

The complaint

Miss S complains that Ageas Insurance Limited (Ageas) unfairly declined her claim for flood damage under her Landlords buildings insurance policy after telling her that her policy would cover the damage. Miss S also complains that Ageas' loss adjuster told her arrange alternative accommodation for her tenant which was also not covered under the policy.

What happened

In late June 2021, following a storm, Miss S's tenanted property suffered flood damage when water entered the property.

Miss S reported the claim to Ageas, with whom she held Landlords buildings insurance. It initially told her that her policy provided cover for storm and flood damage and instructed a loss adjuster to assess the damage.

Miss S said that the loss adjuster told her she could arrange alternative accommodation for her tenant. So she booked and paid for accommodation for three weeks, expecting to be reimbursed.

After the loss adjuster had assessed the damage, he considered that the likely cause of the flood was that storm drains had become inundated following a period of torrential rain. The loss adjuster referred Ageas to an endorsement against "Storm or flood" within the policy. And asked it if this meant the claim should be denied. Ageas referred the claim to their underwriters who confirmed that the claim should be denied based on the endorsement. They said that the endorsement effectively removed all cover under the policy wording for claims caused by storm or flood, regardless of the underlying circumstances.

Ageas then told Miss S that as her policy had an endorsement about storm and flood damage, her policy didn't cover the claim. Ageas acknowledged that its call handler had told Miss S to look into booking her tenant a hotel for a night or two to allow the loss adjuster time to review the damage.

Miss S complained to Ageas about the following:

- the initial reporting of the call and the advice provided
- that the loss adjuster had advised her to book alternative accommodation
- that her policy should cover her damage claim
- that her policy should cover her for loss of rent, as the property was uninhabitable due to storm.

In its final response letter, Ageas partly upheld the complaint. It agreed that its call handler didn't make Miss S aware of the endorsement. It also acknowledged that it'd suggested that Miss S place her tenant in a hotel for a night or two. Ageas offered to pay for one night's accommodation costs if proof of payment could be provided. Ageas said it'd found no evidence that the loss adjuster had given Miss S approval to book three weeks'

accommodation. But said that if Miss S could provide evidence of this it would be considered. Ageas maintained that its decision to decline the claim based on the endorsement had been fair. And said that as the cause of the loss of rent was the flooding, which had been fairly declined, they couldn't provide cover for it.

Miss S was unhappy with Ageas's response to her complaint. So she complained again. She asked Ageas to cover the cost of the three weeks' accommodation. And the cost of the restoration assessment she'd initially arranged. Miss S said she couldn't prove the loss adjuster had told her to go ahead with organising the accommodation. But asked it to consider why she would pay for the accommodation for her tenant when she wasn't legally obliged to if she'd had no assurance of getting her money back. Miss S also felt that the wording of the policy was misleading.

Unhappy, Miss S brought her complaint to this service.

Our investigator felt that the complaint be upheld. She felt that Ageas had fairly declined the claim for flood damage. But considered that it should increase its offer from one night of accommodation to two nights. She said Ageas should add 8% simple interest to the payment for two nights' accommodation.

As agreement couldn't be reached, the complaint has come to me for a final 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.

Having done so, I'm going to uphold it. I've reached the same conclusion as our investigator. I'll explain why.

Should the claim have been covered?

The loss adjuster advised Ageas that the damage occurred following a period of prolonged rain. He felt this had caused the storm drains to become inundated, which meant that water entered Miss S's property at ground level.

Although storm damage is often covered by insurance policies, Miss S's policy had an endorsement which effectively removed all cover under the policy for claims caused by storm or flood.

I have to consider whether Ageas decided the claim in line with the terms and conditions of the policy. And whether it came to a fair and reasonable decision when it declined the claim.

The policy schedule which was issued to Miss S has a number of endorsements. On page 2 of the schedule it states: "*There are endorsements applying to this policy, see attached endorsement sheet*". And on page 5 it covers the Landlords+ General Flood Exclusion.

The schedule states that under the *Flood Exclusion* the policy will not pay for *loss or damage*:

1. *by subsidence ground heave or landslip except as covered under subsidence peril*
2. *to gates hedges fences drives or paths*
3. *to radio or television aerials*

4. *caused by rising ground water levels*
5. *caused by or attributable to inadequate maintenance of the Insured Property*
6. *caused by frost*
7. *caused by:*

the escape of water from the normal confines any natural or artificial water course lake reservoir canal or dam or inundation from the sea whether resulting from storm or otherwise

So damage in relation to storm or flood is not covered by the policy in these scenarios. As the rainwater caused the groundwater level to rise, the policy doesn't cover this flood damage under part 7. above.

Miss S said she wasn't aware of the endorsement. But I consider that it is relatively prominent on the policy schedule. And clearly worded. I also note that the same endorsement had been in place for the policy year prior to the one in which Miss S made the declined claim.

Miss S also said that the policy document said that cover would be provided for flood damage. So she doesn't accept that her claim shouldn't be covered. But the policy document also defines "*Endorsement*" as: "*A variation in the terms of the Policy*". And the policy document also states, on page 3: "*The Policy, your Schedule and any Endorsement pages should be read together as one document*". Taking all of the documentation into account, I consider that Ageas provided clear information about the endorsements on the policy. So it wouldn't be fair or reasonable to hold them responsible for Miss S not being aware of them.

In view of this endorsement I consider that in line with the terms and conditions of the policy, Ageas is entitled to decline any claim in which damage is caused by the peril of flooding caused by either storm or flood. Although I understand that heavy rain caused the drains to overflow, I consider that Ageas acted fairly when it declined this claim in respect of any damage caused by the flooding.

I appreciate that this will have been an extremely distressing incident for Miss S. However, I can't fairly say that Ageas acted unfairly when it declined the claim.

Does Ageas's error mean that it can't rely on the endorsement?

It's not in dispute that the call handler incorrectly told Miss S that her claim would be covered. And while this service takes into account the law, we ultimately decide cases based on what we consider to be fair and reasonable in the circumstances of each case. And when a financial business has made an error, our aim is to (as far as possible) place the complainant in the position they would've been in, had it not been for that error.

Given the mistake Ageas' call handler made, I consider that it would only be unfair for Ageas to rely on the endorsement to decline the claim if Miss S had suffered a detriment as a result of Ageas' actions.

Miss S feels that she has suffered a detriment. She paid for three weeks' accommodation for her tenant - that she said she didn't legally have to pay for - because her claim was initially accepted by the call handler. And because she felt the loss adjuster had approved the cost of accommodation she'd booked. She also considers that the call handler told her the restoration visit would be covered.

Regarding the three weeks' accommodation Miss S booked and paid for, the loss adjuster said that Miss S had asked him what he thought was the best type of accommodation for the tenant. He said he told her that before he could provide specific advice he needed to attend the property and report back to the insurers. And although he did make a suggestion, he said he didn't approve costs for this at any stage.

I've not being able to confirm exactly what was said between Miss S and the loss adjuster. But I haven't seen any evidence to confirm that the loss adjuster agreed to cover accommodation costs. Normal practice in cases like this one is for the loss adjuster to review the damage and contact the underwriter for approval of any repair or associated costs. Ageas has confirmed that this is the approach it takes. Therefore, based on what I've seen, I'm not persuaded that the loss adjuster approved the accommodation costs.

I've carefully considered if Ageas' call handler's mistake led to a detriment for Miss S.

From the evidence I've seen, and the phone call I've listened to, the call handler didn't tell Miss S that the restoration visit would be covered. She explicitly said she didn't know whether it would be covered or not. And went on to explain that Ageas' loss adjuster would have to assess the damage. I also note that the call handler told Miss S that Ageas would be able to sort out the alternative accommodation her tenant needed. But she told Miss S to find somewhere for the night. And told her to: "*act as if you're not insured*". From the evidence Miss S has shared with this service, she arranged and paid for three weeks' accommodation for her tenant on 29 June 2021. This was the day after she'd first made her claim. But it wouldn't be fair or reasonable for me to hold Ageas responsible for all of this outlay. I say this because even though the call handler was wrong to tell Miss S her claim was covered, she told her to book accommodation for one night. The fact that Miss S actually booked three weeks' accommodation was her decision. I understand that Miss S felt that Ageas would pay for the accommodation when she booked it. But she wasn't told to do this. So it wouldn't be fair or reasonable for me to ask Ageas to cover the full cost of the alternative accommodation Miss S decided to book.

I acknowledge that Miss S was in a very difficult situation. I understand that Miss S considers that she had no legal obligation to pay for replacement accommodation for her tenant. But she was considering his needs when she booked three weeks' accommodation. But, despite Miss S's position that she didn't legally need to provide replacement accommodation for her tenant, it was still her choice to do so. I don't consider that she would've acted differently if Ageas had correctly declined her claim from the start. I say this because she would've still had a tenant who needed alternative accommodation. And Ageas' call handler only told her to arrange accommodation for one or two nights. She even told Miss S to "*act as if you're not insured*". Therefore I agree with our investigator that it's fair to ask Ageas to cover two nights' accommodation costs, based on what the call handler said to Miss S.

In summary, I'm satisfied that Ageas fairly declined the claim for flood damage to the property. And therefore the claim for loss of rent. I've found no evidence that the loss adjuster approved the booking for three weeks' accommodation. However, because of what Ageas's call handler told Miss S, I consider that Ageas should pay for two nights' accommodation. It should add 8% simple interest to this payment, from the date the payment was made until the date of settlement.

Putting things right

I require Ageas to reimburse Miss S for two nights' accommodation. As Miss S has provided evidence that the three weeks' accommodation cost £2,179, Ageas should pay her 2/21 of this amount, which is £207.52. Ageas should add 8% simple interest to this payment, from the 29 June 2021 when Miss S made the payment, until the date of settlement.

My final decision

I uphold this complaint. Ageas Insurance Limited should take the actions noted in the “Putting things right” section above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss S to accept or reject my decision before 24 March 2022.

Jo Occleshaw
Ombudsman