

The complaint

Mrs S complains through Mr S that Ageas Insurance Limited has declined her home insurance claim for damage caused by badgers as it says it is excluded under her policy. Although the claim was handled on behalf of Ageas by a claims investigation company, for convenience I'll refer to Ageas throughout.

What happened

In April 2021 Mrs S made a claim to Ageas because of damage caused to her property by badgers building their setts under her garage. Ageas declined the claim initially because it said that badgers are vermin and there is a general exclusion for damage by vermin in the policy. It also said that there was no cover under the policy for that sort of damage. This was bearing in mind that Mrs S didn't have accidental damage to buildings as part of her policy cover.

Our Investigator initially didn't uphold the complaint for the same reasons as Ageas i.e. damage by vermin is excluded under the policy and there is no cover for the damage identified.

Mr S disputed that badgers could be classed as vermin as they are a protected species. He also produced photos of the external damage to the house which consisted of lower level cracking. He believed Ageas should cover the damage as subsidence.

Ageas still said the claim would be declined as it still contended that badgers are vermin and that there is enough evidence of this online to show this. It did however say that it had delayed in considering Mr S's further evidence and in sending out its conclusion. For this it paid compensation of £150.

Our Investigator still thought that Ageas hadn't acted unfairly as they thought badgers could be considered as vermin.

I issued a provisional decision. In it I said that as badgers don't fall easily into any of the definitions of vermin quoted by the parties they can't fairly and reasonably be classified as such for the purposes of Mrs S's policy. So I said Ageas should reconsider the claim.

Mrs S didn't respond to my provisional findings so I assume she has no further comment to make.

AXA's appointed claims investigation company referred the matter to the underwriters but no response has been received. I understand that they disagree with my findings but have provided no meaningful response.

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.

“Mrs S’s policy has a general exclusion for the following damage:

“We will not pay for any loss or damage caused by domestic pets, insects, or vermin.”

The problem in this case is that the evidence appears to show that the damage was caused by badgers. And the policy doesn’t define what Ageas means by vermin. So it falls to be decided whether Ageas’ view that badgers can be classed as vermin is reasonable.

So Ageas, Mr S and our Investigator have considered online definitions. One such definition is “small animals and insects that can be harmful and are difficult to control when they appear in large numbers”. I don’t think badgers fall easily into that definition as they wouldn’t be regarded as small animals or appearing in large numbers. Mr S has referred to another definition which includes “any of various animals that prey on game such as the fox or the weasel.” But again I don’t think that badgers are generally known for being a pest in terms of preying on other animals.

And in its claim notes Ageas says that vermin can be interpreted to cover animals that carry disease or cause destruction to crops and farmland. Yet I think even that is contentious, and Ageas hasn’t specifically relied on that definition in its responses to the claim.

On the other hand Mr S has pointed out that badgers and their setts are protected by law, which other animals traditionally classed as vermin are not.

I think Ageas could have chosen in this policy to define vermin and include badgers as I understand other policies do. My view is that if Ageas had to search around for a definition that would fit and as badgers don’t fall easily into any of the definitions of vermin quoted they can’t fairly and reasonably be classified as such for the purposes of Mrs S’s policy.

So it falls to be decided whether Mrs S has a claim that could be covered under the policy. She doesn’t have accidental damage to buildings cover but she does have subsidence cover. And on the face of it the cracking Mr S has shown us could be caused by subsidence. And I’m aware of cases where badger setts have caused subsidence.

I think that Ageas should reconsider the claim. Subsidence is a technical issue which an expert will have to look at. So I can’t say at this stage whether the claim should or will ultimately be covered.

Lastly I note that Ageas delayed in looking at Mr S’s further evidence and that it paid Mrs S £150 compensation for the inconvenience caused. I think that was fair so I won’t make any other finding about that.”

As neither party has provided any meaningful response, I remain persuaded by my provisional findings as set out above. Those findings are now final and form part of this final decision.

Putting things right

Ageas should reconsider Mrs S’s claim in line with the remaining cover, terms and conditions of the policy.

My final decision

I uphold the complaint and require Ageas to provide the remedy set out under “Putting things right” above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 31 May 2023.

Ray Lawley
Ombudsman