

complaint

Mr R is unhappy with the cash settlement Ageas Insurance Limited ("Ageas") has paid in settlement of a home insurance claim he made for damage to his property caused by a fire.

background

I issued a provisional decision in January 2020 explaining that I was intending to partially uphold Mr R's complaint.

Here's what I said in my provisional decision:

"background

Mr R was carrying out significant renovations to his property in 2017. In March 2017 there was a fire so Mr R raised a claim through his home insurance. His insurer, Ageas, appointed a loss adjuster and a firm of surveyors to assist in the validation of the claim.

Ageas says Mr R wasn't able to provide a detailed scope or schedule of the renovation works being undertaken. The property was also deemed unsafe to enter following the fire. Due to these issues, it says it was difficult to properly assess the extent of the renovation at the date of loss.

Ageas' firm of surveyors attended the property, as well as a surveyor appointed by Mr R (via his loss assessor). They identified what works had likely been completed at the time of the fire and created an estimate for the costs of reinstating the property to that point. This came to around £308,000. Ageas assessed the estimate and concluded that it was too high. It offered £288,000 as a cash settlement offer, including all professional fees. It also agreed to cover the cost of demolishing the post fire property as it had been deemed unsafe. This came to £18,800, less the £100 policy excess.

Mr R didn't accept this offer. Through his loss assessor, he arranged for three companies to tender for the works. The three tenders came back at significantly more than Ageas' offer – the lowest of which was priced at around £440,000.

Ageas didn't agree to the tender before it took place. It also argued that the tender process was a desktop exercise and that reinstatement was never intended. Because of this it said the tenders were overpriced. But it asked its surveyor to review the tender results, liaise with the loss assessor and revisit his estimate. Having done so, Ageas' surveyor said:

- The firm who supplied the lowest tender confirmed that because the property had been demolished its prices had been based on average rates and certain assumptions. When pricing in this way it is usual for a contractor to build in some costs to reflect risk into their price.*
- The tender included costs for a formal JCT contract, despite Mr R being happy that the significant renovation works were being undertaken on a much more informal basis.*

- *The tender is unusual because the contractor is being asked to partially rebuild the property. In reality, it's difficult and confusing to price in this way because some elements will need to be completed out of sequence. And it would be difficult for them to separate their preliminary costs such as site set up and welfare, from that of a full rebuild.*
- *The firm were based 55 miles away from Mr R, so their quote included additional travel/hotel/sustenance costs.*
- *The priced tender is largely hypothetical as if they were appointed to carry out the works a new schedule would be produced for the total re-build. There is little to no chance that the firm would be asked to complete the works at their tendered costs and therefore they are unlikely to have considered the costs in as much detail as if this was a genuine competitive tender.*
- *Priced competitive tenders reflect the appetite of the current market and volume of work of the particular contractor. The BCIS estimate he completed removes this but is based on estimates.*
- *Ultimately, Ageas' surveyor stated there is no perfect way to determine the reinstatement costs due to the above factors. But he and Mr R's surveyor agreed that the true reinstatement cost lay somewhere between his estimate and the lowest tender.*

Following the review of the tenders and Mr R providing further invoices, Ageas' surveyor increased his estimate to around £357,000. Ageas considered this, but still felt it was too high. It increased its cash settlement offer to £350,000.

Mr R doesn't agree that Ageas' cash settlement is sufficient. He feels Ageas should meet the cost of the lowest tender. Ageas disagrees. It states the amount it has paid is sufficient to put Mr R's property back in the position he can evidence it was in at the time of loss.

Mr R brought his complaint to our service where it was looked at by one of our investigators. She thought Ageas' offer was fair in the circumstances. She said Ageas has the right to take over settlement of the claim. And that it can request receipts/proof of works carried out at the time of loss. She said Ageas was prepared to reconsider the amount it offered if Mr R could provide evidence he had spent more on the renovation before the fire, than Ageas has already paid him in settlement of his claim.

Mr R provided a great number of receipts which our investigator considered. But she didn't think they were sufficient to show what works had been completed at the time of the fire. She said the evidence didn't show that Mr R had spent more than the amount that Ageas had already paid him. So she still thought the offer was fair.

Mr R remained unhappy with our investigator's assessment. He says the invoices will never add up to the amount he has been paid by Ageas so far because he was carrying out a renovation. But he now needs to rebuild the property from scratch which will cost more than the renovation.

Because no agreement has been reached the complaint has been passed to me to decide.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Ageas has the right to take over the settlement of any claim under the terms and conditions of Mr R's policy. This means it is for Ageas to decide whether to settle Mr R's claim by repair, replacement, reinstatement or cash.

In this case Ageas says that reinstatement was never an option as Mr R cannot show, with any degree of certainty, what the pre-loss condition of the property was. Because of this it said it would only consider a cash settlement. In situations like this, where an insurer is only prepared to offer a cash settlement, our service usually says it's fair that any cash offer should reflect the cost to the consumer of having the works completed.

With any settlement option, it remains Mr R's responsibility to prove his loss so that Ageas can validate his claim. In this case, that means it is for Mr R to show how much of the renovation work had been completed on his property before the fire took place and what was lost in the fire. Mr R hasn't been able to provide a detailed scope or schedule of works for the renovation, to show the level of completion at the date of loss. But despite this, Ageas has accepted the claim and reached a cash offer after instructing a surveyor and negotiating with Mr R and his loss assessor.

Mr R's main concern is that he obtained three independent tenders for the works required to reinstate the property to its pre-loss condition. He feels Ageas should meet the cost of the lowest tender. He says that Ageas' surveyor didn't enter the property when completing his estimate whereas his loss assessor's surveyor did. And his surveyor created the specification of works which was used as the basis for the tenders.

Mr R's policy terms state that a tender can be used as a basis for a cash settlement offer, in certain circumstances. But the terms only commit to Ageas paying the most competitive estimate from a tender if it is lower than the amount it would cost its nominated contractor to do the work. Ageas says its surveyor's estimate represents the cost for which its contractor could do the work. But as explained above, where an insurer isn't prepared to provide a contractor to complete the works, our service usually says it's fair that any cash offer should reflect the cost to the consumer of having the works completed.

I've thought very carefully about the arguments and evidence put forward by both sides here. Like Ageas, I don't want to get too involved in each individual item that has been disputed. Instead I've focused on what I believe to be the key issue – namely, should Ageas increase its offer in light of the tender process.

Ageas says the settlement amount it came to isn't something that has been individually itemised, because Mr R hasn't been able to provide enough evidence for it to do so. It doesn't agree that all of the items included in its surveyor's estimate were necessary, such as replacement of the foundations. It also says that some of the items included in the estimate were based on information given by Mr R – which hasn't been evidenced.

I sympathise with Ageas here. Having reviewed all of the available evidence I agree that it's not possible to say exactly what condition the property was in at the time of the fire. And I do think Ageas has tried to be helpful by instructing a surveyor and entering into negotiations with Mr R's loss assessor to reach a cash settlement figure. But, from what I've seen, I'm currently minded to uphold Mr R's complaint in part and to direct Ageas to increase its cash settlement offer.

I say this because, as I've mentioned above, there have been two on site surveys completed, one from Ageas' surveyor and one from Mr R's. The notes I've seen, from Ageas' surveyor, indicate that the estimates created were broadly in line with one another. Following this, three independent firms of contractors assessed the schedule created by Mr R's surveyors and quoted for the works – all of which were priced significantly higher than Ageas' estimate. So, based on this I don't think Ageas' offer, which is lower than even its own surveyors' estimate, is fair or reasonable in the circumstances.

After negotiations between Ageas' surveyor and Mr R's, each revised the amounts on their respective estimates. This took Ageas' to £357,261 plus VAT, and the lowest tender to £443,206 plus VAT. Both surveyors were in agreement that the true repair cost would lie somewhere between these two figures. But Ageas' surveyor said it was impossible to identify and isolate the costs, for the reasons covered in the bullet points above.

Both surveyors are experts in their field, and both attended the property and had discussions with Mr R. While I accept that some elements of the estimates were based on information from Mr R which hasn't been specifically evidenced, the surveyors were clearly persuaded by what they saw and were told. As the surveyors felt these items were most likely in place at the time of loss, I see no fair reason to discount their expert view.

That being said, Ageas has argued that the foundations, which were included in its surveyor's estimate, didn't need replacing. It said although the fire was dramatic it should not have affected the foundations and no work in that regard would be needed if the building was rebuilt like for like. It said works undertaken to the house before the fire must have meant that the existing foundations were of a good standard to allow for the increase in building height and therefore it didn't believe there would be any issue with building regulations.

I think this argument is persuasive. And I also note that Mr R's surveyor didn't include any costs for replacing the foundations in his specification of works. So, I think it's reasonable for Ageas to remove the foundation costs from the overall settlement. Once these costs have been removed from Ageas estimate, I think the fairest thing to do is for Ageas to increase its cash settlement offer and meet in the middle of its surveyors' estimate and the lowest tender.

I think a fair settlement, in respect of the works required, would be for Ageas to increase its total cash settlement offer to £385,000 – by paying an additional £35,000. I think Ageas ought to have paid this amount to Mr R when it paid the additional £62,000 in September 2018. So, I'm also intending to add interest to this amount, from that date until the date of settlement, to compensate Mr R for being deprived of this money.

Mr R also feels strongly that Ageas should pay towards alternative accommodation while his property is uninhabitable due to the fire. Ageas says it didn't consider that alternative accommodation should be paid, in the circumstances, because Mr R and his family were not living in the property at the time of the loss.

I've thought carefully about the arguments from both sides here. I think Ageas' position in respect of alternative accommodation, for the period it would have taken Mr R to finish the renovation, is a reasonable one – because Mr R would always have incurred these costs. But I think it could be argued that Ageas should pay some alternative accommodation. I say this because the property will clearly take a lot longer to be habitable, having been demolished as a result of the insured event, than it would have otherwise done. And Mr R's policy does allow for alternative accommodation to be covered where a property is unfit to be lived in following an insured loss.

The three tenders Mr R obtained estimated the time it would take to reinstate the property to its pre-loss condition. The estimates varied from 22 to 60 weeks. The lowest priced tender estimated it would take nine months, and Mr R's surveyor felt this was the most reasonable estimate. So, I need to consider whether it would be fair and reasonable for Ageas to pay for alternative accommodation for some, or all, of this period.

When considering this, I think it's also important to consider that some of the items included in both Ageas' surveyors' estimate and the tender haven't been able to be specifically evidenced by Mr R. And that during the claim, Mr R has made some statements I think are unlikely to be accurate. For example, that he was planning to reuse a kitchen which pictures show was being stored outside at the mercy of the elements. This calls into question the reliability of some of the other statements Mr R may have made. So, I think it's fair to say that Mr R is already benefitting from Ageas agreeing to cover these items which haven't been specifically evidenced.

Taking these points into consideration, I don't think it would be fair or reasonable to direct Ageas to cover the full nine months' alternative accommodation. I think it would be fair for it to pay for four months' additional accommodation.

Mr R's policy covers "additional costs of alternative accommodation, substantially the same as your existing accommodation". So, the amount Ageas pays should be sufficient to cover Mr R's rent in a sufficiently similar property in the local area.

In summary, I think a fair settlement to Mr R's complaint would be for Ageas to increase its cash settlement offer for the building works to £385,000 – by paying an additional £35,000. I also think it should calculate and pay Mr R the equivalent value of four months' alternative accommodation."

I said I was intending to direct Ageas Insurance Limited to pay Mr R a further £35,000, plus interest from the date it paid him the final instalment of £62,000 until the date it paid the settlement. I also said I was intending to direct Ageas to calculate the cost of four months alternative accommodation, in a similar property, and pay this amount to Mr R.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Neither side agreed with my provisional decision, and both provided further arguments for me to consider. To summarise, Mr R said:

- The sums involved in his claim have been life changing for him, so it's not fair that myself or Ageas have said we don't wish to get too involved in each individual item
- Ageas' proposed offer doesn't include several items that it previously agreed to pay, such as a gas disconnection invoice and timber hoarding used to secure the site
- He has spent £12,000 on surveyor's fees which he wants Ageas to reimburse under his policy. He says the loss adjuster initially included a sum equal to 8.5% of the contract sum as a surveying fee, but this was later removed
- Ageas' proposed offer doesn't include damage to his driveway. He says this was damaged by the fire and it now needs to be dug up and replaced so that they can reconnect the gas and electric. He says this wouldn't have been necessary if not for the fire
- Ageas' proposed offer doesn't include first and second floor walls, temporary staircases, electric meters, existing electrics, existing windows and side gates – which when combined amount to a lot of money
- He would like nine months' alternative accommodation paid, in line with the lowest tender
- He has been completely honest from the start of the claim and has provided any evidence that has been requested. He was going to reuse the kitchen stored outside, and in particular the granite. The weather was good at the time and his builder was going to install it as soon as the floor was in
- His policy provides cover for inflation protection. It has been nearly three years since the fire so even a modest 3% per year will have a big impact on the pricing and he would like it to be considered

And in response to my provisional decision, Ageas said:

- My comments in respect of the difficulties in making an accurate assessment of the claim are appreciated and it genuinely believes that a fair settlement of this claim had been paid

- It understands the contractual points about a settlement being based on tenders, but it challenges the independence of the tenders as the companies were selected by Mr R's loss assessor with no input or prior agreement of Ageas. It also says all tenders were produced by the contractors in full knowledge that reinstatement works weren't going to proceed
- Mr R hasn't received the full indemnity payment it has made as he has had to pay his chosen loss assessor

my findings

I've re-considered all the evidence and arguments already sent to us to decide what's fair and reasonable in the circumstances of this complaint.

Both sides have put forward several points for me to consider. For clarity, I'll address them separately.

response to Ageas' points

I appreciate Ageas' comments regarding the tender process that was carried out. I agree that typically, all parties would need to agree to a tender taking place and which contractors will be involved before it is carried out. And I understand that, that didn't happen in this case.

It's for these reasons that I don't believe it would be fair or reasonable to expect Ageas to meet the cost of the lowest tender. But this doesn't change my view that a fair settlement would fall between Ageas' estimate and the lowest tender – as suggested by both Ageas' surveyor and Mr R's loss assessor.

Ageas points out that Mr R has had to use some of his indemnity payment to pay his loss assessor's fees. It's asked me to clarify whether the increased settlement I've suggested includes expecting Ageas to pay Mr R's loss assessor's fees.

To answer Ageas's question, I don't expect it to pay for Mr R's loss assessor's fees. These are costs Mr R should cover, as it was his choice to engage the services of a loss assessor.

The increase in settlement I have recommended relates only to the indemnity payment. Neither Ageas' surveyor nor the tenders factored in costs to pay Mr R's loss assessor. And as I've mentioned above, and in my provisional decision, both surveyors felt the true value of repairs lay somewhere between the estimate and the lowest tender.

After issuing my provisional decision I realised I hadn't correctly calculated the mid-point between Ageas' estimate and lowest tender. This was because the lowest tender is exclusive of professional fees – which Ageas had included in its overall offer at 8% of the contract sum. I explained this to Ageas and informed it that, in line with the reasoning of my provisional decision, I was intending to add 8% to the value of the lowest tender before recalculating the midpoint between it and Ageas' estimate – less the cost of the foundations. This equates to £57,600.

Ageas responded and reiterated its concern with the tender process. It said the tenders were never agreed and it doesn't agree they truly represent reinstatement costs due to the unknown extent of works.

I've thought carefully about this point, and I don't fully disagree with it. But if I thought the tenders had been previously agreed by Ageas and/or that they truly represented the accurate reinstatement costs, I would be directing Ageas to meet the cost of the lowest tender. Because they don't and based on the comments of Ageas' own appointed surveyor, I think the true reinstatement costs fall somewhere between the lowest tender and Ageas' estimate.

So, taking everything into account, I still think Ageas should increase its settlement to the mid-point between the lowest tender (including 8% fees) and its estimate (less foundation costs).

response to Mr R's points

Mr R has raised several points that relate to items he believes haven't been factored in to Ageas' proposed offer.

I'm not going to address each of the individual items Mr R believes haven't been factored in. This is because it seems Mr R is basing his opinion on what is and isn't included in Ageas' offer on the figures included on its surveyor's estimate. But this estimate isn't an itemised breakdown of everything Ageas has and hasn't considered. Ageas based its offer on considerations of that estimate, alongside all of the other evidence available. And I have done the same when reaching my provisional decision and the increased settlement payment I suggested.

Mr R says he has provided enough evidence to show the condition of the property before the fire. But although he has provided a lot of invoices to show the materials he had purchased for the renovation, there is little to support which of these had or hadn't been fitted, or to support his assertions around the pre-existing utilities. For example, Mr R says there were pre-existing electrics in the property. But from what I've seen, there is no scope of schedule of work to support this. Also, the loss adjuster's report, taken shortly after the fire, says that the whole property had been stripped back to a shell prior to the renovations – which indicates there were little to no electrics in situ at the time.

Establishing the exact state of the property immediately before the fire was made even more difficult by the fact that the property was deemed too unsafe for Ageas' surveyor to enter. So, he couldn't inspect the interior of the property in as much detail as would be ideal. Ultimately, I don't think Mr R has been able to provide enough clear or persuasive evidence for Ageas or myself to be able to precisely establish the exact state the property was in at the time of the fire. I also note that the company who completed the lowest tender acknowledged the difficulties in correctly identifying the works required when it said:

"Please be advised that as the building has been demolished, our prices are based on average rates and having drawn certain assumptions regarding specifications in line with the tender."

I have carefully considered everything Mr R and Ageas have said and provided. But it's the evidence from Ageas' surveyor and Mr R's loss assessor which I find the most persuasive. Both Ageas and Mr R's surveyors visited the property and engaged with Mr R throughout the process. They each reached broad agreement on the likely condition of the property. Ageas' surveyor provided an estimate, and Mr R's provided a scope to three companies who produced tenders.

Discussions later took place between Ageas' surveyor and Mr R's loss assessor. Concessions and additions were made on both sides and the amounts reviewed. Following this, both agreed that the likely cost of repairs lay between the two figures produced. So, although not all of the items Mr R has suggested were quoted on Ageas' surveyor's estimate, I have considered the evidence and arguments around each of them when coming to my decision. And taking everything into account I still think fair settlement, in the circumstances of this case, is for the settlement to be increased to halfway between Ageas' estimate and the lowest tender.

But now, unlike in my provisional decision, I'm adding professional fees at 8% to the lowest tender, before calculating this amount. This is to take into account all of the professional fees, including architects, structural engineers, surveyors, project management etc.

In response to my provisional decision, Mr R has stated that his policy offers protection against inflation. He would like me to add 3% per year to the increased settlement. I should explain that the inflation protection Mr R's policy provides is to automatically uplift the declared sums insured each year, to protect him from being underinsured. It isn't designed to provide a higher claim settlement where a settlement takes a long time to be paid.

In my provisional decision I said Ageas should've paid this increased settlement along with the £62,000 it paid in September 2018. Because it didn't, I also recommended that Ageas pay interest on the settlement at 8% simple per year from September 2018 to date of settlement. I think this interest award, along with the additional settlement is enough to deliver a fair and reasonable outcome to Mr R's complaint. So, I don't think Ageas needs to increase the settlement amount in line with inflation.

Finally, Mr R has asked that I reconsider the amount I recommended for alternative accommodation. He's asked that I award this for the full nine-month period that his lowest tender suggested the works would take.

As I explained in the above section (response to Ageas' points), I don't think it would be fair or reasonable to rely fully on a tender that was carried out without the prior agreement or involvement of the insurer. The settlement I've recommended, both for the repair works and alternative accommodation, is a compromise on both sides taking into account the particular difficulties and circumstances of the case. And I maintain that the four months I've suggested is fair and reasonable, taking into account all of the circumstances.

my final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mr R's complaint in part. Ageas Insurance Limited must:

- Pay Mr R an additional £57,600
- Pay interest on this amount at 8% simple per year from the date it paid the £62,000 to the date of settlement
- Calculate the cost of four months alternative accommodation, in a similar property, and pay this amount to Mr R.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 27 March 2020.

Adam Golding
ombudsman