

The complaint

The estate of Mr B1, represented by its executors, Mr B and Mr H, has complained about the estate's property insurer, Ageas Insurance Limited, because Ageas has declined a claim for water damage on the grounds it believes the property was unoccupied.

What happened

Mr B had been living at the property insured to care for his father. His father passed away in April 2022. In December 2022, Mr B was visiting family in Europe when the gardener for the property noticed water coming from the upstairs bathroom and called Mr B. Mr B had a friend visit and switch off the water. He made a claim to Ageas.

Ageas appointed a loss adjuster and a drying company, the latter to start clearing and drying the property. But the loss adjuster thought the electricity usage at the property was low and noted that no council tax was being paid – so Ageas declined the claim on the basis the property was unoccupied.

Mr B said that was unfair – he did live at the property, it was his UK residence and the usage was only low compared to when his father was alive because of their different needs. He said no council tax was being paid due to probate being ongoing – not because the property was unoccupied. When Ageas wouldn't change its view, Mr B and Mr H, as executors, complained on the estate's behalf to the Financial Ombudsman Service.

Our Investigator considered further evidence from Mr B about his use of the property, but felt Ageas' evidence was more compelling. So he thought Ageas' decline of the claim had been fair and reasonable.

Mr B did not agree with the findings. He maintained he had been living at the property. The complaint was referred to me for an Ombudsman's consideration.

I felt minded to uphold the complaint; that, for three reasons, it was unfair and unreasonable for Ageas to rely on the unoccupancy exclusion to decline the claim. I felt Ageas should be progressing the claim but wasn't minded to award compensation for upset. So I issued a provisional decision to explain my findings to both parties.

Following receipt of my provisional decision; Ageas said that it had nothing further to add, that it accepted it. Mr B indicated that the estate was generally in agreement with the findings. But clarified that, although the estate was not really looking for compensation, it had been inconvenienced by incurring costs for commencing repairs.

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 said provisionally:

“Ageas did not reserve its rights

Ageas knew when the claim was made and it appointed the loss adjuster, that there was a potential bar to the claim being successful – that the property might have been unoccupied. It asked the loss adjuster to investigate this. The loss adjuster did so. But it also appointed a drying restoration company to complete initial work at the property. And, in doing that, the executors were not told that this was on a reserved basis only – that Ageas’ liability had not been accepted and it was reserving its right to decline the claim if it transpired the property was unoccupied. Ageas knew of a potential reason for decline, but it went ahead regardless and entered into a contract for repair of the property. Having entered into a contract to repair the property, without any caveat or caution as to rights, Ageas, in my view, waived its right to later rely on the unoccupancy exclusion to decline the claim.

The unoccupancy status was considered against the wrong term

Even if Ageas can convince me I’m wrong regarding the above, I think the specifics of the unoccupancy were considered against incorrect policy wording. Ageas put the task of assessing the unoccupancy with the loss adjuster. And the loss adjuster’s file shows its focus was on whether the home was unoccupied for more than 30 days, that Mr B had stayed and slept in the house for at least three days a week, every week, rather than just visiting to check on the home. But that is not the policy wording which applied to the cover in place for the estate.

The policy wording which applied to the estate considers the home to be unoccupied if it isn’t lived in for more than 60 days in a row, there is no reference to the home having to be stayed in weekly for x number of nights. So the loss adjuster’s conclusion that the home was likely unoccupied is flawed because it has considered that against the wrong wording.

I appreciate that Ageas has used the correct wording in its final response. The final response confirms the claim decline based on the unoccupancy stands based on the findings of the loss adjuster. But, in that respect, no allowance or explanation is given as to why the flawed conclusion of the loss adjuster still applies given the correct policy wording. It seems unreasonable for me to say Ageas has shown it can fairly and reasonably rely on the exclusion to decline the claim when those it tasked with investigating the issue did not assess or apply the correct wording.

Council tax and electricity usage

I note though that Ageas, when applying the correct policy wording in its final response, referenced two findings in particular from the loss adjuster – an exemption for council tax and low electricity usage. Seemingly Ageas thinks these still show the property was unoccupied ie not lived in (or intended to be lived in) for more than 60 days in a row. Ageas’ final response letter does not mention the other data Mr B has provided with a view to evidencing he was living in the home regularly. Nor does it mention his explanation of why there was an exemption and low usage.

I think Mr B has adequately explained that he did not live at the property ‘full-time’. And in terms of the unoccupancy exclusion he did not need to. The wording of the policy definition and exclusion relate to a circumstance where the property is vacant for more than 60 days. So, Mr B could stay away from the property for up to 60 days with it only becoming ‘unoccupied’ if, on day 61, there is still no-one living there.

Mr B’s explained how he spent his time at the house, living mostly in two rooms. That might well account for low electricity usage. I’ve seen photos of the property – they show some furnishings and contents; beds, side tables, lamps, framed pictures on the walls and books. I can also see there were cleaning products in both the bathroom and the kitchen. Along with what appear to be toiletry bottles over the bath and cups on the drainer in the kitchen, with small appliances such as a toaster and kettle on the side too. I see that one bed does

appear to have some bedding on it, that there are clothes in the wardrobe and many personal effects in the sitting room, as well as a small tv or monitor. I think the sitting room was being used regularly by Mr B. I think Mr B was living there at least some of the time. I've not seen anything persuasive regarding the contents of the house or the electricity usage which makes me think it was unoccupied. As such, I think that Ageas' view, that it hadn't been lived in, at the time of the incident, for more than 60 days in a row, is unfair and unreasonable.

Mr B has been able to show some receipts from purchases for goods and/or services when he was in the area of the property. They don't show conclusively he was staying or living at the property. So, taken alone, I could see why Ageas might have felt they didn't show occupancy. But there is a receipt for emptying the septic tank in November 2022 and Mr B's motor insurance is registered for the insured property. Adding all this detail to the photos of the house further persuades me that Mr B was likely living there during the 60 days before the incident. It follows that it also further persuades me that Ageas' view, that it hadn't been lived in, at the time of the incident, for more than 60 days in a row, is unfair and unreasonable.

I have to acknowledge though that there is a council tax exemption for the property. Mr B has explained that is because the property is in probate. And I can see that is the case. But I can also see that a probate exemption is granted where the council considers the property, during probate, to be unoccupied. The exemption has been given to the estate. So I can see Ageas' concern that this, by default, means the property is unoccupied. However, Ageas hasn't shown that the council's definition of unoccupied matches its definition. And this is important because Ageas' policy sets out definitions for terms and phrases which it wants to give "special meaning" to, other than a normal everyday meaning. It isn't clear if, when the council considers whether a property is unoccupied it applies a normal meaning to that, or something specific. But Ageas hasn't shown that the council uses the same definition or 'measure' for unoccupancy that it does. So the council deeming the property unoccupied for the purposes of council tax exemption does not necessarily mean it is unoccupied as per Ageas' policy definition which applies to the exclusion it has sought to rely on to decline the claim.

In summary then, the available evidence suggests the property was most likely occupied for some time at least, or on occasion, during the 60 days before the incident and the council tax exemption, in this situation, does not detract from or override that. Therefore, I'm of the view that Ageas hasn't shown it has fairly and reasonably relied on the exclusion for unoccupancy to decline the claim.

Compensation

I appreciate that this has been a difficult time for Mr B. However, the claim on the policy relates to the estate and he, and Mr H act in their role as executors in respect of the claim. They aren't policyholders or complainants in their own right. The estate can be inconvenienced but it can't suffer distress. And I haven't seen that the estate has been inconvenienced here. So, on this occasion, I won't award compensation."

As neither party objected to my findings, there's little more for me to add here. I'd clarify though that financial outlay is considered separately to compensation for distress and inconvenience. And as Ageas is to progress the claim the estate's cost for repair can be considered as part of that. Also as the estate reasonably had to move to repair because of Ageas' unfair and unreasonable decline of the claim, Ageas won't reasonably be able to apply any policy terms to any claim settlement which relate to its claim outlay being limited to only what it would have cost it to repair.

My provisional findings, along with my paragraph above, are now those of this, my final decision.

Putting things right

I require Ageas to progress the claim for water leak damage at the property, taking into account the remaining terms and conditions of the policy where appropriate, but bearing in mind that it has already entered into a contract to repair the property. It will not be able to rely on unoccupancy to limit or remove its liability for the loss.

My final decision

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

Under the rules of the Financial Ombudsman Service, I’m required to ask the estate of Mr B1 to accept or reject my decision before 11 September 2023.

Fiona Robinson
Ombudsman