settlement should be on an as-new, or effectively as-new basis, because the item was bought second hand and the auction price reflected that – it was roughly 20-30% of the as-new cost.

- Taking all of this into account, I'm satisfied Ecclesiastical's offer was fair and reasonable in the circumstances. I'll explain why.

- Generally, the purpose of this kind of policy cover is to return the policyholder to the position they were prior to the loss – or as close as possible, and not worse. So I think it's important to bear that in mind when thinking about the fairness of the offer.

- Had Mr N owned, used and enjoyed the item for a period of time, say a number of years, then it's original purchase price may become less relevant. To put him back in his pre-loss position would likely mean providing a replacement item on a like-for-like basis or better. Given the rarity of this item second hand, that may mean an as-new replacement in order to ensure he's no worse off than he was pre-loss.

- However, Mr N hadn't owned the item for very long and hadn't had a chance to use or enjoy it because the damage was found upon delivery. Ecclesiastical's offer effectively reimburses Mr N the cost of the item, and associated costs, so that he has no financial loss as a result of the damage. He bought an item, which he understood to be free of damage, but didn't receive the item in that condition. So he didn't receive what he paid for.

- In my view, effectively giving him back what he paid puts him back in his pre-loss position. Whilst he's lost out on the opportunity to enjoy and use the item, I don't think that's something I can fairly hold against Ecclesiastical.

- Overall, Ecclesiastical has offered a settlement at market value, in line with the policy terms. And it means Mr N doesn't lose out financially for an item he'd only just bought and hadn't had the chance to use. As a result, I'm satisfied the offer treats Mr N fairly and reasonably. So I won't require it to increase its offer.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr N to accept or reject my decision before 4 February 2025.

James Neville
Ombudsman