

## **The complaint**

Mr L complained that Ageas Insurance Limited (“Ageas”) has unfairly declined a buildings insurance claim, and a legal expenses insurance (“LEI”) claim.

Any reference to Ageas or Mr L includes that of respective agents and representatives.

## **What happened**

The background is well known between the parties and has been detailed at length elsewhere, so I’ll summarise events. Mr L’s complaint with this Service has also narrowed in scope while the complaint has been with us – so I will focus on the matters still in dispute.

Mr L is a leaseholder of his property, as well as a shareholder of the management company that is the policyholder for this Ageas insurance policy. Given the distinct nature of the two claims disputed here, I’ll address the buildings insurance and LEI claims individually.

### *The buildings claim*

- Mr L’s flat suffered water damage. This was first identified by the tenant in mid-2021.
- In August 2021, this damage was reported to Ageas and it was told the property had been uninhabitable since June 2021. So, Ageas investigated and declined the buildings claim, saying the scenario in question was excluded by the policy terms as the policy didn’t cover damage caused by or as a result of wear and tear or gradually developing conditions. And that the cause of the damage was due to historic defective workmanship.
- Mr L argued the claim should be covered and asked for consequential losses (including loss of rent, earnings, and other costs). He said Ageas had breached data protection rules and complained about Ageas’ handling of the claim.
- The complaint came to this Service and our Investigator didn’t uphold this matter, explaining why he felt Ageas’ had fairly declined the claim and it didn’t need to do anything further in respect of this claim.

### *LEI claim*

- Mr L sought to make an LEI claim against his neighbour. This neighbour is also a leaseholder and shareholder of the management company that is the policyholder.
- In March 2022 Ageas wrote to Mr L saying the claim was excluded in line with the policy terms. This was due to Mr L incurring costs without Ageas’ consent. And because a separate exclusion relating to disputes between partners or shareholders – here it said the two leaseholders of the property (Mr L and his neighbour) were both directors and potential beneficiaries of the policy.
- Our Investigator looked into things, concluding:
  - He was unable to award costs for Mr L’s decision to take legal action against Ageas or to represent him in bringing a complaint.

- He agreed both Mr L and his neighbour could have a potential interest in the policy, and it was possible only one party would have cover – but that this wasn't excluded.
- He said Mr L had not agreed costs with Ageas in advance, and it wasn't enough for his solicitor to simply inform Ageas of its costs after they'd been incurred. But he said Ageas could've taken action earlier than it did and should've provided him with a claim form.
- He was satisfied Mr L's claim did not arise from a matter related to him and his neighbour in the capacity of "partners". And while Mr L and his neighbour were both shareholders of the policyholder (management company), it wouldn't be fair nor reasonable for Ageas to rely on this exclusion as the dispute doesn't arise from a matter relating to them as shareholders – which the Investigator was satisfied this exclusion was likely seeking to cover.
- So, the Investigator upheld the complaint, directing Ageas to:
  - Reassess the claim in line with the remaining terms of the policy as it had unfairly applied policy exclusions.
  - As a result of Ageas' delays, it should consider providing retrospective cover from October 2021 – speculatively allowing for Ageas to have considered the claim and cover costs from that point onwards.
- The Investigator explained this Service was unable to make any awards to a third party, so could not make any award payments to Mr L's representative directly and would only consider impact on Mr L and costs he was responsible for.

#### *Following the assessment*

- Mr L said the direction for Ageas to reconsider the claim left the matter open for Ageas to decline it on another ground in the future.
- The Investigator stood by his direction, saying any future dispute may be a matter for a separate complaint.
- Ageas disagreed on the Investigator's findings on the LEI claim.
  - It said Ageas does not handle or provide cover under the LEI part of the policy and this is handled by a separate firm that acts as an administrator (that I'll call Company A).
  - Mr L's legal representation agreed it had a copy of the policy schedule – which included a link to the Business Legal Guard Policy Wording (the LEI cover) that he is seeking cover under. And that this document clearly outlined how a claim can be made under the policy. As Mr L was legally represented it says his own solicitors should've read the policy and advised him of the claims procedure.
  - Ageas recognises its loss adjuster did not fully explain its LEI claims process until March 2022 – and would be willing to make a nominal payment of £500 + VAT towards Mr L's solicitors fees.
  - Any claim decision falls to Company A and not Ageas as its administrator. And Ageas has no involvement with the dealing, consideration or administration of such a claim. So, any direction to consider Mr L's incurred costs would fall to Company A.
- The Investigator looked again and said that while Company A may be the claims administrator, Ageas is ultimately the insurer within the policy wording, so it was

responsible for paying claims. So, regardless of Ageas' internal processes or potential need to involve third parties within its handling of a claim, he was satisfied Company A would've had an opportunity to assess the claim earlier than it did.

- Ageas stood by its position that Company A would be responsible for the decision making and it said to date, Mr L's representation was still yet to progress a claim with Company A despite being aware of the process.
- The Investigator put Ageas' offer to Mr L, which he rejected, alongside a copy of the Company A claim form to start an LEI claim if they had not done so already.
- Mr L reviewed Ageas' comments and commented that its claim form included incorrect statements and was unlike any similar form his solicitors had been asked to complete previously – who said it was for a preliminary form of notification solely intended to be completed by the insured and not their instructing solicitor.
- The Investigator reviewed the matter again, saying:
  - He was satisfied Mr L did not strictly follow the claims process. While Mr L's agent may have had access to the policy or could've asked for this earlier, he felt Ageas and its own agents could've communicated the next steps earlier than it did.
  - Mr L should complete Company A's claim form and engage with its claims process. While this would be looking at future costs, he said Ageas would also need to consider retrospective historic costs.
  - He was satisfied Ageas' decline in March 2022 was unfair (for reasons previously given), so should it accept the claim, it should do so from this date. And it should also consider costs from October 2021 until March 2022 to account for its delays in providing this response.
  - Had Mr L submitted a claim around October 2021, this claim would've been incorrectly declined (on the grounds it later sought to rely on that he felt was unfair).
  - Should there be a further dispute about costs or should Ageas or Company A (on behalf of Ageas) decline the claim for a reason previously not raised, Mr L will be able to complain about this, but under a separate complaint to this one.
- Ageas maintained its position to decline the claim, saying it could not comment on the cover that would apply given the dispute would lead to a single entity suing itself – and that Company A had not been given the opportunity to comment. And it reiterated it believed Mr L's representatives had an ability to raise a claim in line with the policy terms.

So, the complaint was been passed to me for an Ombudsman's final decision.

Most recently Mr L's representatives were in touch to say Company A had accepted the LEI claim, and this settled almost all matters, with the exception of the historic costs being incurred without consent of Ageas. So, in line with Mr L's direction, I will only consider the remaining matter of these historic costs alone within my 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 upholding this complaint. I'll explain why.

- Ageas' agent – Company A – has now accepted the LEI claim. So, I don't need to make a determination on this point as it is now resolved.
- The matter left in dispute here is about historic costs incurred before the claim had been accepted.
- In this particular case it's clear the claims process wasn't strictly followed by Mr L. This isn't disputed. But it's also clear Mr L's representative wrote to Ageas early in the claim and despite numerous opportunities to explain the required steps, Ageas failed to do so.
- Ageas has accepted that it (and any respective agents) should've been clearer on the claims process prior to March 2022 when the claim was declined. It made an offer of £500 plus VAT to account for this mistake. But it has sought to put the responsibility for this inaction on Mr L's own legal representation. And it said it was for Company A to determine whether claims were covered.
- I'm in agreement with our Investigator that while Company A may be Ageas' claims administrator, Ageas remains the insurer and is responsible for paying claims. So, I don't agree that Ageas can distance itself over this handling or decision making even if it delegates this responsibility to an agent – particularly where it accepts it should've done more earlier than it did.
- I also don't consider it fair nor reasonable in this case to place the onus on Mr L's own solicitors when Ageas accepts that it failed to be clear on what the process was itself. So, this hasn't changed my mind.
- Ageas' solicitors previously declined the LEI claim by relying on exclusions. It seems these have fallen away given the claim has been accepted so I see no benefit in going over these again, aside to say I would agree with our Investigator's findings that these were unfairly applied in the circumstances.
- So, it most likely seems to me that if Mr L began the claims process earlier than he did, around October 2021, Ageas would've still likely sought to decline the matter using the above-mentioned exclusions.
- Taking everything into account, I'm satisfied it is fair and reasonable in this case for the costs covered under this claim to extend back to October 2021 as I'm satisfied this fairly reflects Ageas' and its agents' mistakes in not being clear about its claims process earlier than it should have.
- For these reasons, I will direct Ageas Insurance Limited to ensure consideration of costs incurred by Mr L are not limited to the point in time it was accepted, and that this will extend to October 2021 onwards – subject to remaining policy terms and conditions.

### **My final decision**

I uphold this complaint and my direction is for Ageas Insurance Limited to ensure consideration of costs for Mr L's LEI claim extends from October 2021 onwards in line with the remaining policy terms. I will leave it to Ageas to determine how it meets this direction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 23 May 2023.

Jack Baldry  
**Ombudsman**