

The complaint

Ms J complains about the way Ageas Insurance Limited dealt with a third party liability claim on her landlord's insurance policy.

What happened

Ms J owns a flat which she let to a tenant. There was a leak from the washing machine in the flat, which caused some damage to the flat below. The managing agents for the building dealt with the repairs to the other flat and then told Ms J she would need to pay the excess of £1,000 on their insurance policy.

Ms J made a claim on her landlord's insurance, which is underwritten by Ageas.

Ageas wrote to Ms J saying

- the mere fact there had been damage to another flat didn't mean she was liable for it; the other party needed to show she was legally responsible;
- it would handle the matter on her behalf and contact the managing agent;
- she should not make any comment to the managing agent and should pass on any correspondence without replying to it.

Ageas told the managing agent it was not accepting liability because Ms J had repaired the leak as soon as she became aware of it and had not been negligent.

Ms J later contacted Ageas to say she had been pressed by the managing agent to pay the excess and so had paid it. Ageas said that was in breach of the policy conditions and it would not reimburse her for this.

Ms J was unhappy and complained but Ageas didn't change its decision, so she referred the complaint to this Service.

Our investigator said Ageas' decision was reasonable as it had made it clear to Ms J that she should not make any admission or payment, and she had paid the excess without its knowledge.

Ms J disagrees and has requested an ombudsman's decision. She says Ageas initially denied liability and then changed its position and said she had compromised its position – it was simply trying to find ways not to accept her claim.

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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly, and give consumers timely and clear information. They should not unreasonably reject a claim.

The starting point is the policy terms and the relevant section of the policy is “Legal Liability as Owner”. This section covers Ms J for damages she is legally liable to pay for (amongst other things) damage to someone else’s property.

As is usual with this type of cover, the policy terms allow Ageas to take over and deal with the claim on Ms J’s behalf. So it can decide whether to settle a claim by another party or to contest it.

The key point is that to pay out, Ageas must be satisfied Ms J is legally liable for the damage.

Ageas explained to Ms J that, just because some damage had been caused, that didn’t mean it was covered by this policy – she’s covered if she’s legally liable for the damage. And it was for Ageas to decide that. So for example, if it accepted the third party’s claim was valid it might settle the claim. But if it didn’t think Ms J was legally liable, it might choose to contest the claim.

Ms J has said Ageas rejected her claim but I don’t think that’s the case – it accepted her claim. But that didn’t mean Ageas had to make any payment; it meant Ageas could deal with the matter on Ms J’s behalf and make a decision on whether she was liable.

Based on the information it had, Ageas’ view was that the other party hadn’t shown Ms J was negligent and so it hadn’t shown she was legally liable to pay.

The policy terms say the policyholder must not admit liability or make any offer or payment without Ageas’ consent.

And Ageas told Ms J she shouldn’t make any admission or offer to the other party and that if she did, she would likely be in breach of the policy terms and this could prejudice the claim. However, Ms J made a payment of £1,000 to the managing agent.

I appreciate she felt she was being pressured by the managing agent and was worried it might start legal action against her. It was a difficult position for her to be in. But she could have referred that to Ageas to deal with on her behalf.

As she paid the excess without telling Ageas, she prevented it from considering this and deciding whether to agree a settlement with the managing agent or to contest the claim.

Ageas’ view was that Ms J wasn’t liable and if it had continued to defend the claim it may have either prevented any payment having to be made or been able to negotiate a better settlement. It lost the opportunity to do either.

In the circumstances, I think Ageas’ decision to not reimburse Ms J, on the basis of her breach of the policy condition, was reasonable.

My final decision

I don’t uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms J to accept or reject my decision before 6 September 2024.

Peter Whiteley
Ombudsman