DRN-4040471

Financial Ombudsman Service

## The complaint

Mr and Mrs B have complained that their home insurer, Ageas Insurance Limited, has unfairly and unreasonably declined their claim for malicious damage caused by a builder.

## What happened

In 2015 Mr and Mrs B arranged with a local company to extend the rear of their home. Their garden sloped steeply away from the back of the house, and they wanted to change that by extending an existing terrace on a level with the house and adding a usable room in the space below, level with the remaining lawn.

In August 2015 the contractor asked Mr and Mrs B for a deposit of £6,000, followed by two further payments of £6,000 a fortnight apart thereafter, with the progress of the work to then be reviewed. In October 2015 Mr and Mrs B emailed the contractor with various concerns about the progress of the contract, centring on how work already completed, as well as that planned for or felt to be necessary, had or hadn't been accounted for in the costings. And that the costs had sharply increased, with the contractor seemingly having asked for an extra £18,000 on top of agreed costs.

In November 2015 Mr B emailed the contractor. The email explains that, by now, Mr and Mrs B had expected the work to be finished – but that was not the case, and that in the last few weeks work had not progressed as agreed. On 20 November, an exchange of phone messages regarding faulty equipment being used in the rain, which had affected the home's electrical installation, took place. The contractor did not return to Mr and Mrs B's home thereafter. Mr and Mrs B had paid the contractor a total of £24,000.

On 30 November 2015 Mr and Mrs B had a chartered engineer ("L) visit their home. L's letter of 2 December 2015 confirmed the visit had been undertaken "*in order to assess the recent construction work at the rear of the property and provide advice on how the work could be progressed to completion*". L also recommended involving a structural engineer. Consequently "B" (a structural engineer) was appointed and wrote to Mr and Mrs B in January 2016. B said that he could not provide any costs for necessary work at that time as he'd first need to know details about the work done to date.

In May 2016 Mr and Mrs B contacted Ageas. Ageas' notes from the time show that the cover for malicious damage on the policy was discussed. The conversation with Ageas did not result in a claim being made at that time.

Mr and Mrs B sought further expert advice from "F", a chartered engineer, in July 2016. F's report of 29 July 2016, noted that the "*objective of the inspection was to…..comment as far as possible on the seriousness of any damage seen and to suggest suitable remedial works if these were considered necessary"*.

In July 2019 Mr and Mrs B reverted to Ageas. They felt they could claim for accidental or malicious damage and were unhappy that Ageas hadn't, in 2016, made them aware that they could potentially use their legal expenses policy to pursue the contractor. Ageas issued a final response to Mr and Mrs B in August 2019 but they remained unhappy with Ageas'

response and complained to this service. Our Investigator considered the matter and noted that Ageas had not formally assessed a claim on the policy for malicious damage. He thought it should do so. Regarding the legal expenses issue, he felt Ageas should pay £50 compensation for poor customer service. Both parties agreed.

Subsequently Ageas began considering the malicious damage claim under the buildings policy. It sent a loss adjuster ("A") to the property. A discussed matters in some detail with Mr and Mrs B and, on 4 November 2020, told Ageas it had asked for more evidence to be provided "*to enable us to advise you fully on Quantum and Policy Liability issues*". A's report dated 31 December 2020 concluded that there was no evidence of any works, or damage caused during them, amounting to malicious damage under the policy, or any other event the policy offered cover for. A notified Mr and Mrs B, on behalf of Ageas, that the claim "*would not be admissible*". In March 2021 Mr and Mrs B asked A to arrange for Ageas to write to them; Ageas wasn't minded to do so. In November and December 2021 Ageas told Mr and Mrs B that it had issued its final response to them regarding its liability for damage in 2019 and nothing, in its view, had changed since, so it wasn't prepared to comment further.

In March 2022 Mr and Mrs B reverted to this service. They said that whilst Ageas was saying this was faulty workmanship – in the policy there was no exclusion for that in the malicious damage section, that was only in the accidental damage cover. They said Ageas had referenced an exclusion for faulty work in 2016 – so it had provided incorrect advice at that time. Mr and Mrs B also noted that Ageas had told them that the policy doesn't cover them for 'civil issues', which they noted the policy also did not say. Mr and Mrs B said that A's formal final report had not reproduced the hand-written report made on site, or the comments made, such as that A was truly shocked as to the vast extent of damage.

Mr and Mrs B explained that their health had suffered since the incident and with their dealings with Ageas. They explained that Ageas had repeatedly delayed and obstructed their claim, ignored their evidence and refused to provide them with a final response.

Mr and Mrs B provided an email report from a local building contractor "M". M explained what had been seen at Mr and Mrs B's property in 2017 and 2018, when assessing what the contractor had done in 2016, with a view to whether M could take on and complete the work. They also referenced the findings of architects who had also given their professional views – with one ("C") in 2022 stating the contractor had been reckless to proceed without planning permission.

Mr and Mrs B explained their view on the situation in more detail, looking at what the definition of malicious damage might be – the policy not having defined it – and explaining that, in this respect, there was damage which had, or must have, been done intentionally by the contractor. And that the contractor's intention can be inferred by their recklessness. But even if what the contractor did is thought to be faulty workmanship, it is still damage and malicious damage caused by faulty workmanship is not excluded. They note that they're required to report the matter to the police, which, belatedly, they had – but not that the police must pursue the matter criminally. They explained that whilst the contractor would never admit it, it did damage for weeks on the pretence of deceiving them into thinking work was being done so staged payments would be made. And the contractor had clearly never meant to finish the work as, for example, the ceiling height was far too low and topsoil needed for reinstating the lawn post-work, was removed from site. Mr and Mrs B contended that none of the work done had any value and to fix it will likely cause more damage to their home. They said the contractor was either reckless or a liar or both – any of which made the contractor malicious.

But Mr and Mrs B said they didn't think it was correct for the contractor's motivations to be too closely considered – that many things in law that are seen as malicious damage, graffiti

for example, don't contain any intent by the perpetrator to spitefully damage property. It also shouldn't matter that the contractors had their permission to be on the property. However, it was clear that the contractor, in stating that it could do this work, which was clearly untrue, had deceived its way onto the property. Mr and Mrs B said they can't understand how that can't meet the definition of malice.

They said that as the policy is unclear on this, they'd considered what the Financial Ombudsman Service says in this instance, and about what damage and malicious damage is. They referred to some past decisions issued by this service. They explained why they felt all of these supported their contention that what their contractor did at their property should be covered by Ageas as malicious damage under their policy.

Mr and Mrs B also referenced the fact that Ageas had not advised them in 2016 to use their legal expenses cover to take the contractor to court. They couldn't have known, they said, for the need for them to have raised that issue separately – indeed changes to Ageas' website in the years since show it was previously unclear. Mr and Mrs B said they expect legal advice at the time would have supported them in taking a case personally against the contractor, as opposed to the limited company, which would likely have been successful. They explained that they had consulted a local solicitor but that the expected likely costs had prohibited them taking that any further. And when our Investigator, considering their initial complaint, said it would be up to them to pursue a claim under their legal expenses cover if they wanted to do so – they hadn't felt well enough to do that alongside Ageas reviewing the malicious damage claim. Further, once Ageas had answered that and then spent months refusing to give them a final response, they felt so upset that their health was further affected so they then couldn't possibly pursue the legal expenses claim. They said that Ageas' poor advice and actions in the years since had prevented them from making a legal expenses claim in time.

They explained how they've been affected in the years since engaging the contractor – that they can't sleep, concentrate or live in anyway normally. That they are constantly waiting and worrying about the property's deterioration and/or collapse. They're living, Mr and Mrs B say, in a constant state of anxiety, plagued by thoughts of escape and the feeling of powerlessness to do so. Their position, financially and literally, they say is precarious and precipitous. Mr and Mrs B said that dealing with Ageas has been one of the worst experiences of their lives. They asked for Ageas to be made to accept their claim, which they felt they had proven as validly falling for consideration as malicious damage under the policy.

Our Investigator said that whilst Ageas hadn't shown the claim was excluded, Mr and Mrs B had not shown that they had a claim that arose from malicious damage. He felt the motivation of the contractor was important here, as was the fact that Mr and Mrs B had been satisfied sufficiently by the work to pay the contractor. And he said that he had found A's report more persuasive than M's. So, overall, he felt the Ageas policy would not cover this situation, that Ageas refusal to assist had not been unfair.

Mr and Mrs B were unhappy with the findings. They provided several extensive replies. They emphasised again that the contractor had clearly never intended to see out the job and had deceived them into thinking it, a landscaping contractor by name, could do this complex building work. A previous decision by this service, referenced before by Mr and Mrs B, was further highlighted. Mr and Mrs B said Ageas had chosen to design ambiguity into the policy when it had chosen to not define what it meant by malicious damage, and the consequences of that had to be that the definition of malicious which most favoured them had to be applied.

Mr and Mrs B said they had only reported the matter to the police recently. That the policy doesn't require this any way, and even if it did it was unlikely that any failure by them in this respect had been material.

Mr and Mrs B felt our Investigator hadn't addressed the narrative they'd provided which showed, in their view, the contractor had been malicious. Not least that it had been in the habit of closing its limited companies only to re-open shortly after under a similar name (often referred to as phoenixing). They said that A, rather than looking at the evidence of phoenixing, as highlighted by M, had merely sought to discredit M's report. And, when they had emailed A shortly after their meeting, confirming that A had said there was malicious damage, A had not refuted that or corrected them. They said A had discredited itself with contradictions and overlooking inconvenient truths, so it wasn't reasonable to rely on its report at all. In their view M's report is persuasive and their reports from architects and engineers needed proper consideration too – all of whom were better and more suitably qualified than A.

They restated their view that everything done by the contractor was with a view to supporting its effort to convince them to part with more money – that no damage was constructive it was all destructive. Clearly, they feel, this evidenced a malicious motivation. With the destructive nature of the damage and/or worthlessness of the work corroborated, they said, by M, architects and engineers. They referenced two press articles about rogue traders. They said they failed to see how our Investigator could conclude this was not malicious damage, or that they hadn't evidenced that it most likely was. And Ageas could have excluded malicious damage caused by rogue traders from the policy if it had wanted to but hadn't. They noted that Ageas had chosen to add an exclusion for faulty workmanship to the accidental damage cover.

Mr and Mrs B said Ageas, then A, had only ever wanted to shut down their claim. That neither were interested in decency, honesty or fairness. They pointed out that Ageas' own file shows that whilst it appointed A in the course of considering the malicious damage claim – it had told A it expected nothing to support such a claim would be found. Mr and Mrs B said that Ageas broke the law when it wrote the policy without defining the terms and it was now seeking to benefit from that law breaking by unfairly declining their claim – a decline which isn't supported by the policy wording, in law or in evidence. And they didn't think our Investigator had satisfactorily explained why their circumstances didn't meet the definitions of malicious damage used by Ombudsmen in decisions issued by this service.

They said Ageas can't be trusted, that it had constantly tried to deceive them and us. For example, Ageas had denied that they had made a complaint, in order to deceive us, only to then accept internally that a complaint had been made, meaning it should have provided a final response in 2021. It never did.

Our Investigator provided a further response to Mr and Mrs B explaining why he felt the contractor's actions did not amount to malicious damage. He said the key issue was whether the contractor had intended to cause damage and Ageas' loss adjuster (A) had felt that wasn't the case.

The complaint was passed to me for an Ombudsman's consideration. I felt that the outcome Ageas had reached was fair and reasonable – but that in a couple of respects it had mishandled things. So whilst I wasn't persuaded to say Ageas should change its position on the malicious damage claim, or that it was responsible for them not pursuing the legal option on their policy, I did think it should pay £500 compensation to Mr and Mrs B. I issued a provisional decision to explain my views to both parties. My provisional findings and award were:

*"Mr and Mrs B have made a lot of points and my detailed background above reflects that. But it is likely that Mr and Mrs B may think I haven't set out every point or concern they've raised. I trust they'll understand though that I have to consider the issue at the heart of their*

*complaint – the decline of the malicious damage claim. And so, whilst I've considered everything they've said, I've noted above the concerns they have that the key issue really turns on.*

*I appreciate that this has been an incredibly difficult time for Mr and Mrs B. I think it's fair to say they feel scammed by the contractor – that they spent a lot of money with no result other than it will cost them a lot more to fix or even merely reinstate their property. I also know they've felt stuck in the years since; unable to afford to change things and also unable to use their property as they had or even sell it. I don't doubt the worry and anxiety they've suffered. And I can understand why they think that all tracks back to Ageas – that they think they have a valid claim, which they've spent time and effort evidencing, and which Ageas has consistently denied.*

*At the outset here I think it's worth noting that I do think Ageas has to bear some criticism for the way it has handled some things. I've seen the note from Ageas when it had agreed to consider the claim in 2020 and it instructed A. Ageas told A that whilst it needed A to attend the property it didn't expect there to be any cover, so it just needed A's assessment to rely on. I totally understand why, when Mr and Mrs B saw this, they were upset. I don't think that was fair or reasonable of Ageas – it comes over as it, essentially, telling A what it should find. There was also Ageas' refusal to provide a final response having had A complete the assessment. Ageas said it felt it didn't have to as nothing had changed since 2019 – but that can't possibly be a reasonable response because since 2019 Ageas had considered a claim, including obtaining evidence from its loss adjuster. I can again understand the frustration this caused Mr and Mrs B. I think some compensation is fairly and reasonably due for Ageas handling these things poorly. I think £500 in the circumstances of this claim and complaint is fair and reasonable. But I don't think that Ageas' failures in these respects materially impacts on the claim outcome.*

*That said I'm conscious that Mr and Mrs B feel that A either misled them or that A's opinion changed between meeting on site and completing the formal written report which Ageas relied upon. That they feel there were also discrepancies between the hand-written site notes and the formal report. In this respect I don't think that A, or by association Ageas, failed Mr and Mrs B. I know their recollection of what was discussed on site was that A had agreed that malicious damage had occurred – but that is not what the hand-written site notes record. They show that damage was discussed, and A recorded what Mr and Mrs B said about it. But they also show that A explained to Mr and Mrs B that it was felt that the damage did not amount to malicious damage covered by the policy. And I think it's also important to remember that site notes and a final report are written for different purposes. Clearly the site notes helped A record what issues were at hand, and here some initial views of A – that this was unlikely to be malicious damage – were recorded also. Whereas the formal report is a more considered document. As Mr and Mrs B know, A asked them for various documents following the site visit which, along with a full consideration of the policy, were all taken into account by A before making its report. So I'm satisfied that A conducted a reasonable investigation and I don't think it misled Mr and Mrs B, mis-reported or changed its findings to suit the narrative Ageas had set out. But in light of the way Ageas instructed A, which I've taken account of above, I can fully understand why Mr and Mrs B felt unable to trust A's conclusions. All I can do here is assure them that I've taken their views in this respect into account. That said, as the parties will see from my findings below, I am not persuaded that A's view of things, in the end, is that material to my decision.*

*The contract that exists between Mr and Mrs B and Ageas does require – under "12 How to make a claim" – that for certain claims, including those for malicious damage, the police are notified. I mention this here as I know Mr and Mrs B have been concerned as to whether or not the policy did require them to contact the police, with Ageas at one time referencing this as a bar to policy cover. However, this wasn't ever the main reason for Ageas declining the*

*claim. That always centred on whether or not the policy would respond to the reported damage.*

*The policy in question is a perils based policy. That means that Ageas will respond to claims for damage caused by certain perils/ events. There are other types of policy that will offer cover for any damage, howsoever caused. The insurer for those policies will respond to any damage and if it wants to deny cover it will likely have to show that a policy exclusion applies. But a perils based policy is different. A perils based policy still contains some exclusions – and if an insurer wants to rely on them, to limit or decline liability, it will be up to it to prove they reasonably apply. The policy likely won't list what it doesn't cover, only what is 'included', with relevant exclusions applying. The important thing though – and which sometimes even insurers don't explain very well in considering claims – is that initially, the policyholder first has to show, on the face of it, that they likely have a claim under one of the perils included in the policy. A claim can still be 'excluded' even if there is no policy exclusion, if the damage has been caused by a peril not covered ('included') in the policy.*

*In this case the Ageas policy does contain an exclusion for faulty work – but only in relation to accidental damage. It is not a general exclusion (as many household policies contain), and nor is it a specific exclusion for the malicious damage peril. The issue here then is whether or not the damage Mr and Mrs B have suffered is most likely malicious damage – which is a peril covered by the Ageas policy. Ageas has argued it is not malicious damage – that its most likely poor or incomplete work – which is not a peril covered by the policy.*

*The policy does not define what is meant by 'malicious damage'. But it doesn't have to. No insurance policy of which I am aware contains a definition for every word or term used. To do so would be confusing at best. Rather insurers define terms which they want to give a specific meaning to. Any terms in the policy which are not defined are taken to have a normal, everyday meaning. Ageas has chosen to do that here with 'malicious damage'. So the fact that Ageas has not defined the term, does not mean it has created a lack of clarity in the policy. As such, it is my view, that the rule and approach, which apply when a lack of clarity has been caused by an insurer, don't apply here. Which means it is the everyday meaning of malicious damage which needs to be used when considering whether Ageas has acted fairly and reasonably in declining the claim.*

*I think it's fair to say that the everyday meaning of 'malicious' includes an acceptance that the perpetrator is acting in an unkind way towards the victim, that the perpetrator wants to harm the victim, most usually by damaging the victim's property or belongings, for no other reason than to cause them upset. The everyday meaning of 'malicious' does not usually extend to the perpetrator being malicious due to reckless behaviour or disregard for whether or not their actions cause damage. Indeed, recklessness or disregard would clearly lack the intent for any resultant damage to be considered malicious.*

*In the circumstances here, Mr and Mrs B have consistently argued that the contractors did damage at their home under the guise of work to deceive them into paying it more money. To me that is more akin to an action of fraud or theft, not a spiteful action born out of a desire to merely cause upset. So I can understand why Ageas, regardless of agreeing to consider the claim, has maintained that the damage at the property is not malicious damage as covered by the policy.*

*I am, of course, aware of the decisions that Mr and Mrs B have highlighted as being issued by other Ombudsman at this service in respect of malicious damage claims. It's worth noting here that no Ombudsman decision sets a precedent for another. Rather each case is assessed on its own merits. However, I can see why Mr and Mrs B feel that one of the decisions that they've particularly highlighted has some relevance to their situation.*

*The decision in question concerns a trader who the complainant had contracted to do repairs at her home. Money exchanged hands, the complainant believed work was done externally, the trader left and water damage to the home was found internally. The complainant had claimed from her insurer under the cover on her policy for vandalism and malicious acts. The insurer agreed to cover the internal water damage but not the external area which had been left in a damaged state. Our Ombudsman found that the external area should be covered by the insurer. As Mr and Mrs B believe their contractor only caused damage at their home, whilst taking money from them, I can see why they think its relevant that our Ombudsman upheld this other complaint.*

*The Ombudsman in that complaint did find that the external area had been damaged as part of a malicious act by the trader. But I don't think the decision can be directly compared to Mr and Mrs B's situation. Seemingly material from the external surface was removed, torn up, and no attempt was made to reinstate the area. So I think it's fair to say, in that case, where the trader had been contracted to complete a repair, that no work was done – only damage. I think that is very different to what happened at Mr and Mrs B's home where the contract involved an element of preparation work in digging out the area and the contractor did do work at the property over a number of weeks, including transplanting plants, digging out and installing a retaining wall. Whether that work was of quality or not is a different matter. But it does make the circumstances different from those considered by my fellow Ombudsman in the comparison decision. However, and for completeness, I have considered the evidence which exists about the work that was done at Mr and Mrs B's home.*

*I'm also mindful that Mr and Mrs B have provided various evidence over the period since their contractor left their home which they feel shows the work done had no worth. I accept that, as recently as 2022, an architect having considered the property in the years since the contractor left, confirmed that he felt the contractor had been reckless to proceed without planning permission. And another architect, in 2017, had recommended demolition as the best way forwards. Further that M, a builder, having seen the property in 2017, confirmed in 2022 that he felt no work of worth had been done. But I'm not persuaded that the views of these professionals are the most relevant here. I say that as they've come quite some time after the incident in question and they have been put forward by professionals with less relevant qualifications than those that saw the property and provided their views much closer to the incident date.*

*In that respect, in late 2015 and through summer 2016 three engineers, L, B and F, assessed the work that had been done at Mr and Mrs B's home. None of them said the work was so bad it had no worth. Nor that the only way to rectify the situation was to demolish everything and start again. L felt the work/project could be completed. B didn't say that couldn't be done, rather that in order to say what that might involve, more detail about the construction would need to be known. F found no damage to the house and that there was no sign of major distress to the partially completed structure. F did have some concerns though about how the retaining wall, built by the contractors, had been constructed and its fitness for purpose, particularly in light of the known soil type in the area. F does discuss the necessity of demolition – but on the basis that it can't be known how the construction was completed, which isn't quite the same as something needing to be demolished because it is faulty/dangerous/of no worth. And even having taken all of that into account – F's recommendation is to progress the project with what is already there being left in place and built upon. I think L, B and F's views, the latter of which is the most detailed, are persuasive evidence of the contractor's work not being entirely without merit or equivalent to no more than mindless, destructive damage.*

*I know that some existing, or previously existing structures and/or fixings at Mr and Mrs B's home were also damaged or removed by the contractor. They generally feel this is further indication of the contractor's malice, as they hadn't agreed to some of the things that were*

*done, or hadn't been told they'd be done. They also felt some, like removing the topsoil from the site, showed the contractor had no intention of completing work. I'm not persuaded the latter is the case – all too often poor and ill-thought out work is completed by contractors. However, it isn't necessary for me to know why these things might have occurred, only to consider whether they're most likely indications of malicious damage. And, in that respect, I'm drawn back to whether or not the contractor did these things to harm Mr and Mrs B – and I have not seen anything that makes me think that is the case.*

*Rather they all appear to have been damaged in the course of the contractor carrying out work at the property. And if some of that work or those actions weren't agreed by Mr and Mrs B then that isn't evidence of malice, such as would be needed for malicious damage cover on a household insurance policy.*

*I'm also mindful that Mr and Mrs B, following our Investigator's view on their previous complaint, did not make a claim on their legal expenses cover. They believe that if things had been different, they'd have utilised this policy benefit, which would have enabled them to issue proceedings against the former director of the limited company on the basis of negligence, which the limited company status, and that company having been dissolved, would not protect the former director from. I know that they feel Ageas prevented them from doing this – firstly because it didn't give them correct advice in 2016, and secondly because when they were aware they could take a legal expenses claim, the dispute with Ageas had taken its toll and they couldn't face pursuing a legal claim too.*

*I appreciate, as I stated at the start, that this has been a difficult time for Mr and Mrs B. And I recognise that their health has been affected and they've struggled at times to cope. I was also critical of Ageas in a few aspects for which I've said I intend toward compensation. But I don't think that Ageas got the claim so wrong, either in its outcome or its overall handling of it, that I can reasonably conclude it is responsible for Mr and Mrs B not feeling able to pursue the legal option they had on their policy.*

*In summary then I think Ageas' conclusion that it had no liability under the malicious damage cover on the policy for the condition which Mr and Mrs B's contractor left their property in was a fair and reasonable one. I think it would not be fair or reasonable for me to make it accept any of that damage as being malicious and therefore subject to cover on the policy. I also think it wouldn't be fair to blame Ageas for Mr and Mrs B not pursuing a legal expenses claim in the years since the incident. Overall, I don't think Ageas handled things too badly – but I've identified a couple of issues where I think it did fail them. And I've awarded some compensation in this respect. I know my decision, provisional as it is, will be disappointing for Mr and Mrs B. That is regrettable. But I can assure them that in reaching my decision I have taken into account all of their arguments and evidence.*

*I'm minded to require Ageas to pay Mr and Mrs B £500 compensation."*

Ageas said it accepted my findings. Mr and Mrs B provided a detailed reply setting out the concerns they have with my findings but also why they disagree with the outcome reached. I've summarised their replies below.

They detailed again what had happened between them and the contractor emphasising they'd had no choice to pay more money based on the contractor's calculated extortion. And my use of phrases such as "they said" added a layer of ambiguity to what was actual fact. They said they're unhappy that I included what Ageas and our Investigator had said without applying any critical thinking or qualification to that. They said they didn't agree with the Investigator's findings from 2020.

Mr and Mrs B said that they are not to blame in this circumstance. That they are the victims. That the contractor told lies upon lies and what was done went far beyond what I had described as "*poor and ill-thought out work*".

They detailed further concerns they have with A's actions and reports. Including that the individual which visited their home has not specifically denied agreeing there was malicious damage.

Mr and Mrs B said that they haven't seen Ageas' full file submissions. Whereas detail they have sent to us has been automatically shared with Ageas. They don't know if what I've said is the view of the Financial Ombudsman Service or Ageas, and Ageas has sought to deceive the Financial Ombudsman Service before.

They said they don't accept my view on the everyday meaning of malicious. Their research shows that common usage rarely reflects "your quite strict and narrow explanation".
Mr and Mrs B provided a variety of examples to show this, explaining they include reckless disregard and general destruction and defacement of property, where intention is imputed because of the act itself. Which they feel other decisions by our service reflect. They gave further detail about their views on the contractor's actions, with supporting email correspondence, explaining again that he clearly had no intent to do the job contracted for. And even the transplanting the contractor did, had no chance of being successful.

They contest that by not defining what it means by 'malicious damage' there is no ambiguity. They feel that at least the headline perils should be explained. Mr and Mrs B said they've found a statistic which shows around half of all claims made to Ageas are declined – so that must mean, Mr and Mrs B say, that half of Ageas' policyholders are unclear about the cover Ageas offers, which must mean its policy is unclear.

Mr and Mrs B said Ageas has never demonstrated any duty of care – it had misadvised them and failed them at every turn, consistently trying to place blame on them for what it had got wrong. They feel its association with a charity further misleads its policyholders whilst giving it a constant supply of vulnerable customers. They note it has many unhappy customers and feel this must be because it unfairly declines claims. Mr and Mrs B said it had acted in bad faith towards them on numerous occasions.

They noted that A's representative had said this was the second worst situation he had ever seen and that work would likely need starting again. They emphasised that this was exactly what M had said in his report – which had been provided at no cost to them as a goodwill gesture from someone they did not know privately. They feel that these views should not be dismissed, and nor should that of the architects, including one who had attended with L and B in late 2015/early 2016. And the local authority building control team said the room the contractor was meant to have been creating, could only be a garden store. They are definitely, they said, worse off as a result of the contractor's work.

Mr and Mrs B provided further detail about contact they'd had with a solicitor, regarding dealings that solicitor had previously with the contractor. They said A had told them, establishing a chain of past similar behaviour by the contractor could help their claim. They said they had certainly done this through contact with the solicitor.

Mr and Mrs B explained the huge impact this has had on them; financially, mentally and physically. They maintained that their not pursuing the contractor in the courts, via the legal cover on their policy, is indeed Ageas' fault.

**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.

I'm sorry if my background detail set out provisionally upset Mr and Mrs B – but it is a summary of what had happened to get the parties to the point of my involvement. So it necessarily has to include things like our Investigator's findings – which I know Mr and Mrs B disagreed with and were unhappy about when they were issued in 2022. All of that detail brought us to the point of my provisional findings, where I reviewed the complaint afresh and where I reached my own conclusions on it. As my findings superseded our Investigator's view and were much more detailed, I issued my provisional decision. I'm satisfied by the accuracy of what I set out provisionally and I've used it again in this final decision.

I noted provisionally that Mr and Mrs B felt scammed. I certainly respect that they feel they are victims here. Of course they'll also understand that in terms of the contract in place between themselves and the contractor, I can't make a formal finding of wrong-doing against the contractor. That is not because I am giving the contractor any benefit of doubt. Rather, it's because my remit only extends to considering the acts of financial businesses, like insurers, like Ageas.

Prior to Mr and Mrs B responding to my provisional decision the documents I had relied upon on reaching those findings were shared with Mr and Mrs B. I understand that they had seen most of that detail already but that they think there is more – however, as part of this decision process, I have shared with them what I've relied upon. And as my provisional findings explain – in the circumstances here, most of my findings revolve around answering Mr and Mrs B's concerns about things like our previous decisions, whether the policy was clear and the meaning of 'malicious damage'. And why, in light of all of that, Ageas' decision to decline the claim for malicious damage was, in my view, fair and reasonable. There isn't much which really turns on Ageas' submissions to this service.

I did, however, consider provisionally concerns raised by Mr and Mrs B about A's reports. I recognise that Mr and Mrs B recall the individual that visited their property as agreeing there was malicious damage – but that is not what was reflected by the notes taken on site. I wasn't present at the time of the visit, so didn't hear the conversation. But I'm mindful that two parties to a conversation can come away from it, even immediately afterwards, with different understandings of what was said. I've reviewed the site notes, as requested by Mr and Mrs B, in light of comments they've provided about what they think they show. I remain of the view provisionally reached: "*I'm satisfied that A conducted a reasonable investigation and I don't think it misled Mr and Mrs B, mis-reported or changed its findings to suit the narrative Ageas had set out*".

I note and respect the detail Mr and Mrs B have found and provided about the common everyday usage of the phrase "malicious". But I stand by what I said in this respect provisionally. Further, having noted that Mr and Mrs B felt that the contractor had only done damage, which must, therefore, be malicious, I explained provisionally that the expert evidence they provided did not support that only damage was done by the contractor. So I remain of the view this was not an instance of malicious damage.

I appreciate that Mr and Mrs B feel the policy is unclear. But, as I explained provisionally, there is no requirement for an insurer to explain every term – it is up to each which they choose to define. The fact that Ageas has chosen to not give a specific definition to the peril of malicious damage does not make the policy unclear. And it would be inappropriate for me to make any finding about the statistic referenced by Mr and Mrs B. No details about the declined claims, or even the types of policy they were made under, are known. My focus has

to be on Mr and Mrs B's complaint about their claim which Ageas declined under the policy which exists between them. I'm not persuaded that policy is unclear.

I can't comment on the way Ageas generally comports itself. The way a business acts generally is a matter for the regulator, The Financial Conduct Authority. In respect of this claim I did accept, and explained, that, in my view, Ageas had not always dealt fairly with Mr and Mrs B, that this had affected their ability to trust it and I awarded compensation. I see from its reply, Ageas has accepted that. I trust that may provide some solace to Mr and Mrs B, that it has been recognised that they were failed. But I also explained that those claim handling failures did not, in my view, materially affect the fairness and reasonableness of the claim decision reached.

I explained provisionally why I felt the most relevant expert evidence came from the engineers, commenting most recently after the contractor walked away; which I referenced as L, B and F. Mr and Mrs B have said an architect attended with L and B, and confirmed in an email that what had been done would have to be demolished. B's report from January 2016 confirms the architect was involved at that time. I considered the email Mr and Mrs B have referenced when making my provisional decision, it's dated January 2017. I stand by my provisional assessment that the reports from L, B and F are most relevant. And whilst I appreciate that Mr and Mrs B have sought to establish a chain of behaviour by the contractor, I can only reasonably consider what the expert evidence says about the work the contractor completed at their home as far as that pertains to whether it was all just destructive. In considering those reports I considered their full content and took into account the purpose for which they were written. I don't doubt there was poor work done at Mr and Mrs B's home and from the expert views available, it seems that what was done was likely not fit for purpose. But the expert engineers do not completely slate and criticise what was done. If only 'destruction' had occurred at the property, I think these experts would have been able to see that and would have said so. I remain of the view that this expert evidence does not show that the contractor's work was entirely without merit or equating to no more than mindless destruction.

As I said provisionally, I accept that for Mr and Mrs B, this has been an extremely difficult time. And I don't doubt that their health has been affected. But I note that even in their response to my provisional findings they explain that their poor health was in no small part due to the treatment they'd received from the contractor. It wasn't just any failure by Ageas that had impacted them. And I bear in mind that although they were struggling with poor health, Mr and Mrs B were able to pursue Ageas via a complaint to this service. Further, whilst they've explained that their health meant it was impossible for them to pursue both avenues, they chose one over the other. I appreciate that this is difficult for Mr and Mrs B to accept, but having reviewed everything, from my removed and impartial position, I remain of the view that Ageas can't fairly and reasonably be held liable for them not pursuing the legal option they had on their policy.

I understand how important this complaint is for Mr and Mrs B. I can assure them that I understand the unbelievably difficult situation they are in. And I have carefully considered and understood everything they've said, all the arguments they've made and the evidence they've presented. But, with all that in mind, I remain of the view that Ageas' claim decision was fair and reasonable in the circumstances and that whilst it did fail them, its failures did not prevent them from pursuing the legal option they had on their policy.

With regret for the disappointment I know this will cause Mr and Mrs B, my views have not changed from those issued provisionally. As such my provisional findings, along with my comments here, are now the findings of this my final decision.

## Putting things right

I require Ageas to pay Mr and Mrs B £500 compensation.

## My final decision

I uphold this complaint in part. I require Ageas Insurance Limited to pay the redress set out above at “Putting things right”.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B and Mrs B to accept or reject my decision before 21 April 2023.

Fiona Robinson
**Ombudsman**