

## The complaint

C, a limited company, complains that Ageas Insurance Limited unfairly declined a claim under their rent guarantee and legal expenses insurance policy.

Where I refer to Ageas, this includes the actions of its agents and claims handlers for which it takes responsibility.

## What happened

C holds a rent guarantee and legal expenses insurance policy for the insured property that they let out on behalf of the landlord. It has been let to the same tenants (Mr and Mrs) since 2014 and the policy has been in place since inception of the tenancy agreement.

Both tenants were referenced in 2014 by an agent of the policy. Mr passed these checks subject to having a guarantor, but Mrs didn't. A guarantor was appointed who also passed the checks.

In late 2019, C were informed by Mr and Mrs that they'd separated. Mrs said she wanted to remain in the property and take over the tenancy. After checking with the landlord, C agreed she could subject to her passing the reference checks and having a suitable guarantor. She was sent the application forms but didn't return them.

From December 2019, Mr and Mrs failed to pay the rent on time and in full, accruing arrears. So C made a claim to Ageas for the unpaid rent and the legal costs to evict the tenants.

Ageas declined the claim. It said C hadn't complied with the policy terms and conditions on the basis that there was no satisfactory reference in place for Mrs. C argued that there was a satisfactory reference in place for Mr and a guarantor. But Ageas said Mr had given his notice to leave under the tenancy, so he wasn't legally a tenant anymore or liable for the rent. As such, there was no satisfactory reference in place for the remaining tenant.

As C didn't agree, they raised a complaint. They said whilst Mrs had said she'd stay on at the property alone, Mr didn't leave and remained in the property. Ageas declined the complaint, so C brought it to our service in 2021.

In the meantime, the landlord took the tenants to court to evict them and was granted possession. The court order listed both Mr and Mrs as the defendants and ordered them both to leave the property. It also ordered them both to pay a sum of debt and interest to the landlord. C says this further proves that Mr was still living in the property.

The landlord complains that Ageas took several months to decide to decline the claim and by the time she was aware of its decision, Covid-19 restrictions were in place. This caused a significant delay on bringing legal action and by the time she regained possession of the property, the damage and lack of general maintenance was substantial.

Our Investigator considered the complaint and was satisfied that Ageas had fairly declined the claim. He said Mr had given notice under the tenancy which meant he wasn't legally

liable for the rent from that point. But, as there was no reasonable expectation that a claim would be paid from the point Mr left, he considered it fair for Ageas to refund all premiums paid from that point onwards.

C didn't accept this outcome. They said Mr didn't give notice to leave under the tenancy as nothing was received in writing and the keys weren't returned. Furthermore, he remained living there.

The landlord tells us that she's been able to recover the rent arrears in full. She wants Ageas to refund all premiums paid for this policy since inception in 2014 as well as compensation for the distress and inconvenience she's suffered as a result of the claim being declined.

Ageas also didn't agree. It said a claim had been paid so it was entitled to charge the full premiums for the period of insurance. And that C hadn't informed it for four months that Mr had vacated. But it agreed to make a partial refund.

As neither party accepted our Investigator's proposed resolution to this complaint, it was passed to me, and I issued the following provisional decision.

### **My provisional decision**

The terms and conditions of C's policy say:

*"Conditions precedent to liability*

*For the insured to be eligible for cover...the landlord or the agent acting on the insured's behalf, must ensure that the following procedures are adhered to:*

*The landlord or agent must...ensure that all tenants to be included in the tenancy have, in aggregate, been satisfactorily referenced and accepted for a minimum of the full monthly rent, or a higher amount, by the administrator's referencing service prior to the start date of the tenancy."*

It's not in dispute that C obtained satisfactory references for Mr and Mrs as a couple, as well as a guarantor, at the start of the tenancy. And, until late 2019, it's accepted that the policy terms had been complied with for this tenancy.

What is in dispute is whether the above policy condition was breached when C was informed that Mr and Mrs had separated and Mrs intended to remain at the property as a sole tenant. Based on the information I've seen, I'm not persuaded it was. I'll explain why.

Mr and Mrs were on a periodic tenancy from 2017. For serving notice under this arrangement, the tenancy agreement says:

*"If this tenancy has not been ended by written notice at the end of the term it will normally continue as a periodic tenancy on a monthly basis. This agreement then may be terminated by the tenant giving not less than one month's written notice to the landlord."*

I haven't seen anything to demonstrate that Mr served notice in writing to end his tenancy at the property. The landlord tells us she didn't receive anything in writing and C says they were only notified by Mr and Mrs independently that they'd separated – which I don't think means C should've automatically assumed Mr would be leaving. Whilst Mrs had said she wanted to remain in the property as the sole tenant, without written notice from Mr that he

intended to leave, C and the landlord have no apparent grounds to remove him from the tenancy agreement.

Because of this, I'm persuaded that when the rent arrears accrued from December 2019 Mr was still on the tenancy and liable to pay them. And as he'd been satisfactorily referenced – with a guarantor who had also been satisfactorily referenced – I can't fairly say the policy condition had been breached.

Had I found that Mr had served notice in writing of his intention to leave, in the absence of anything from the court which specifically held Mr liable for unpaid rent arrears, I'd be inclined to agree with Ageas that he was no longer a tenant.

As it stands, on the information available, I'm not satisfied Mr gave written notice under the tenancy and so remained liable for rent at the time of the arrears. As such, I don't think Ageas has declined the claim fairly and I'm intending to uphold the complaint and direct it to pay the claim, plus 8% simple interest per annum, minus any costs that have already been recovered.

The landlord has asked for all premiums to be repaid from 2014 but I don't think this is a fair resolution to the complaint. C and the landlord have had the benefit of the policy in place since that time. And as I find that the claim should be paid, I can't direct a refund of premiums as this would mean there is no policy in place to pay it.

I've thought about the landlord's comments regarding the damage to the property and that this is a result of Ageas' delay in making a claims decision. But I can't agree. There is nothing to suggest that, even if Ageas had made its decision quicker, that this claim would've have been held up by the pandemic given how closely the claim arose to the start of the lockdown.

And finally, I've thought about the landlord's request for compensation. But C is the policyholder and as the landlord isn't named on it, I can't award anything to her in recognition of the distress and inconvenience she's suffered. But I do recognise the inconvenience C has experienced as a result of Ageas' actions and for this reason I'm inclined to award £150 compensation.

### **Responses to my provisional decision**

C has asked for clarification on my proposed redress and queried whether this would include the refund of premiums and the legal costs incurred to evict the tenants.

Ageas 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 neither party had any further submissions for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

In answer to C's question, I must clarify that I haven't awarded a refund of any policy premiums. Our Investigator recommended that premiums paid from the point Mr left the property be refunded but neither C nor Ageas agreed to this, so the complaint was passed to me to decide.

I've awarded payment of the claim – which I understand was for the legal costs of eviction and rent arrears – in line with the remaining policy terms and conditions. By this, I mean that Ageas can apply the policy's terms and conditions excluding the ones I deemed to be unfairly applied. It should apply 8% simple interest per annum to the claim payment and it can deduct any costs that have already been recovered.

In addition, I'm awarding £150 compensation for C's inconvenience.

### **My final decision**

For the reasons explained, I uphold this complaint and direct Ageas Insurance Limited to:

- pay the claim for rent guarantee and legal expenses in line with the remaining policy terms and conditions, plus 8% simple interest per annum and deducting any costs that have already been recovered.
- pay £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 3 April 2023.

Sheryl Sibley  
**Ombudsman**