

## The complaint

Mr P complains that Ageas Insurance Limited declined some parts of a claim he made under his home insurance policy.

## What happened

Mr P has a home insurance policy underwritten by Ageas, which covers the contents of his home and his personal possessions.

He made a claim in October 2021 after a fire in his garage and shed. The claim related to the contents of the outbuildings – tools, golf equipment, fishing tackle and other possessions. There's no claim to Ageas relating to the buildings themselves – Mr P has no buildings cover under his Ageas policy.

The full amount of the claim hasn't yet been quantified – for reasons which will become apparent - but it amounts to somewhere above around £25,000.

The loss adjuster appointed by Ageas had some concerns about the claim, for reasons which are known to both parties, but in around March 2022, Ageas accepted liability for the claim and asked the loss adjuster to validate and value the items claimed by Mr P.

The outcome of that process is, in short, that Ageas have paid just under £15,000 to Mr P for items for which the claim has been accepted. Also, Mr P has accepted that some of the contents – mainly motor parts and accessories - are not covered under the policy.

However, Mr P made a complaint to Ageas about a third category of claimed item, which mainly consists of tools. Ageas declined the claim for these items because they believe Mr P may use them for business purposes. Mr P is a self-employed gas fitter.

Mr P told Ageas that the tools in the shed and garage were for personal use and not used for his business. He says the tools he needs for his business are kept in his work vehicle, not in the shed or garage.

Ageas asked Mr P to prove that. They thought that if he didn't provide such proof, they'd maintain their position and decline the claim for those items.

Mr P wasn't happy with that and brought his complaint to us. Our investigator looked into and didn't think Ageas had acted fairly and reasonably towards Mr P.

She thought many of the tools could and would be for personal rather than business use. They were, essentially, the kind of tools many people would have in their sheds or garages.

For that reason, she asked Ageas to reconsider the claim and re-assess those items for which they'd declined the claim on the basis that they were used in Mr P's business.

Ageas didn't agree and asked for a final decision from an ombudsman. They think the onus should be on Mr P to prove that the claimed items aren't used for business purposes.

Mr P says he's happy for Ageas to re-assess the claim for the relevant items, but he won't know until they've done that whether or not he's satisfied with the outcome.

### **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.

There's no dispute in this case about what the policy says or means. In essence, if Mr P uses the tools in question for business purposes, they aren't covered and Ageas are entitled to decline that part of Mr P's claim.

Mr P says the tools and equipment for which he's made the claim *aren't* used for his gas-fitting business. He says he has tools specifically for that purpose which are kept separately.

Ageas have asked Mr P to provide proof, evidence or substantiation of that. And they said they aren't going to pay for replacement of those tools and equipment unless and until Mr P provides that proof.

The question for me, in making this decision, is whether Ageas' stance (as described immediately above) is fair and reasonable. I don't think it is and I'll explain why.

Our view – and this is reflected in best practice in the insurance industry at present – is that the onus is on the policyholder, when they make a claim, to show that they've suffered a loss or damage due to an insured event. But the onus is on the insurer to show an exception or condition applies which might allow them to decline a claim (or part of a claim).

In this case, there's no dispute that there was an insured event – the fire. And there's no dispute that Mr P had contents lost or damaged as a result of that insured event.

Ageas are now saying they won't cover some of those contents because they were of a particular type or nature – that is, they were used for business purposes.

I know Ageas don't set out the position on business equipment explicitly as an exclusion or condition in the policy. It's set out in the section entitled "*Making sense of your policy*", which is towards the front of the policy document and defines or explains the cover provided.

However, in my view, it has the same effect as an explicitly listed exclusion – and in essence acts as an exclusion even if it is not described as such in the policy terms.

That means that if Ageas are to justifiably decline the relevant parts of the claim on this basis, they need to show that the tools and equipment were most likely used for business purposes.

I think it's unfair to ask Mr P to prove the negative in this case. And it's unfair to ask him to prove that what is effectively an exclusion doesn't in fact apply.

To be fair to Ageas, they haven't as yet tried to demonstrate that the tools and equipment were used for business purposes – because they've been asking Mr P to prove the opposite.

So, I'm going to ask them to reconsider the parts of the claim declined on that basis. If they wish to carry out further enquiries or investigations as a part of their reconsideration of the claim, they'd be entitled to do so.

I should stress that there's no real doubt in this case that some of the tools and equipment in question *could* be used for business purposes, given that Mr P is a gas fitter.

But I'm satisfied that if Ageas are to decline the claim on that basis they need to demonstrate that it's likely the tools and equipment *were in fact* used for business purposes.

I should say that it's difficult to see how some of the declined items might be used – at least in all but exceptional circumstances - in a gas-fitting business. For example, the currently declined items include fan heaters, post-setting concrete and a carpet stapler.

I accept that when Ageas reconsider the claim, they may do so under the remaining terms and conditions of the policy.

If there are other reasons to decline the relevant parts of the claim, it would be unfair to effectively override those in this decision by requiring Ageas to settle the claim for the relevant tools and equipment.

However, I certainly don't expect Ageas to argue that the items claimed by Mr P weren't in fact lost in the fire.

Their loss adjuster chose to dispose of items which were beyond economic repair – and which were on the face of it potentially covered under the policy (as opposed to the car parts and accessories, which weren't covered) - so it's not possible now to go back and verify the existence of the claimed items.

I acknowledge that Mr P doesn't wish to say he's happy with the outcome as yet, because he doesn't know how Ageas will treat his claim from now on.

If Mr P is unhappy with Ageas decision(s) after their reconsideration of the claim, he'd be entitled to make a further complaint to Ageas – and then to us if he's not satisfied with Ageas' response.

### **Putting things right**

In line with the reasoning set out above, Ageas must now reconsider the claim. If they are to decline the claim for any items on the basis that they were used for business purposes, they will need to demonstrate that's more likely than not.

### **My final decision**

For the reasons set out above, I uphold Mr P's complaint.

Ageas Insurance Limited must reconsider Mr P's claim in line with the terms and conditions of the policy - and on the basis that if they are to decline any item because it was used for business purposes, they need to demonstrate that was the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 7 February 2023.

Neil Marshall  
**Ombudsman**