

## complaint

J, a limited company, is unhappy with how Ageas Insurance Limited handled its claim under its business insurance policy following damage at its rented premises.

## background

- H (a sole trader), who is a 'third party' in law for the purpose of this case, had buildings insurance with Ageas to cover commercial premises. J rented these premises from H – which J used as a wholesale bathroom showroom. J had business insurance with Ageas which, among other things, covered its stock and business interruption. Mr H is a sole trader – trading as 'H' – and also the director of J.
- On 19 February 2018, the gutter next to the roof of H's property, which J rented, was damaged causing water to come in. Mr H said he attempted a repair immediately, but this wasn't successful.
- The next day, Mr H got a quote for approximately £13,000 to repair the roof.
- On 23 February 2018, Ageas's loss adjuster visited the property. The report noted several pallets of stock were affected by the water coming in; and that a small amount of stock was damaged by water that spread across the floor. While not covered by the report, Ageas told us that Mr H agreed to repair the roof (at least temporarily). But Mr H said he only *speculatively* asked about carrying out the restoration works – but he didn't offer to repair the roof. He said Ageas agreed the quote he'd obtained seemed expensive, so the loss adjuster asked him to get others.
- From 27 February 2018, it rained daily until 18 March 2018 causing further water damage.
- On 6 and 8 March 2018, Mr H purchased materials to carry out a temporary repair.
- On 7 March 2018, the loss adjuster contacted Mr H. They said they were waiting for Ageas's decision on liability (to indemnify under H's and J's business policies) and asked for information to support the stock lost and for reinstating the damaged displays.
- On 14 March 2018, Mr H appointed a loss assessor. (In general, loss *assessors* act for policyholders where loss *adjusters* act for insurers.) On the same day, the loss assessor emailed the brokers asking them to contact the loss adjuster to urgently arrange a site visit. They also explained they instructed Mr H to move the damaged stock to hired containers for inspection, shut down the damaged showroom and set up a temporary showroom.
- On 19 March 2018, Mr H chased the loss adjuster by email, saying he'd been trying to call since last week. He said he needed their agreement to hire containers.
- The same day, the loss adjuster contacted Mr H. They asked for confirmation that a temporary repair had been carried out and suggested they didn't object to container hire. They again asked for details of the stock loss, so they could arrange a second site visit. And they offered a contractor if further drying was needed.

- Between 19 and 21 March 2018, Mr H carried out a temporary repair to the roof, which was largely successful.
- From 22 March 2018, J's stock was moved to hired containers.
- In April 2018, Mr H started to strip out the displays and began to dry the property. He also submitted quotes to permanently repair the roof. This included a quote for Mr H to repair the roof. However, Ageas approved a different contractor.
- In the same month, the loss adjuster requested further information – about the stock, financial information for the business-interruption claim, and costs for the strip-out, drying-out and reinstatement claim. They also explained that the showroom area is categorised under the policy as tenant improvements, which J wasn't covered for. This meant the strip-out or re-fitting of studwork, ceilings or electrics wasn't covered. They also turned down Mr H's proposal for a temporary showroom – they believed it would be quicker to reinstate the damaged showroom.
- In response, the loss assessor said Mr H's accountants were preparing the overall stock value and financial information. And that, given the damage, it was taking time to detail the stock lost. They also believed the showroom was covered under H's building policy and, in general, highlighted Ageas's lack of assistance with the claim.
- In May 2018, work continued to strip out plumbing, electrics, internal walls and insulation. Around June 2018, the roof was permanently repaired and Mr H withdrew the drying equipment on account of the better weather.
- In July 2018, the loss adjuster visited the site again. They noted the stock was moved to containers and the units had been stripped out. As the drying wasn't complete, they instructed a contractor to look into this. Mr H refused, as his own company was carrying out the works. The loss adjuster also confirmed receipt of information about J's stock.
- In the same month, Mr H submitted a scope of work to Ageas. The works had been carried out by A, a company Mr H set up which ultimately was part of J.
- Given the increase in 'reserve' (i.e. the sum an insurer estimates for indemnifying a claim) and questions over documents, a reservation of rights was issued by Ageas. In other words, it had not committed to covering the claim in full or at all. In August 2018, those acting for Ageas interviewed Mr H. In summary:
  - Mr H explained he only speculatively asked about carrying out the works himself during the initial site visit – he denied agreeing to repair the roof. And said that he carried out the temporary repair as a last resort – due to construction regulations and health and safety, he shouldn't have been on the roof. The interviewer referenced Mr H's quote to carry out a full repair in April 2018 – asking why he'd not done that sooner. Mr H said he wasn't authorised by them to do so.
  - Mr H explained he specifically set up A to carry out the works, given Ageas's lack of action.
- In September 2018, Ageas asked further questions via email about the initial repairs, A's invoices, as well as requests for information about J's business interruption. In October

2018, Mr H responded to this. Around November 2018, a new loss adjuster was appointed and Mr H's loss assessor was told the claim would be covered.

- In January 2019, the loss assessor submitted a bundle to support the claim – including details of the stock lost, tender documents, strip-out costs, and the temporary showroom costings. Details of J's business interruption claim followed shortly after, further to input from Mr H's accountant.
- Following disagreements over the settlement and Ageas's decision not to renew H's or J's policies, Mr H raised a complaint. In February 2019, Ageas responded. It noted how the reserve for the claim had significantly increased and that, given this, a surveyor would attend the site.
- In April 2019, further to another site visit, Ageas proposed an offer to settle the claim:
  - It said its ability to assess the claim had been prejudiced because Mr H had moved the stock and stripped-out the property.
  - It offered £51,900 for H's buildings claim (minus the excess and amounts already settled). This excluded what Ageas believed were tenant improvements, which weren't covered under either policy.
  - £15,000 for J's stock lost. It said this claim was overstated and unsubstantiated – noting how items were unlikely to have been affected by the path of water, and that the nature of the bathroom items meant they could've been repackaged.
  - £31,000 for J's business interruption. This was based on a comparison with the previous year from March to November, inclusive. This ignored a negative trend in business before the incident and any delays in the restoration works. It also included £8,000 for container hire costs.
  - It wouldn't pay for the temporary showroom, as it wasn't clear how it financially benefited the business interruption claim – or whether it was just a temporary measure.
  - It also wouldn't cover £50,000 marketing/advertising costs, as these weren't substantiated.
- Unhappy with this, Mr H bought J's and H's complaints to us. In summary:
  - He considered that Ageas's inaction following his notification of the claim is what led to both the further damage and the actions he had to take to restore the property. He disputed that he agreed to repair the roof and that he didn't mitigate H or J's losses.
  - Ageas hasn't substantiated its offer of settlement, whereas he spent time substantiating H's and J's claims.
  - He considered that the internal structures that Ageas describes as "tenant improvements" should fall under H's buildings insurance.

- In relation to J's business interruption claim, Ageas hasn't properly accounted for the money he put into the business to keep it running.
- Prior to J and H bringing the complaints to our service, Ageas paid £20,000 in interim payments, as well as settling the invoice for the permanent roof repair. During the course of our investigation, Ageas has also paid £66,750, which represents the outstanding balance under its offer of settlement for H's and J's claims.
- On 6 July 2021, I sent my provisional findings which didn't uphold J's complaint. I've attached a copy of this to my decision.
- Ageas didn't add anything further by the deadline. Mr H disagreed with my findings – in summary:
  - It was a legal error to suggest that despite health and safety regulations, he and his employees repair the roof in the rain.
  - My findings are contradictory – they said Ageas told us that Mr H agreed to repair the roof, and it also noted that Mr H attempted a repair immediately.
  - I ignored how Ageas didn't reply to Mr H's emails at a crucial time – after the damage happened while it was still raining.
  - It was a legal error to suggest that he sold defective and mould infected products to vulnerable clients, despite his policy forbidding this and it being illegal.
  - I've supported Ageas' offer of settlement. So I've not carried out my own calculations nor have I sought to confirm Mr H's calculations. In doing so, I've ignored an expert witness's report, meter readings, and photos on the condition of the building and goods.
  - My findings were different to those of our investigator, and I said I was unlikely to reverse my provisional decision.
  - I've not considered how Ageas redacted information from Mr H's data subject access request.

### **my findings**

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

Having carefully considered Mr H's response, my decision is not to uphold this complaint. That's not to say that my mind couldn't have been changed. But that the response hasn't persuaded me that it should be.

Mr H has asked me to reply to each of his points. I've considered his responses, alongside the file in its entirety, very carefully. But my role as an ombudsman is to reach a decision and explain why. So, it's not to address every point if I don't think it's material to the outcome of the complaint.

I have, however, commented on the key issues in Mr H's response as I see them:

mitigation

- Mr H said it would've been against health and safety regulations to repair the roof in the rain.
- I'm satisfied my provisional findings addressed this point as follows:

*I recognise it rained for some time after the damage happened. But there was a clear period at the start – and some days with much less rain. There's also no independent evidence to say that a temporary repair couldn't have reasonably been carried out sooner, given the rain, to make the premises watertight.*

- Mr H hasn't presented any specific regulations – only that a contractor must work in a manner that secures the health and safety of those involved. I accept that, but this still relies on Mr H's own opinion that what was being asked here – a temporary repair – would've been contrary to health and safety in these circumstances. As I've explained, he can't be an expert on his own cause.
- And even if I accept Mr H's point, he still hasn't persuaded me why a temporary repair wasn't made during the clear period immediately after the damage happened.
- It follows that there's still no independent evidence to support that the work couldn't have been carried out sooner – either as a result of the weather conditions, and/or as a result of the time needed to purchase materials and carry out research.
- Mr H also said my provisional findings were contradictory: they said Ageas told us Mr H agreed to repair the roof, and they also noted that Mr H attempted a repair immediately.
- In Mr H's submissions to us, he said that on the day the damage happened, he unsuccessfully attempted to repair the roof. I don't think that means Mr H couldn't have offered to repair the roof in his meeting with the loss adjuster a few days later. My provisional findings set out why I think that's the case, so I won't repeat this again here.
- Mr H also said how Ageas ignored his emails at a crucial time. The evidence I've seen suggests there was around a week, in mid-March, where Mr H was contacting the loss adjuster but didn't hear back. I don't think this was a significant delay – nor do I think it materially changed J's position. That's because I'm persuaded that Mr H had already agreed to carry out a temporary repair. And I note that in the communication with the loss adjuster, there wasn't any specific mention that the temporary roof repair was outstanding and required input from the insurer. Instead, the focus was gaining authorisation for the container hire. So, in all, I don't think the insurer's communication is to blame for the temporary repair not being sorted out sooner.

settlement for J's stock

- Mr H said he couldn't have sold his damaged stock, given his vulnerable clients and that his policy terms say J should take reasonable care to prevent accidents or disease; and to prevent the sale of goods which are defective in any way.
- My provisional findings weren't to suggest Mr H sell defective stock. But rather that I thought Ageas' offer of settlement was a fair reflection of the damage to Mr H's stock, taking account that some items will be a total loss, and others may be 'shop-soiled' but still of satisfactory quality and/or fit for purpose.
- I recognise Mr H disagrees that the items can be salvaged to be of satisfactory quality. But as my provisional findings explained, there's no independent expert evidence to support that – which I think was necessary here. I also note that his own calculations included a cost to restore many of the items – so it seems he's acknowledged this wasn't a total loss situation.
- Mr H said J doesn't sell such stock. But that doesn't mean it can't be sold and that the stock is no longer of any value. And ultimately, J is insured for damage to its stock. So, it doesn't also cover consequential losses and inconveniences – like selling some goods at a discount when that's not your usual market.
- I appreciate our investigator reached a different conclusion on J's stock losses. But it's my role to determine the complaint by what is, *in my opinion*, fair and reasonable in all the circumstances of the complaint.
- I understand Mr H also thinks I'm biased because I agreed with Ageas's offer of settlement. But I've explained why I reached this decision. So I don't agree my opinion was disproportionately and unfairly weighted in Ageas' favour.

#### other matters

- Mr H has raised concerns with how his data subject access request (DSAR) was redacted by Ageas. For the avoidance of doubt, I'm satisfied that I've enough information to reach a fair decision on this complaint – I'm not persuaded there's further information I needed to see.
- Should Mr H wish to raise concerns specifically about how Ageas handled the DSAR, then he'll need to approach Ageas first, as I can't see that's been raised and considered by it yet.

#### **my final decision**

For the reasons I've explained here and in my provisional 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 J to accept or reject my decision before 21 September 2021.

Emma Szkolar  
**ombudsman**

## PROVISIONAL DECISION

### complaint

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### background

- H (a sole trader), who is a 'third party' in law for the purpose of this case, had buildings insurance with Ageas to cover commercial premises. J rented these premises from H – which J used as a wholesale bathroom showroom. J had business insurance with Ageas which, among other things, covered its stock and business interruption. Mr H is a sole trader – trading as 'H' – and also the director of J.
- On 19 February 2018, the gutter next to the roof of H's property, which J rented, was damaged causing water to come in. Mr H said he attempted a repair immediately, but this wasn't successful.
- The next day, Mr H got a quote for approximately £13,000 to repair the roof.
- On 23 February 2018, Ageas's loss adjuster visited the property. The report noted several pallets of stock were affected by the water coming in; and that a small amount of stock was damaged by water that spread across the floor. While not covered by the report, Ageas told us that Mr H agreed to repair the roof (at least temporarily). But Mr H said he only *speculatively* asked about carrying out the restoration works – but he didn't offer to repair the roof. He said Ageas agreed the quote he'd obtained seemed expensive, so the loss adjuster asked him to get others.
- From 27 February 2018, it rained daily until 18 March 2018 causing further water damage.
- On 6 and 8 March 2018, Mr H purchased materials to carry out a temporary repair.
- On 7 March 2018, the loss adjuster contacted Mr H. They said they were waiting for Ageas's decision on liability (to indemnify under H's and J's business policies) and asked for information to support the stock lost and for reinstating the damaged displays.
- On 14 March 2018, Mr H appointed a loss assessor. (In general, loss *assessors* act for policyholders where loss *adjusters* act for insurers.) On the same day, the loss assessor emailed the brokers asking them to contact the loss adjuster to urgently arrange a site visit. They also explained they instructed Mr H to move the damaged stock to hired containers for inspection, shut down the damaged showroom and set up a temporary showroom.
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- The same day, the loss adjuster contacted Mr H. They asked for confirmation that a temporary repair had been carried out and suggested they didn't object to container hire. They again asked for details of the stock loss, so they could arrange a second site visit. And they offered a contractor if further drying was needed.
- Between 19 and 21 March 2018, Mr H carried out a temporary repair to the roof, which was largely successful.
- From 22 March 2018, J's stock was moved to hired containers.

- In April 2018, Mr H started to strip out the displays and began to dry the property. He also submitted quotes to permanently repair the roof. This included a quote for Mr H to repair the roof. However, Ageas approved a different contractor.
- In the same month, the loss adjuster requested further information – about the stock, financial information for the business-interruption claim, and costs for the strip-out, drying-out and reinstatement claim. They also explained that the showroom area is categorised under the policy as tenant improvements, which J wasn't covered for. This meant the strip-out or re-fitting of studwork, ceilings or electrics wasn't covered. They also turned down Mr H's proposal for a temporary showroom – they believed it would be quicker to reinstate the damaged showroom.
- In response, the loss assessor said Mr H's accountants were preparing the overall stock value and financial information. And that, given the damage, it was taking time to detail the stock lost. They also believed the showroom was covered under H's building policy and, in general, highlighted Ageas's lack of assistance with the claim.
- In May 2018, work continued to strip out plumbing, electrics, internal walls and insulation. Around June 2018, the roof was permanently repaired and Mr H withdrew the drying equipment on account of the better weather.
- In July 2018, the loss adjuster visited the site again. They noted the stock was moved to containers and the units had been stripped out. As the drying wasn't complete, they instructed a contractor to look into this. Mr H refused, as his own company was carrying out the works. The loss adjuster also confirmed receipt of information about J's stock.
- In the same month, Mr H submitted a scope of work to Ageas. The works had been carried out by A, a company Mr H set up which ultimately was part of J.
- Given the increase in 'reserve' (i.e. the sum an insurer estimates for indemnifying a claim) and questions over documents, a reservation of rights was issued by Ageas. In other words, it had not committed to covering the claim in full or at all. In August 2018, those acting for Ageas interviewed Mr H. In summary:
  - Mr H explained he only speculatively asked about carrying out the works himself during the initial site visit – he denied agreeing to repair the roof. And said that he carried out the temporary repair as a last resort – due to construction regulations and health and safety, he shouldn't have been on the roof. The interviewer referenced Mr H's quote to carry out a full repair in April 2018 – asking why he'd not done that sooner. Mr H said he wasn't authorised by them to do so.
  - Mr H explained he specifically set up A to carry out the works, given Ageas's lack of action.
- In September 2018, Ageas asked further questions via email about the initial repairs, A's invoices, as well as requests for information about J's business interruption. In October 2018, Mr H responded to this. Around November 2018, a new loss adjuster was appointed and Mr H's loss assessor was told the claim would be covered.
- In January 2019, the loss assessor submitted a bundle to support the claim – including details of the stock lost, tender documents, strip-out costs, and the temporary showroom costings. Details of J's business interruption claim followed shortly after, further to input from Mr H's accountant.
- Following disagreements over the settlement and Ageas's decision not to renew H's or J's policies, Mr H raised a complaint. In February 2019, Ageas responded. It noted how the reserve for the claim had significantly increased and that, given this, a surveyor would attend the site.
- In April 2019, further to another site visit, Ageas proposed an offer to settle the claim:

- It said its ability to assess the claim had been prejudiced because Mr H had moved the stock and stripped-out the property.
  - It offered £51,900 for H's buildings claim (minus the excess and amounts already settled). This excluded what Ageas believed were tenant improvements, which weren't covered under either policy.
  - £15,000 for J's stock lost. It said this claim was overstated and unsubstantiated – noting how items were unlikely to have been affected by the path of water, and that the nature of the bathroom items meant they could've been repackaged.
  - £31,000 for J's business interruption. This was based on a comparison with the previous year from March to November, inclusive. This ignored a negative trend in business before the incident and any delays in the restoration works. It also included £8,000 for container hire costs.
  - It wouldn't pay for the temporary showroom, as it wasn't clear how it financially benefited the business interruption claim – or whether it was just a temporary measure.
  - It also wouldn't cover £50,000 marketing/advertising costs, as these weren't substantiated.
- Unhappy with this, Mr H bought J's and H's complaints to us. In summary:
    - He considered that Ageas's inaction following his notification of the claim is what led to both the further damage and the actions he had to take to restore the property. He disputed that he agreed to repair the roof and that he didn't mitigate H or J's losses.
    - Ageas hasn't substantiated its offer of settlement, whereas he spent time substantiating H's and J's claims.
    - He considered that the internal structures that Ageas describes as "tenant improvements" should fall under H's buildings insurance.
    - In relation to J's business interruption claim, Ageas hasn't properly accounted for the money he put into the business to keep it running.
  - Prior to J and H bringing the complaints to our service, Ageas paid £20,000 in interim payments, as well as settling the invoice for the permanent roof repair. During the course of our investigation, Ageas has also paid £66,750, which represents the outstanding balance under its offer of settlement for H's and J's claims.

### **my provisional findings**

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

This provisional decision solely addresses J's claim under its business insurance policy. That's necessary given that J is a distinct limited company under a separate insurance policy. However, given that both claims stem from the same event, I have considered both complaints – and naturally, parts of my findings overlap. I am issuing a separate but linked decision on H's complaint.

### **mitigation**

Ageas said it authorised Mr H to carry out temporary repairs during its initial site visit in February 2018. Mr H said he speculatively asked about carrying out the work – meaning the general building

reinstatement – and that he never said he would repair the roof. He has added he was asked to find other quotes to permanently repair it, given the expense of the first one he got. But otherwise, he wasn't given any direction or offered any help.

The report the loss adjuster prepared is silent on what was discussed about repairs. But both sides agree some sort of conversation took place. I can't be certain of what was discussed, but civil disputes like this are only decided on the balance of probabilities. In other words, what's more likely than not to have happened.

Here, I think it's more likely that Mr H gave the impression he'd carry out a temporary repair, and the loss adjuster agreed with his proposal. That's because:

- Mr H bought materials to carry out a temporary repair on 6 and 8 March 2018 – so after the initial site visit and before he next heard from the loss adjuster. I think it's unlikely Mr H would've done this if it hadn't been discussed during the initial visit.
- In an email from the loss adjuster on 19 March 2018, they asked Mr H to confirm he'd done a temporary repair. Had this not been agreed, I'd have expected Mr H or his loss assessor to have disputed it at the time. But there's no evidence of that. Instead, the temporary repair started that day. This contemporaneous evidence (or lack of) tends to be more persuasive than recollections of a conversation that took place months or years ago.
- While Mr H and his loss assessor chased the loss adjuster, they didn't specifically mention the roof. Given the amount of water coming in, I'd have expected this issue to have been raised if nothing had been agreed. Instead, the focus was getting authorisation to hire containers, to move the stock.
- It seems plausible that Mr H offered to repair. I recognise it wasn't his immediate expertise, but it wasn't beyond his capabilities, as evidenced by the eventual temporary repair and his offer to carry out the permanent repair (and with a guarantee too).

So, having concluded that Mr H gave the impression he'd carry out a temporary repair, I've considered whether he did so in a timely manner – to mitigate H and J's losses. I don't think he did. That's because:

- Mr H explained the temporary repair wasn't straightforward – it took weeks of research, he had to source the materials, and it took several men a few days to carry out the repair. But given the weather forecast and the likelihood that failing to take any action would cause significant damage, I think this temporary repair ought to have taken priority. And there's no independent evidence to persuade me that the time taken to research the temporary repair, purchase the materials, and carry it out – i.e. four weeks – was unavoidable.
- I recognise it rained for some time after the damage happened. But there was a clear period at the start – and some days with much less rain. There's also no independent evidence to say that a temporary repair couldn't have reasonably been carried out sooner, given the rain, to make the premises watertight.
- When Mr H was asked during his interview why he didn't carry out a repair sooner, he said, among other things, it was because he wasn't authorised. For the reasons I've explained, I think there was in fact an agreement made about effecting a temporary repair. But I've also not seen any correspondence where Mr H specifically sought authorisation to carry out repairs to the roof. If he was waiting for this, I think it's likely he'd have asked at the time. So, this doesn't change my mind.

So, in all, I think it's likely Mr H didn't take the action he gave Ageas the impression he would take in a timely enough manner – and in doing so, I think he didn't adequately mitigate H or J's losses, potentially prejudicing Ageas's position as insurer of both companies.

I've kept this in mind when I've considered Ageas's offer of settlement.

settlement for J's stock

Mr H has itemised that the stock affected by the insured event totalled £74,823 – of which he estimated that £42,008.96 was lost or damaged.

I've considered this claim in light of Ageas's settlement of just £15,000 for the stock lost. Despite the significant difference, I think the offer is fair. I'll explain why:

- Ageas submitted that its position was prejudiced because Mr H moved the stock to hired containers. But it's accepted that was to mitigate J's losses – indeed, Ageas covered the hire costs. And I'm satisfied it had the opportunity to object to that at the time. So I am with Mr H on this point.
- However, I do accept Ageas's questions over the extent of the damage. An ombudsman does not need independent expert evidence to resolve questions of fact within their own life experience or that involve matters of common sense. I would reasonably expect, given the 'wet goods' nature of the stock (bathroom items and sanitaryware), that many items could withstand contact with rainwater. And where the stock was away from the direct pathway of water, and on pallets elsewhere, the amount claimed for seems unreasonable – particularly with the efforts Mr H and his team took to remove water as it built up and move the stock to containers.
- Mr H said he's substantiated J's stock loss, and Ageas hasn't supported its offer. But as J's making the claim, the onus rests with it to prove on balance what J's losses are. I've reviewed the details submitted, which include estimates of how much it would cost to salvage each item. But Mr H can't be an expert in his own cause. If he wanted to rebut reasonable presumptions on matters of common sense or common experience (of which an ombudsman can take 'notice'), he needed to have consulted an independent expert to explain why in fact everything needed to be sold with such a discount. Without that, and given Ageas's questions, these details are not sufficiently persuasive.
- I'm also mindful of the conclusion I reached before – that I don't think Mr H sufficiently mitigated J's losses. That means it's likely the stock was damaged more than it ought to have been.
- All of this makes it difficult to come to a precise settlement for J's losses. But, looking at the matter in the round, the contribution of £15,000 represents 20% of the total value of stock. In other words, an overall 20% discount to reflect that a small proportion of items will be a total loss for J, but some can be sold at a reasonable discount to reflect that they are slightly 'shop soiled' (i.e. damaged packaging) but still ultimately of satisfactory quality and/or fit for purpose.
- Looked at this way, alongside the concerns about the reliability of the information, and the uncertainty of what the loss would've been had Mr H adequately mitigated J's losses, I'm persuaded this offer is fair and reasonable.

settlement for J's business interruption

Under the policy's terms and conditions, J's covered for the loss of gross profit as a result of interruption to business caused by damage to the property as a result of an insured event – for a maximum of 12 months. That's worked out by:

- a) looking at the rate of gross profit earned on J's turnover in the previous financial year in comparison to what it earned during the indemnity period as a result of the damage.

- b) looking at what J necessarily and reasonably paid that was only to stop J's turnover reducing during the indemnity period. This can't be more than the gross profit J saved by spending this money.

I'm satisfied Ageas's offer of £31,000 reflected the first point – J's loss of gross profit – supported by Mr H's accountant. I don't think that's disputed.

But Mr H has argued that the offer doesn't account for the £100,000 that he personally injected into J – to keep it running. It's difficult to see where, under J's policy, Mr H would be covered for any personal sacrifices he's made. And either way, I understand this was a temporary loan so Mr H should get all his money back. So I can't reasonably expect the policy to cover it as an increase cost of working when, ultimately, it's not a cost the insured party will suffer. (It's important to distinguish between discrete legal 'persons' in a case such as this, where someone acts in different capacities at different times – and sometimes in dual capacities simultaneously.)

I understand Mr H also set up a temporary showroom – but there's no persuasive evidence that it was, firstly, necessary; secondly, was done just to reduce turnover, as opposed to something more permanent; and, thirdly, of the financial benefit claimed. Without that, I think Ageas's decision not to cover these costs is fair.

I've also noted J's submitted a £50,000 claim for marketing and advertising costs. But similarly to the showroom issue, it's not clear exactly how these costs relate to the insurance claim and/or mitigation of loss, or how they avoided a reduction in turnover as a result of such matters (as opposed to normal business promotion). It's also uncertain this would be less than any gross profit J saved during the indemnity period, as per the policy terms. So, I'm minded to agree with Ageas's decision not to pay these costs.

Mr H has also submitted that the indemnity period should be extended from nine months. The maximum period under J's policy is 12 months. And I've not seen evidence to suggest J was affected, *in consequence of the damage*, for longer than nine months. Instead, it seems any longer-term effects were in consequence of the time taken to substantiate the claim and the dispute over the settlement. But I'm not convinced Ageas was to blame for that – and generally, I think the settlement proposed in April 2019 was reasonable. I'm also mindful that the existing indemnity period seemingly wasn't reduced to reflect that the damage could've been mitigated. So overall, I'm satisfied that the nine-month indemnity period used is fair and reasonable.

#### conclusion

Having considered this matter carefully, I am satisfied that Ageas's offer to settle J's claim is fair and reasonable in all the circumstances. I know this will disappoint and upset Mr H, given his understandable strength of feeling over this. And that, going through any significant claim that affects someone's businesses is inevitably difficult for them, made worse when there're these sorts of disputes along the way.

It's not my intention to add to that. But as an impartial decision-maker, I must reach what I think is a fair outcome, looking at what both sides have presented. Of course, should J ultimately not accept any final decision, it would remain free to explore other possibilities – such as taking this dispute to court.

**my provisional decision**

For the reasons I've explained, I don't intend to uphold J's complaint. I will consider any new points submitted before the deadline set out at the start – but, to manage expectations, I am unlikely to change my mind without clear evidence or arguments showing that I have made a legal or factual error, or have otherwise reached a conclusion that is inherently unfair or unreasonable.

Emma Szkolar  
**ombudsman**