

## **complaint**

Mr and Mrs W complain that Ageas Insurance Limited have voided (cancelled from the start) their home insurance policy and declined their claim following a fire.

## **background**

The policy is underwritten by Ageas Insurance. Other companies assist in the administration of the policy but for clarity I will refer to Ageas throughout.

There was a fire at Mr and Mrs W's house whilst they were away. This caused extensive damage to both the property and its contents. Mr and Mrs W started a claim on their home insurance policy.

Whilst they were considering the claim Ageas found that the house had seven bedrooms. Mr W had told them it only had five bedrooms when taking out the policy. As they don't offer insurance on houses with more than five bedrooms they voided the policy, declined the claim and refunded the premiums.

Mr and Mrs W maintain that it is a five bedroom house. They say the extra rooms are attic rooms and Ageas has incorrectly applied their definition of 'bedroom'. They complained initially to Ageas and later to the Financial Ombudsman Service.

Our investigator looked at the case and thought that Ageas had acted fairly and weren't unreasonable in considering the house as a seven bedroom property. Mr and Mrs W disagreed and so the complaint has been passed to me for a final decision.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have considered the complaint with regard to the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). Whilst we are not bound solely to the law it will be our starting point in assessing this complaint before considering if the outcome is fair and reasonable.

### *has there been a misrepresentation?*

Ageas believes there has been a misrepresentation as they think the house has seven bedrooms. Mr and Mrs W disagree as they think the property has five bedrooms and two attic rooms.

Taking a common sense approach, I think most people would consider upstairs rooms within a house as bedrooms. Provided there was enough space for a bed, the room was heated and had a window. Ageas obviously doesn't want to insure houses over a certain size and have chosen the number of bedrooms as their criteria to do this.

Mr and Mrs W raise a variety of points about the bedrooms. Much of this focuses on what can legally be considered a bedroom in relation to building regulations. I don't think that whether a room has been signed off as a building regulation compliant bedroom is relevant in this case.

The insurance policy is a contract between Ageas and Mr and Mrs W. How a bedroom is defined within that contract is the relevant issue. The question asked during the online sales process was:

*"How many rooms does the property have?"* It then had drop-down menus to give the number of different types of rooms. One of these related to bedrooms. In addition to this there is further explanation that says: *"Bedrooms **include** rooms originally designed as bedrooms but now have another use such as studies, and rooms that have been converted to bedrooms."* I think both the question and explanation are clear.

It's also clear that the current use of the room is not relevant to its definition as a bedroom. I don't think Mr and Mrs W were using the rooms in the attic as bedrooms at the time of the fire. But that doesn't mean that they can't be considered as bedrooms for the purposes of the policy.

I've seen a statement from the previous owner of the house which states that *"we did not consider using the attic areas for permanent bedrooms"*. I believe these were the owners at the time the sales documentation was prepared that I have also seen.

The use of the word 'permanent' bedrooms in the statement leads me to think it was likely that at least one of the attic rooms was used as an occasional or guest bedroom. This is supported by the fact that within the sales brochure there is a picture of the attic room with beds in it. At this point, if not before, I think at least one of the attic rooms had been converted to a bedroom.

I understand that Mr and Mrs W say that the room had been dressed for sale. But taking everything into consideration, I think its use as an occasional or guest bedroom is most likely.

Because of the reasons outlined above I think the house had at least six bedrooms. It follows that saying the house had five bedrooms was a misrepresentation. And I don't think Ageas were unfair in considering at least one of the attic rooms as a bedroom.

*was this a qualifying misrepresentation?*

For Ageas to void the policy they must show there has been what is known as a qualifying misrepresentation. This means they need to show three things. The first is that there's been a misrepresentation. The second is that Mr W failed to take reasonable care when providing the incorrect information. And the third is that they would not have entered the contract at all (or would have done so only on different terms).

The misrepresentation element is covered above. I've seen evidence that Ageas wouldn't have offered insurance for a house with more than five bedrooms. So I am satisfied that part of the definition also applies.

The way in which the questions were asked is clear and I think that Ageas highlighted how important them having the correct information was. This is included in the Home Insurance Policy Schedule that they sent to Mr and Mrs W. It also contains the words *"If **You** are in any doubt, please contact Your insurance advisor."*

When Mr and Mrs W bought the house it was marketed as having seven bedrooms. The building survey commissioned by Mr W in October 2016 also lists the house as having seven bedrooms. So prior to taking out the policy there were two professional sources that described the house as having seven bedrooms.

I acknowledge the statements obtained by Mr and Mrs W that further explain how the authors of those statements now view the number of bedrooms. But what I'm concerned with here is the information that was available around the time the policy was purchased.

I know Mr W disagrees about the number of bedrooms but I would expect him to at least acknowledge that others might see it differently due to these reports. In cases where there is uncertainty or disagreement, part of taking reasonable care would be contacting the insurer to ask for clarification. I've not seen any evidence Mr W contacted Ageas seeking clarification.

I've been provided with the details entered by Mr W onto the comparison website whilst purchasing the policy. The part in relation to numbers of rooms asks for the number of bedrooms, receptions, bathrooms and 'other rooms'. Mr W answered 'zero' for the 'other rooms'. If Mr W didn't consider the attic rooms as bedrooms, I would have expected them to have been included as 'other rooms'.

Taking all of this into consideration I don't think that Mr W took reasonable care to avoid making a misrepresentation.

A deliberate or reckless misrepresentation is where the consumer knew what they were saying was untrue, or didn't care if it was untrue. From the evidence I've seen I don't think Mr W was deliberate or reckless.

Whilst I don't believe there was any dishonesty in Mr W's selections, I do think that they were careless. Because of this I think there has been a qualifying misrepresentation.

*were Ageas fair when they voided the policy and declined the claim?*

The options available to an insurer in cases like this are also laid out in CIDRA. It says that in cases of careless misrepresentation:

*"If the insurer would not have entered the into the consumer insurance contract on any terms, the insurer may avoid the contract and refuse all claims, but must return the premiums paid."*

Ageas has shown they would not have offered insurance at all had they known the house had more than five bedrooms. So I don't think that in voiding the policy, refusing the claim and returning the premiums paid they have acted unfairly.

I don't think it would be fair to ask them to consider a claim on a policy they would never have offered, were it not for the misrepresentation. I understand this isn't the outcome Mr and Mrs W had hoped for. I would like to remind them that whilst this is the end of our process, they are under no obligation to accept my decision. There may be other avenues for them to pursue, such as the courts. But that is a decision for Mr and Mrs W.

**my final decision**

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 6 December 2017.

Richard Annandale  
**ombudsman**