

## **The complaint**

A company which I will refer to as H, complains about how Ageas Insurance Limited handled and settled its claim for subsidence on its commercial property insurance policy.

The directors of H have brought the complaint on its behalf. For ease of reading I'll refer to Mr H throughout.

## **What happened**

H is the owner of a pub. It has a commercial insurance policy underwritten by Ageas to insure the building. In June 2018 Mr H made a claim on the policy after noticing uneven flooring and cracks in the walls. Ageas appointed a loss adjuster who made an initial visit in September and concluded further investigation would be required. Following further investigation it concluded that part of the floor had been damaged due to subsidence and needed to be replaced. So it accepted the claim.

Over the months and years that followed Mr H raised additional concerns about water ingress in the building, damage to another part of the ground floor and damage to the patio area. Ageas investigated these issues and initially agreed to replace the whole ground floor. However it later retracted this as it said the other part of the floor didn't need replacing. It also said the damage to the patio wasn't related to subsidence and the water ingress wasn't linked to an insured peril either. So the policy wouldn't provide cover for these.

It offered Mr H a cash settlement of around £45,000 for the rebuild of the part of the floor that was covered under the policy.

Mr H didn't think this was a fair settlement offer, as he said the whole ground floor needed replacing in order to ensure there would be no further movement. He also said he was unhappy with how the claim had been handled as it had progressed very slowly. And this had meant he wasn't able to re-open his business after covid-19 restrictions were lifted in 2020. So he thought Ageas should also cover the money H had lost due to this. He made a complaint.

Ageas upheld the complaint as it agreed the claim could have progressed more quickly. It offered to refund the £1,000 policy excess as compensation to apologise for the poor service. However it maintained that the claim settlement it had offered was fair, as it represented its liability under the policy. It said it would consider a claim for business interruption for the time the repairs would take to do, but Mr H would need to provide accounts from 2020 and 2021 in order for it to calculate this.

Mr H was unhappy with this response as he didn't think it was fair that Ageas were only agreeing to pay for part of the replacement floor when a whole new floor was required. He brought the complaint to this service.

Our investigator considered all the issues but didn't think Ageas had acted unfairly when reaching the settlement amount. She said it had based its determination on expert reports, which was fair in the circumstances. However she thought it should pay H business

interruption costs for the two months required for the repairs, based on accounts provided for the 12 months prior to the claim, as this was inline with the policy terms.

Ageas agreed to our investigator's recommendation. However Mr H didn't agree. He said that Ageas had confirmed it would pay for the whole ground floor to be replaced, so it wasn't fair that it had gone back on that. He asked for the complaint to be reviewed by an ombudsman.

### **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.

Mr H has expressed a number of issues with how Ageas has handled the claim. I consider the key ones to be – the limit of policy liability, the claim settlement amount, business interruption cover and compensation for poor service. I've therefore considered each of these in turn below.

### **Policy liability**

Mr H has identified a number of issues at the building, and doesn't think its fair that Ageas are only providing a settlement for part of the ground floor.

My role when making this decision isn't to determine what the cause of the damage to H's building was. But rather to determine if Ageas' decision to decline the claim was fair and reasonable, based on the evidence.

Ageas has provided numerous reports from its contractors. From these I can see that its experts have concluded that the floor around the carpeted bar area had dropped considerably due to subsidence. And that it required replacement. However the damage to the rest of the floor was minimal, with no recent movement noted.

H's insurance policy provides cover to rectify damage caused by an insured peril – something listed as covered under the policy. But this doesn't extend to ensuring damage doesn't happen in the future. So while I understand it would be preferable for the whole ground floor to be replaced, in order to ensure it doesn't move in the future, this isn't what the policy provides for. And Ageas' experts conclude that there is no significant damage to the other part of the ground floor. For this reason, I think it's reasonable that Ageas has only offered a settlement for the replacement of the floor that has suffered subsidence damage.

I understand Mr H's frustration that Ageas offered cover for the whole floor, and later withdrew this. However, as I think Ageas' decision to just cover part of the floor is fair, I therefore can't say it should pay for the whole floor just because this was its original offer.

Further, Ageas' reports conclude that the water ingress and damage to the patio weren't caused by insured perils. So I think it acted fairly by not accepting these as part of its liability.

So while I understand Mr H doesn't agree with the findings of Ageas' reports, he hasn't provided any further expert opinion to show that they are inaccurate. For these reasons, I think Ageas has acted fairly by relying on its experts reports to decline the claim. And I won't require Ageas to do anything further in this regard.

### **Settlement amount**

Mr H has said he's unhappy with the amount Ageas has offered as a cash settlement for the

replacement floor. Ageas has provided a breakdown of the costs it has based the settlement on. And while these costs are at its preferred rates with its own contractors, it's added around an additional £10,000 to this quote to make up for any possible price differences between its contractors and those Mr H is able to obtain. So I think this is fair in the circumstances.

Should Mr H be unable to have the insured work completed for this amount, then he should provide evidence of this for Ageas to re-consider its settlement.

### **Business interruption**

Mr H has said that H has lost business due to having to close for a prolonged period because of the damage.

H's policy provides business interruption cover on the following basis:

*"In respect of each item in the Schedule We will indemnify You in respect of loss resulting from interruption of or interference with the Business carried on by You at the Premises in consequence of Damage occurring during the Period of Insurance caused by the operation of a Contingency covered under the Property Damage Section of the Policy unless otherwise stated in the Schedule."*

So cover is only provided for interruption due to damage that is covered by the policy. Mr H has said that the damp in the bar area is the reason why he hasn't been able to re-open the pub. And I've not seen any reason why the floor alone would prevent the pub from opening. So I don't agree Ageas would reasonably be liable for this closure.

However, when the work to the floor is carried out, it's reasonable that the disruption will be such that the pub will be unable to operate as usual. So I agree Ageas should pay for business interruption during this period. Ageas has said that this should take two months. And it's agreed to our investigator's recommendation that it pays this, on receipt of H's accounts from the 12 months prior to the loss. As this is in line with the policy terms, I agree with this recommendation and will require Ageas to make payment in line with the policy.

### **Compensation**

Mr H is also unhappy with how the claim has progressed, as it's taken three years before his complaint and the damage still hasn't been repaired.

From looking at the correspondence provided, I agree there have been times when the claim could have been progressed more quickly. And this has caused Mr H – on behalf of H – some inconvenience in having to continue to correspond with Ageas and chase it up. However Ageas has offered to refund the £1,000 policy excess as compensation to apologise for this inconvenience and this is in line with what I would have required it to pay in the circumstances, had it not offered anything. I therefore think this is fair and reasonable and won't ask it to pay any further compensation.

### **My final decision**

For the reasons I've given, I uphold H's complaint and require Ageas Insurance Limited to:

- Pay H's claim for business interruption for the two months it will take for the insured work to be completed, on receipt of H's accounts for the 12 months preceding the loss.

Under the rules of the Financial Ombudsman Service, I'm required to ask T and Mrs H and

Mrs H to accept or reject my decision before 13 April 2022.

Sophie Goodyear  
**Ombudsman**