

The complaint

Mr H complains about the way his insurer, Ageas Insurance Limited ('Ageas'), dealt with a claim he made on his motorbike insurance policy.

Ageas is the underwriter of this policy i.e. the insurer. During the claim Mr H also dealt with other businesses who act as Ageas' agents. As Ageas has accepted it is accountable for the actions of its agents, in my decision, any reference to Ageas includes the actions of the agents.

What happened

Mr H took out a yearly policy with Ageas in October 2022. In January 2023, upon picking up his motorbike from a company who had listed it for sale, Mr H noticed that a red light had come on. He said the bike wouldn't restart so he booked it in for an inspection by a local dealership. He also arranged for roadside assistance to recover the bike.

Mr H says he was told by the dealership that the damage was severe and that he needed a new engine. As the dealership couldn't provide a second-hand engine, Mr H said he arranged for the bike to be taken to another garage. The other garage told him they believed the engine had been vandalised, that wires had been cut and that something had been forced into the spark plugs. He says they advised him to report this to his insurer.

Mr H called Ageas and reported the incident and said he wanted to make a claim. Ageas said that he could use the garage that the bike was at to do the repairs, or he could use an Ageas approved repairer. They would arrange to pick the bike up, repair and return it. Ageas told Mr H he would only have to pay the £350 excess. If the bike was a write-off it would pay him the market value for the bike. If he used his own garage, someone from Ageas would inspect the bike to ensure the cost of repairs was ok. Mr H agreed for the bike to be taken to Ageas' approved repairer.

When the bike arrived at Ageas' repairers they said that they couldn't find evidence of the bike being vandalised. They said that the damage was due to the engine being starved of oil. They said this was a mechanical failure and wear and tear and so not something that would be covered under the policy.

Mr H was not happy about this and complained. He said he had only agreed for the bike to be repaired not for the claim to be validated. He said had it stayed at his own garage the bike would have been repaired by now. Mr H also said that the bike had been serviced approximately 120 miles before it broke down. And when it was recovered by the roadside assistance company, they noted that the oil levels were ok. Mr H said that Ageas

misrepresented what it had told him and that it shouldn't be allowed to limit its liability based on false representations.

Ageas reviewed the complaint and responded in November 2023. It said it was not upholding Mr H's complaint about the cover and said that its approved repairer as well as an internal engineer both agreed that there was no evidence of any tampering and concluded that there were insufficient oil levels that led to the damage. The engineers also concluded that because of the general condition of the bike, the damage was due to wear and tear which is excluded under the policy. Ageas upheld Mr H's complaint in relation to its investigation and said it should have not taken such a long time to conclude and respond to Mr H's complaint. However, it didn't offer any compensation.

Mr H then brought his complaint to us and said he wanted Ageas to be accountable for the agreement it had entered into with him. He said he had been induced into entering into an agreement to either repair or replace the bike. He said he relied on this agreement and so Ageas should honour it. He added that this agreement formed the basis of a contract.

One of our investigators reviewed the complaint and thought it should be upheld in part. She didn't think Ageas had acted unfairly or unreasonably in not covering the claim based on the available expert evidence which said the damage was due to the engine being starved of oil rather than vandalism. She didn't think the statement from the breakdown assistance company about oil levels being ok was as persuasive as the engineer's reports which reached the same conclusion regarding the oil levels in the engine.

In relation to Mr H's argument that he had been induced into entering into a contract which only involved the repair of his bike and not the validation of the claim, she wasn't persuaded that this meant that Ageas would definitely pay the claim. She said it was an agreement based on information Mr H had provided to Ageas. And that information was that the bike had been vandalised. She also thought it was standard industry practice for a claim to be validated before it was paid.

Our investigator thought that Ageas caused unreasonable delays over several months when it was under the impression that its agents were dealing with the complaint but weren't. Ageas accepts there were long delays. She thought it should pay Mr H £300 for the distress and inconvenience this caused him. Our investigator had noted that Mr H said that he had planned to ride the bike abroad and would have had it repaired himself and shipped abroad had Ageas confirmed that the claim wouldn't be covered sooner.

Ageas agreed with our investigator. Mr H asked if our investigator's view could include his bike being transported somewhere. He also said that his bike has been outside for over a year and will have sustained more damage. He also wanted more time to obtain supporting evidence that the bike had been vandalised.

Our investigator said that her view was based on information available at the time. If Mr H obtained new evidence she would expect Ageas to consider it. She also said that as the issue of transportation and also any further damage didn't form part of his original complaint, this is something he would have to complain about separately. She asked Mr H to liaise with Ageas first.

Mr H repeated that the crux of his complaint is that he was induced into a contract that Ageas subsequently failed to fulfil. He said it's part of English law and something we should consider. He also said that his bike has been devalued due to Ageas' actions and delays.

Our investigator responded to say that she didn't believe that Mr H's initial conversation where he reported the claim amounted to a contract whereby Ageas had to repair the bike under any circumstances. She repeated that she couldn't address complaints that hadn't already been raised with Ageas.

As there was no resolution the matter was passed to me to decide.

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 policy

Mr H's policy says that, among other things, if the bike is damaged or destroyed, Ageas will pay for it to be repaired, or replaced or pay the amount of the loss or damage. Among other exclusions, the policy does not cover wear and tear or mechanical failures.

The evidence as to the cause of the damage

Mr H said that when his bike was inspected by the dealership and the garage he took it to subsequently, they said that the damage was severe and also that it had been done maliciously. Mr H said that he hadn't ridden the bike in some time and had, in fact, put it up for sale. He took it back after it didn't sell. When Mr H reported the claim he said the damage may have been done by the company who had tried to sell the bike but he had no proof of this. For this reason he also didn't go to the police. But he did say that the bike had done 80 miles more than when he had dropped it off even though the company said that it hadn't been offered for test rides.

I note what Mr H has said and I accept he genuinely believed that the bike had been vandalised. Mr H had asked one of the garages above to put what they had told him in writing but they refused. So, based on what I have seen there is no expert evidence to support Mr H's claim that the bike had been vandalised, other than what he says he was told verbally.

Ageas' repairers inspected the bike in early March 2023. They said that the engine failure was due to excessive heating and oil starvation. They said they found no evidence of vandalism. Mr H didn't agree and said he wanted the bike to be repaired. He said the claim had already been approved as per his initial conversation when he reported the claim. The repairer responded to say the claim was still subject to validation regardless of which garage it was at.

The repairers also said that some of the sensors had been unplugged and some wiring was hanging off. They added that there was an intense smell of mechanical burning and said

they wondered if perhaps something other than oil was put into the engine at some point or if the inside got very hot very quickly possibly due to total oil starvation.

Ageas' engineer inspected the bike on 9 November 2023. They said that the engine had seized which can only occur when the engine is running or if the bike has been immobile for a long time with insufficient oil levels. The engineer noted that when the bike had its MOT in 2020 there was an oil leak and that the bike only covered 200 miles over the following two years. They said the bike was generally untidy and ill maintained and found no evidence of tampering and concluded the bike's condition was due to wear and tear and a lack of sufficient general maintenance.

After our investigator asked for further comments from the Ageas' engineer they said that they found no signs of the wiring loom being cut and none of the ignition components, where they would expect signs of tampering, had been affected. They said further images of the bike showed there was a lack of maintenance and a significant oil leak present.

Like our investigator said, I have no reason to doubt what Mr H has told us and that he genuinely believes that the bike has been tampered with. Nevertheless, the expert evidence available which consists of the approved repairer's engineers and also Ageas' engineers says that the damage was due to wear and tear and a mechanical failure. As far as I can see there is no other expert evidence to contradict this. So, based on the evidence available to me, on balance, I think the damage to the bike was due to the engine being starved of oil and general lack of maintenance. And this isn't something that would be covered by the policy.

Mr H said that when the bike was recovered, the breakdown recovery company noted that oil levels were ok. I don't find this evidence as persuasive as the engineer's evidence. I say this because the recovery agent would not have inspected the bike as thoroughly as an engineer carrying out an inspection. Also the report says oil levels were ok but doesn't expand on this at all. If the recovery agent had done a thorough inspection I would have expected them to make similar comments to the ones provided by the dealership and the garages i.e. that the bike had sustained severe damage. Their report doesn't go into any detail in relation to the state of the bike and it also states that their service is not equivalent to the service carried out by mechanics working in a fully equipped garage or workshop.

For these reasons, I thought Ageas' decision not to cover the claim was fair and reasonable.

Mr H reporting the claim

Mr H said that when he reported the claim he was only given two options; to have the bike repaired by his own garage or by Ageas' agent. He said he never agreed to the claim being validated and this was never mentioned to him.

I have listened to the first notification of loss call and I agree that Mr H was told the bike would either be repaired or written-off and that he would only have to pay his excess. There was no mention of the claim being validated.

Even so, I don't think this meant that the claim would simply be paid without being validated. It is standard industry practice for claims to be validated before they are paid. Insurance

policies don't cover all eventualities and in order to ensure a claim is covered it firstly needs to be validated.

Mr H said he was induced into this agreement by what he had been told when he reported the claim. He said if he had chosen for the bike to have stayed at his garage it would have been repaired. I don't necessarily think this is the case because I think Ageas would have still wanted to ensure that the claim was covered under the policy before it was paid. But even if this wasn't the case, which is unlikely, Ageas would have ended up covering a claim it wasn't responsible for. And I don't think this would have been fair or reasonable.

Mr H said he relied on what he had been told Ageas and that this was essentially to his detriment. I'm afraid I don't agree with Mr H. As I said above, had the bike stayed with the original garage it would still have to be validated so Mr H would have been in the same position he is now. I don't think Ageas not mentioning validation in the original call would fairly and reasonably preclude it from assessing the claim. As I said above this is standard insurance practice.

Mr H said that what he was told by Ageas formed the basis of a contract which it shouldn't be allowed to renege from. I think the contract between Mr H and Ageas in this case is the insurance contract Mr H agreed to when he took the policy out. And this contract has terms and conditions and also exclusions. And it is those exclusions that Ageas has relied on. I don't think Ageas and Mr H's initial conversation about the claim led to a variation of the insurance contract and meant that Ageas would cover the claim under any circumstances.

Even if it did, Mr H's belief at the time was that the bike had been vandalised. And this is the information Ageas relied on when it told Mr H the bike would be repaired or written off. As the engineers excluded vandalism as the cause of the damage, it wouldn't be fair or reasonable for Ageas to cover the claim based on information which was ultimately incorrect.

Delays

The claim was made in February 2023 and the bike was inspected in early March 2023. Mr H's complaint was escalated by the approved repairer to Ageas on 21 May 2023 but Ageas took no action. Mr H escalated the complaint himself to Ageas on 30 October 2023 and said he had not heard anything since July 2023. Ageas responded to the complaint in November 2023.

Ageas accepts that there were unnecessary delays including a period of months where no action was taken. I think this caused Mr H a certain amount of frustration as well as inconvenience. Mr H said he had planned to ship the bike abroad and use it there. He also said he would have had it repaired had he known for sure that Ageas wouldn't have covered it. In the circumstances I think the £300 compensation recommended by our investigator is fair and reasonable in the circumstances and in line with awards we would make in similar circumstances.

Mr H mentioned some other concerns he has, including in relation to the current state of the bike but, as our investigator mentioned, these would have to be raised with Ageas first and then with us if necessary.

My final decision

For the reasons above, I have decided to uphold this complaint. Ageas Insurance Limited must pay Mr H £300 for the distress and inconvenience it caused him by its delays.

Ageas Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mr H accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

If Ageas Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so *he* can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 October 2024.

Anastasia Serdari
Ombudsman