

The complaint

Miss A is unhappy that Ageas Insurance Limited (AIL) declined her claim for malicious damage.

What happened

Miss A claimed under her buildings insurance when builders, who had been working on her home, sprayed graffiti on the outside wall and took her gutters away. She also reported the matter to the police.

On request, and after some delay, the police provided AIL with details of its investigation into the events. The police said that the Crown Prosecution Service (CPS) didn't think there was sufficient evidence to warrant a realistic prospect of conviction. For that reason, the CPS said it would be a civil matter.

Based on this information, AIL declined Miss A's claim stating that it was a civil dispute.

Miss A brought her complaint to this service. She explained that the builders had fitted the gutters and started work on rendering the walls, both of which she'd paid for. But she withheld the completion payment because of a dispute about the materials used.

Our investigator upheld Miss A's complaint. She said AIL should've considered Miss A's claim under the policy cover for malicious damage. Further, our investigator recommended that AIL pay Miss A £300 compensation for the distress and inconvenience caused by the delays it could've avoided in handling her claim.

AIL agreed with our investigator's proposal, with the exception of providing cover for the guttering. It said the builders took the gutters as part of a dispute about payment and, in line with the police report, it considered this a civil matter.

I issued a provisional decision in February 2023 explaining that I was intending to uphold Miss A's complaint. Here's what I said:

provisional findings

I've looked at the avoidable delays and AIL's initial refusal to cover the graffiti under the policy. I won't go into detail here because AIL has accepted the recommendations to put this right. Having considered the evidence, I'm satisfied that the proposed compensation of £300 is fair in the circumstances, and that the graffiti falls within the policy cover for malicious damage.

The remaining issue, then, is that of the guttering. I've seen Miss A's bank statement which shows she made two payments to the builders, totalling £5,000. Miss A confirmed she made the first payment after the builders installed the gutters, and the second payment after they'd started rendering the walls. Because Miss A was unhappy with the standard of work, she sought consumer advice. In line with the advice, she wrote to the

builders to say she was withholding the final payment of £2,000 until the issues regarding the rendering materials were resolved.

It was at this point that the builders spray painted a message on her house and took away the gutters they'd fitted. This is evidenced in the photos provided, and the video footage the police reviewed.

I understand why AIL considered this a civil matter - it relates to payment of a contract between Miss A and the builders. However, the evidence clearly shows that the civil matter was about the workmanship regarding the rendering. Had Miss A refused to pay for the gutters, then I might have viewed this differently. But, as it stands, the builders took Miss A's gutters after she'd paid for them.

Whether this is regarded as theft because the builders took Miss A's property, or malicious damage because the builders caused damage to her home by removing the gutters on purpose and with ill intent, I find that AIL treated Miss A unfairly by declining her claim.

Miss A has since had new gutters installed at a cost of £1,350, as shown on the invoice she provided. Therefore, her loss in respect of the gutters is £1,350 because that's what she paid over and above what she would've done if the work had been completed and paid for.

I've thought carefully about what AIL said about this being a civil matter. Looking at the police report, however, I'm not persuaded that it's as simple as that. The police looked into the theft of the gutters and presented evidence to the CPS. The CPS has a much greater burden of proof, and the evidence didn't identify the individual who removed the gutters – just that someone did - so it didn't take the matter forward. But the evidence does show that the gutters were taken, so, on balance, I think it's reasonable to say Miss A has demonstrated that she suffered a peril which should be considered under the terms of her policy.

Therefore, I find it fair and reasonable to require AIL to consider Miss A's claim for her gutters under the malicious damage and/or theft section of her buildings policy. This is in addition to its consideration of the graffiti under the malicious damage section and payment of £300 in recognition of the delays Miss A experienced.

Overall, I think it's reasonable to consider both elements of the claim event under the policy, because Miss A provided sufficient evidence to persuade me that the graffiti and removal of her gutters were acts intended to cause loss and damage.

I said I was minded to require Ageas Insurance Limited to:

- reconsider the claim for the graffiti and gutters in line with the policy terms and conditions, and
- compensate Miss A £300 for the distress and inconvenience caused by the avoidable delays reaching a decision, and for failing to consider her claim under the malicious damage peril.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

AIL had nothing further to add.

Miss A accepted my provisional 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.

As Miss A accepted, and ALL didn't make any further submissions or provide further evidence for me to consider, I see no reason to change my provisional findings.

So, my final decision is the same as my provisional decision and for the same reasons.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Miss A's complaint and Ageas Insurance Limited must:

- reconsider the claim for the graffiti and gutters in line with the policy terms and conditions, and
- compensate Miss A £300 for the distress and inconvenience caused by the avoidable delays reaching a decision, and for failing to consider her claim under the malicious damage peril.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 17 March 2023.

Debra Vaughan
Ombudsman