DRN-5910413

The complaint

Mr H has brought a complaint in his capacity as director of limited company "N" about ECCLESIASTICAL INSURANCE OFFICE PUBLIC LIMITED COMPANY ("Ecclesiastical") and its decline of a claim made under a building insurance policy.

Any references to Ecclesiastical in this decision include its appointed agents.

Mr H has been represented throughout this complaint. For ease, I'll refer to the representative's comments as Mr H's own.

What happened

Ecclesiastical have insured N's premises since 2016. At that time, N submitted a proposal form which asked a specific question relating to the presence of cracks. The answer given was that the property was free from any signs of cracking or subsidence.

In 2022, the property suffered subsidence damage. Ecclesiastical sent a loss adjuster to inspect the damage and following this, it concluded that a misrepresentation had been made when the policy was taken out. So it declined the claim and removed cover for subsidence and accidental damage to drains, returning the appropriate premiums back to N. It said that cracking to the property hadn't been disclosed when the policy was taken out, and that this meant N had breached its duty to make a fair presentation of the risk.

Mr H complained. He said the property wasn't suffering from subsidence damage at the time the proposal form was completed and it didn't have any cracks in the structure. He said the proposal form had therefore been completed truthfully and accurately.

In its response to his complaint, Ecclesiastical said when applying for insurance it was N's duty to disclose every material fact about the risk and not make any material misrepresentations. It said that based on investigations following submission of the claim, it was noted that there were several areas of distortion and movement throughout the property and that the movement appeared to have been occurring for many years. It referred also to reports around the time the policy was taken out, in which cracking had been identified.

Mr H didn't accept Ecclesiastical's response. He said Ecclesiastical had cherry-picked comments from a pre-purchase survey to deny the claim, and that it hadn't even considered other ways in which the policy might respond. So Mr H referred N's complaint to the Financial Ombudsman Service for an independent review.

Our Investigator considered the complaint, but didn't think it should be upheld. He said he didn't think Ecclesiastical had acted unfairly by declining the claim and removing subsidence cover and cover for accidental damage to drains – because a fair presentation of the risk hadn't been made.

Mr H didn't agree with our Investigator's assessment, so the complaint has now been referred to me for 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.

As this is an informal service, I'm not going to respond here to every point raised or comment on every piece of evidence Mr H and Ecclesiastical have provided. Instead, I've focused on those I consider to be key or central to the issue in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm not upholding this complaint. I'll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a claim. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

As N holds a commercial insurance policy, the relevant legislation for me to consider is the Insurance Act 2015. Under the Act, commercial policyholders have an obligation to volunteer the right information to an insurer when taking out a policy, i.e. they have a duty to make a fair presentation of the risk. This means a commercial customer has to disclose either:

- 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; or

- Enough information to put an insurer on notice that it needs to make further enquiries about potentially material circumstances.

The Act also says that a policyholder ought to know information that should reasonably have been revealed by a reasonable search of information available to them. And I think a reasonable search of information would've revealed that there were cracks at the property. Ecclesiastical has shown that in the schedule of condition included in the original lease from 2010, as well as in valuation reports from 2015 and 2017, cracking was identified.

In particular, the schedule of condition refers to cracks in various areas of the property, and identifies areas of heavy cracking. I accept what Mr H has said about the property undergoing extensive refurbishment before opening as a school in 2010. But the later surveys, in 2015 and 2017 show that the property wasn't free from any signs of cracking. Both reports refer to *"hairline cracking*" although they both go on to say that it wasn't so significant that it would warrant a structural engineer. It also mentioned these cracks were likely as a result of the age of the building, and some historic movement having occurred.

However, I'm satisfied the existence of *any* cracks was a material circumstance and should've been disclosed – and in not doing so, N breached its duty of fair presentation. I've checked the Broking presentation dated 30 March 2016 and I can see that the policyholders were asked if the risk address was *"Free from any signs of cracking, subsidence, asbestos and/or hazardous materials"* and the answer given was *"Yes".* It was clear therefore, that the existence of any cracks was material to the insurer, because the question specifically referred to *"any signs of cracking"* and not just major cracks or structural cracking.

The disclosure of hairline cracks at the property would've put Ecclesiastical on notice that it would need to make further enquiries. I'm persuaded by its underwriter's comments that it would've carried out investigations and monitoring if it had known about the cracks – as even

a small hairline crack which can initially seem superficial can suggest underlying structural issues that could lead to a claim.

And insurance policies aren't designed to cover every eventuality or situation. An insurer will decide which risks it's willing to cover and set these out in the terms and conditions of the policy. But if a misrepresentation is made when the policy is taken out, which then leads to cover being agreed, (which wouldn't have been offered if the correct information had been given), then the insurer is entitled to certain remedies under the Act.

Ecclesiastical has been able to demonstrate that if it had known about the cracks, it would've refused to provide the relevant cover unless there was evidence of subsequent remedial actions and an updated structural engineer's report to confirm the issues had been resolved following at least another two years' monitoring of the building. This means the breach of N's duty was a "qualifying" one, as Ecclesiastical would've done something different if it'd been given the correct information. It hasn't considered N's qualifying breach to be deliberate or reckless, and I think that's fair. In the circumstances therefore, I think the actions Ecclesiastical took – to remove the cover for subsidence and accidental damage to drains, back to the date of inception, and provide an appropriate refund of the premiums, was reasonable.

I've considered what Mr H has said about Ecclesiastical's failure to consider the damage under another section of the policy, such as escape of water. But as the escape of water would've likely been as a result of damage to drains, I'm not satisfied Ecclesiastical acted unfairly in not considering the claim under that particular peril. Accidental damage cover to drains was removed due to the misrepresentation, so I don't think Ecclesiastical needed to consider the damage further under that part of the policy. If Mr H wants the damage to be further considered under any other part of the policy, he should approach Ecclesiastical about this for its response.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 2 January 2026.

Ifrah Malik
Ombudsman