

The complaint

Mr D and Miss R complain that Ageas Insurance Limited have unfairly declined a claim they made on a legal expenses insurance policy.

All references to Ageas include their claims handlers and agents.

What happened

Mr D and Miss R have a legal expenses insurance policy underwritten by Ageas. They have been involved in a dispute about a property they own with their neighbours for a number of years.

They previously sought to claim on this policy, and when Ageas declined cover for the claim on the last occasion, they approached our service. In August 2021 another Ombudsman said that Ageas should reconsider the claim in accordance with the remaining terms and conditions.

The subject of this present complaint is Ageas' decision to decline cover again after reconsidering Mr D and Miss R's claim in accordance with the Ombudsman's decision. Ageas' decision to do so was based on their determination that the type of claim Mr D and Miss R wished to bring was for a repair and renovation dispute. Ageas said the policy only covered those claims if they were contractual disputes with a contracting party about the repair and renovation of their property. In this case Mr D and Miss R were in dispute with the adjoining owner and not a contracting party so the claim didn't fall within cover.

Mr D and Miss R also asked Ageas to consider the claim under the nuisance section of the policy. Ageas said the claim wouldn't fall under this section either because the policy requires the damage complained of to be emanating from the policyholder's own property but in this case, it was emanating from the adjoining property.

Our investigator considered Mr D and Miss R's complaint and concluded that it should be upheld. She took the view that whilst Ageas were entitled to turn down the claim in reliance of their policy terms in the way that they had, they ought to have done this more promptly. She thought that Ageas should compensate Mr D and Miss R for the delay by paying them £100 in compensation.

Ageas agree with the outcome reached by the investigator but Mr D and Miss R don't. As such the matter has been referred to me to determine.

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 uphold this complaint in the same way and for the same reasons reached by the investigator.

When explaining my findings, I'm mindful of the considerable representations Mr D and Miss R have made in response to the investigator's explanations of her assessment of their complaint. I don't intend to repeat those representations nor address those that aren't relevant to the outcome of this complaint. No disrespect is intended to Mr D and Miss R in my doing so. Rather, it reflects the informal nature of this Service.

The key issues to determine in this complaint are whether the policy terms cited by Ageas apply to the claim being made and whether Ageas are entitled to rely on the sections of cover they have to turn down Mr D and Miss R's claim. In addition, I need to determine whether there have been any delays by Ageas in communicating their decision to decline cover, such that compensation should be paid to Mr D and Miss R.

Mr D and Miss R have questioned whether the policy terms Ageas have provided apply to the relevant policy period they are claiming for and whether Ageas is the correct insurer. They've cited several reasons why this might not be the case. Ageas have confirmed that the terms they've relied on are applicable to the policy period Mr D and Miss R are claiming for. And although Mr D and Miss R have raised questions about this, I haven't seen anything to support that different policy terms apply or that a different insurer is responsible. If Mr D and Miss R had produced evidence to support that was definitively the case, I might have reached a different conclusion, but in the absence of anything to suggest Ageas' assertion, based on its own records is wrong, I can't say that different terms and a different insurer is responsible for that period of cover. And it's not for me to determine who is responsible for historic periods of insurance generally. That's for the parties to establish. Given the information I have, I'm satisfied that the terms I have are applicable. It follows that my remit is to decide whether those policy terms were applied fairly. And that's what I've done below.

Ageas turned down cover firstly because they said the dispute Mr D and Miss R were involved in was a repair and renovation dispute. I agree that this is the most applicable section of cover in this particular policy. That's because Mr D and Miss R were seeking legal expenses insurance cover for a claim against the adjoining owner of their property for damage caused to their property on an ongoing basis because of rainwater seeping through that property to their own. Under that section the policy says:

The Insurer agrees to indemnify the Insured against Legal Expenses incurred in the pursuit or defence of any dispute or legal proceedings made by or brought against the Insured in a contractual dispute with a Contracting Party over the repair or renovation of the Insured Property provided that:

- a) the Legal Expenses incurred in any Claim or legal proceedings shall be limited to 75% of the sum in dispute or the Limit of Indemnity, whichever is less;*
- b) the amount in dispute exceeds £1,000 and the contract value is less than £300,000;*
- c) the work is commenced within the Period of Insurance.*

Mr D and Miss R have said they did have a contract with the adjoining owner of the property about the repair of their property. They've produced some correspondence they say supports this. I don't agree that what they've produced amounts to a contract with a 'Contracting Party' as defined in the policy as "A person, firm or company domiciled within the Territorial Limits with whom the Insured has a direct contractual relationship." And whilst the owner of the adjoining property might well have agreed to remedy the damage after the dispute arose, I've seen nothing to suggest that a contract was entered into with terms to this effect for the repair of Mr D and Miss R's property. And in any event the claim Mr D and Miss R wish to make is for costs arising out of the damage to their property and not in respect of an agreement by the adjoining owner to repair it. So, I don't think their claim is covered under this section of the policy nor do I think it was unfair for Ageas to turn down cover in the way that they have.

Mr D and Miss R asked Ageas to consider the claim under the nuisance section of the policy. That term says:

“Section A – Property Disputes

The Insurer agrees to indemnify the Insured against Legal Expenses incurred in any dispute or legal proceedings made by or brought against the Insured:

....

c) over actual or alleged nuisance emanating from the Insured Property;”

Ageas said the alleged nuisance wasn't emanating from Mr D and Miss R's property. From everything Mr D and Miss R have said, I'm satisfied that their complaint has always been that the water ingress was emanating from the adjoining property. I don't doubt that this is likely to amount to a nuisance in law which is what Mr D and Miss R say their solicitors have argued. But that's not enough for their claim to be covered. The nuisance itself needs to emanate from their property and in this case it doesn't. So, I can't say that Ageas need to cover their claim under this section.

I've looked at the delay in Ageas communicating their claims decision to Mr D and Miss R, and I agree with the investigator that this should have been communicated sooner. Given the time it took them, I think it's appropriate for Ageas to pay Mr D and Miss R £100 in compensation to compensate them for this. I'm pleased to see that Ageas agree with the investigator's view on this and that they've agreed to pay this sum to Mr D and Miss R directly.

Putting things right

Ageas Insurance Limited should pay Mr D and Miss R £100 to compensate them for the delay in communicating their claims decision to them.

My final decision

I uphold Mr D and Miss R's complaint against Ageas Limited and direct them to put things right by paying the award I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Miss R to accept or reject my decision before 3 February 2023.

Lale Hussein-Venn
Ombudsman