

## **The complaint**

Mrs E has complained about Ageas Insurance Limited's decisions to decline a claim she made for an escape of water at her home.

## **What happened**

The details and background of this complaint are well known to all parties, so I will not repeat them again in full detail here. But to briefly summarise, Mrs E made a claim for a potential leak in her kitchen in October 2021.

Ageas inspected the leak and determined it had been ongoing for a significant period of time, and that it would have been noticeable. So, Ageas declined the claim on the basis that the damage happened gradually – which is excluded under the policy.

Mrs E raised a complaint about Ageas' decision and referred it to our service. Our investigator considered things and concluded that Mrs E's complaint should be upheld. She accepted the damage had happened gradually, but she didn't think Ageas had sufficiently evidenced that Mrs E would have been aware of damage occurring before she reported the claim. So, she felt Ageas' decision was unfair. She recommended that Ageas should reconsider the claim in line with the remaining terms and conditions.

Ageas said it had reconsidered the claim and maintained its view that damage which happened gradually wasn't covered. It also said the damage would have been visible for a significant period of time, but Mrs E hadn't taken sufficient action to mitigate the damage. So, it maintained its decision to decline the claim.

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

## **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.

Mrs E has brought her claim and complaint through a representative. But for ease of reading, I'll only refer to Mrs E by name in this decision, even when referring to evidence or arguments put forward by her representative.

Having carefully considered the evidence and arguments, I agree with the conclusions reached by our investigator. I'll explain why.

Mrs E's policy excludes damage which has happened gradually. So, under a strict application of the policy terms, Ageas can decline the claim. But the remit of our service also includes what's fair and reasonable in all the circumstances. And in relation to this type of complaint, our service has a long-standing approach that it's unfair for insurers to rely on exclusions like this in circumstances where a policyholder wouldn't reasonably have been aware that damage was occurring – and did everything they could when they became aware.

Ageas' surveyor's report contains conflicting information about when Mrs E advised she noticed the damage. One section says the damage had been visible for a few months (from the point of the inspection) which is broadly consistent with when the claim was reported, and with what Mrs E told her own builder and our service. But another part of the report suggests Mrs E said damage had been evident for a year.

I've seen no other evidence to support that Mrs E had been aware of damage for a year. So, based on everything I've seen, I'm more persuaded that she didn't notice the damage until shortly before the claim was made. It follows that I don't agree that Mrs E failed to mitigate further damage.

I'm also not persuaded that Mrs E ought reasonably to have been aware of the leak, or that damage was occurring, significantly before she made the claim. I say this because Ageas' surveyor's report suggests that the visible damage was a drop in the kitchen floor and worktop, and the partial rusting of some cabinet handles. Mrs E's builder's report mentions some discolouration to kickboards and cupboard doors and some rusting to the cooker, in addition to the damage highlighted by Ageas' surveyor. But this is all damage which was visible at the point of these inspections, which took place several months after Mrs E had noticed, and reported, the damage.

Ageas' surveyor's report does say the damage occurred over time and would have been visible. But it doesn't specify at what point the damage would have become visible or how the surveyor arrived at this conclusion. So, I don't find the report particularly persuasive on this point.

I also don't think it would be reasonable to conclude that Mrs E ought reasonably to have noticed discolouration of the kickboards or the kitchen floor dropping subtly over time. Nor do I think she ought reasonably to have associated any of the signs she *might* have noticed with a potential escape of water – prior to the point that she did. Particularly as there were no obvious issues with the dishwasher, water pressure or the water bills.

I note the surveyor's report mentions parts of the kitchen floor were wet or saturated. But this appears to be based on moisture readings taken using specialist equipment, rather than the floor having been wet to the touch. It also mentions an intermittent musty smell. But Mrs E explained she attributed this to a separate leak elsewhere which she was aware of. So again, I don't think these issues would have made the escape of water obviously apparent to Mrs E.

I accept Mrs E's builder's report also highlights other visible signs of damage. But as explained, these were at the point of the inspection which was several months after Mrs E had reported the claim. I don't agree that the builder's report states, or supports, that there would have been obviously noticeable signs of damage significantly before Mrs E raised the claim.

Ultimately, I'm not persuaded that Mrs E was aware, or ought reasonably to have been aware, of the leak or damage, significantly before she made the claim. So, I don't think it's fair or reasonable for Ageas to decline her claim on the basis that she failed to mitigate the damage. Nor do I think it is fair or reasonable for Ageas to decline her claim on the basis of the gradually operating cause exclusion because I'm satisfied, on balance, she took reasonable actions at the point she became aware.

Ageas cannot fairly decline Mrs E's claim based on the conditions/exclusions it has sought to rely on. So, to fairly resolve this complaint, it must reconsider the claim in line with the remaining terms and conditions.

**My final decision**

For the reasons set out above, I uphold Mrs E's complaint.

Ageas Insurance Limited must reconsider Mrs E's claim in line with the remaining terms and conditions of her policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 10 February 2023.

Adam Golding  
**Ombudsman**