

## **The complaint**

Mrs L complains about Ageas Insurance Limited's (Ageas) handling of a loss of rental income claim made under her commercial insurance policy.

Any references to Ageas also include its agents.

## **What happened**

Mrs L owns a property which she rents out to tenants. It was insured with another insurer, who I'll refer to as X. Mrs L's property experienced an escape of water in August 2022 which was dealt with by X. They settled the claim in late 2022. Part of the settlement offer included a payment for loss of rental income as Mrs L's tenant had moved out of the property. X chose to cash settle the claim on the basis their contractors had identified some potential subsidence damage which they said pre-existed the policy held with X.

In January 2023 Mrs L made a claim to Ageas, for both the subsidence damage and the rental income she says was lost as a result of the repairs from the escape of water claim being delayed until the subsidence damage was repaired.

Ageas appointed a loss adjuster to inspect the damage. They arranged for an inspection of the underground drainage system which identified a fault. Repair works were carried out, followed by a period of monitoring to ensure the property was stable.

Mrs L complained about the loss of rental income, as her tenant still hadn't moved back to the property. Mrs L says this caused her some financial difficulties. In July 2023, Ageas responded to Mrs L's complaint. They apologised for the time taken to progress the claim so far. Ageas noted there had been a lack of communication at points, as well as some avoidable delays. They offered £200 compensation. Shortly after this, Mrs L made another complaint about the impact the loss of rental income was having on her, but we've not seen a response to this complaint.

Mrs L then referred her complaint to this Service. It was considered by one of our investigators who said he didn't consider Ageas were required under the policy terms to compensate Mrs L for the lost rental income when settling the subsidence claim. He said the reason the property wasn't inhabited wasn't because of the damage caused by subsidence, it was because of the damage caused by the escape of water which was considered under another policy held with X.

But he did find that there were avoidable delays in progressing the subsidence claim and recommended Ageas pay Mrs L the equivalent of one month's rental income to recognise this and £200 compensation for the worry she experienced.

Ageas didn't respond, but as Mrs L didn't agree, this case has been passed to me.

## **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 conscious Ageas has recently made an offer to settle Mrs L's claim. I think it's helpful to say here that I've not considered this offer, as it occurred after the eight-week timeframe from the point of Mrs L's second complaint. So, if Mrs L is unhappy with the offer made by Ageas, she can make a separate complaint.

In reaching my decision, I've started by considering what the policy terms say in respect of lost rental income. The policy says it will cover:

*"12. Loss of rent and/or cost of alternative accommodation incurred by **You** as a result of the **Building** becoming **Uninhabitable** following loss of damage caused by any of the perils listed in Section 1 of this policy."*

Subsidence is one of the perils covered under the policy. And the policy defines uninhabitable as *"not in a sufficient condition to be lived in"*.

As I've set out, loss of rent is something the policy covers. But it's important to identify here the key determination for loss of rent to be covered by this policy is the property being uninhabitable a result of an insured event. So, in order for me to require Ageas to compensate Mrs L for the lost rental income, I need to be persuaded the property became uninhabitable as a result of the damage caused by the subsidence, as this is the insured event covered by the policy.

Mrs L says the property is uninhabitable essentially because X's contractors said any remedial repairs following the escape of water claim should be carried out *after* any monitoring and necessary structural repairs were complete. Ageas says the reason the property is uninhabitable is because the kitchen and bathroom were damaged by the escape of water, which was the subject of a claim with X.

I've considered Ageas' reports from April and May 2023. In particular, the report dated 16 May 2023 identified the cause of the subsidence related damage as water escaping from underground drainage system. The report said after some repairs to the drainage system had been carried out the remaining remedial works would be crack repairs and redecorating the superstructure.

I'm mindful the reports provided by Ageas identify the cracking as moderate in severity. Subsidence related damage can, sometimes, cause a property to be uninhabitable. In order for me to conclude Ageas wrongly declined the lost rental income part of Mrs L's claim, I've considered if some moderate cracking is sufficient to make a property uninhabitable. And if the escape of water hadn't happened, would the subsidence related damage alone have caused the property to be uninhabitable?

I note Mrs L says she was told she had to wait for the completion of the monitoring process before carrying out repairs to the damage caused by the escape of water, but I haven't seen that this direction came from Ageas. I note X and Mrs L reached a separate agreement to cash settle the escape or water claim and this seems to be because the contractor noted the subsidence related damage.

On balance, the evidence provided doesn't support the subsidence related damage as being the reason the tenants had to vacate the property. If the escape of water had not happened and the cracking had still occurred, it seems more likely than not the tenants would have remained in the property. None of the expert reports identify the subsidence damage as the reason the property was uninhabitable. This is supported by the finding the cracking was moderate and the remedial works were limited to repairing the cracking and some

re-decoration. If the subsidence related damage had been the reason for the property being uninhabitable, I would have expected the repairs to be much more extensive.

But the repairs aren't, and this leads me to conclude it was not the subsidence related damage that caused Mrs L's property to be uninhabitable. So, for this reason, I'm not inclined to say Ageas wrongly declined the lost rental income part of Mrs L's claim and I'm not going to require it to take any further action in respect of this.

I recognise Mrs L is in a very difficult position as, essentially, she's been caught between two claims with two different insurers and still hasn't entirely had her lost rent covered by either policy. I'm sorry to read of the difficulties she's experienced. But my role is to decide if Ageas responded to her claim as I'd expect and in line with the policy terms. I'm satisfied Ageas has demonstrated it acted fairly in finding the subsidence related damage was not the reason the property was uninhabitable, so isn't responsible for the lost rental income.

Our investigator summarised why Mrs L had decided not to proceed with the internal repairs until certain the property had stopped moving. At the end of the eight-week timeframe for Ageas to respond to Mrs L's second complaint, the necessary repairs have been carried out to the drains and the property was still being monitored.

However, as identified, there was a significant delay between Mrs L notifying Ageas about the damage and a loss adjuster being appointed. This took two months to action and there was some confusion with identifying the policy and determining who the policyholders were. I consider this could have progressed more quickly and a reasonable timeframe to appoint the loss adjuster would have been one month.

I acknowledge Ageas offered £200 compensation to Mrs L in recognition of the frustration and worry she experienced in the delay in starting the claim. However, I also require Ageas to pay Mrs L the cost of one month's rental income. This is because Mrs L had a long-standing tenant in the property before they vacated, and it seemed likely they would have been keen to return to the property.

But in any event, a delay of a month in starting the claim is, in these circumstances, a delay the property in being ready to rent out again. To put this right, Ageas should pay Mrs L the cost of one month's rental income (detailed on the tenancy agreement on file at £600 per calendar month).

### **My final decision**

My final decision is I uphold this complaint. To put things right, Ageas Insurance Limited should:

- Pay Mrs L £200 compensation
- Reimburse Mrs L £600 for one month's lost rental income

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 25 July 2024..

Emma Hawkins

**Ombudsman**