

The complaint

Mr and Mrs M are unhappy Ageas Insurance Limited said a further assessment of their legal expenses claim would be required prior to it authorising court proceedings.

What happened

Mr and Mrs M have a long running dispute with their neighbours. This has two elements; a trespass claim and a nuisance claim (relating to anti-social behaviour). They've sought assistance from their legal expenses insurance in relation to both elements and have made a number of complaints to our service about matters relating to this. Another Ombudsman issued a final decision in January 2022. He agreed the event giving rise to the nuisance claim had occurred in mid-2014. And he said the nuisance and trespass claims should be covered with effect from 30 November 2020.

Matters progressed and in November 2023 Mr and Mrs M's solicitors advised they were now ready to issue proceedings. Ageas said a further assessment of the claim's prospects of success would need to be carried out prior to that taking place. Mr and Mrs M didn't agree that was required and also raised concerns about an IT outage they said had prevented the progress of their claim.

Our investigator didn't think the IT issues which affected Ageas had a detrimental impact on the progress of Mr and Mrs M's claim. And she thought given the time that had passed since the previous assessment and developments on the case since then it was reasonable Ageas wanted prospects reassessed prior to legal proceedings commencing.

Mr and Mrs M didn't agree. They provided significant submissions for me to consider which I've summarised as follows:

- They didn't consider it fair to seek review by an independent barrister given the stage the claim had reached. Ageas had already received legal opinions and expert evidence as the claim progressed so none of this was new information.
- In particular a report showing the reduction in value of their property had been approved by Ageas and it had been provided with a copy of that report (which showed a zero value for their property) in August 2022. Ageas had then approved the incorporation of that in to their 'Particulars of Claim'. And while there had been attempts to settle the claim Ageas had been kept fully informed of these offers and had approved them.
- Ageas had previously approved the issue of court proceedings (and the payment of the relevant court fee). And it hadn't said that further information was required at that point on any split in funding with other insurers. Prospects of recovery from the other side had also been confirmed as it had been agreed a charge could be placed on their property.

- Their barrister had reviewed the entire claim in March 2023 and so an assessment of prospects would have been made at that time. And he confirmed the claim was ready to issue and was content for that to be done in its current form.
- It wasn't appropriate of Ageas to now decide their barrister didn't have the competence to provide advice on their claim and they didn't accept he'd been biased in their favour. If Ageas had any concerns about his conduct it could have referred him to the Bar Standards Board and hadn't done so.
- There had been delay by Ageas in progressing matters from November 2023 until February 2024 and there was no evidence it had tried to obtain counsel's opinion in that period. And it already had the information it needed to do that. It wasn't reasonable of it to request the full file from their solicitors in order for prospects to be assessed.
- They thought the issue with Ageas's IT systems was a key reason why progress wasn't made with their claim during this period. They said Ageas hadn't evidenced their claim was available on an older system (and so unaffected by the problem).
- And they raised concerns about post decision correspondence following the January 2022 final decision on their complaint which they said contained unresolved issues.

Mr and Mrs M also questioned whether Ageas were the correct respondent for this complaint. I've explained in a separate decision why I'm satisfied it is. So I now need to reach a final decision on the merits of the complaint they've made against it.

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 rules and industry guidelines say Ageas has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I appreciate the long running dispute with their neighbours has understandably caused Mr and Mrs M a significant amount of distress. Their submissions make clear the impact that's had on them. I recognise how difficult it must be to deal with issues which directly impact their enjoyment of their home. However, the question I need to consider is whether Ageas did anything wrong in relation to the complaint issues they raised with it.

And while I have read all of the very detailed submissions Mr and Mrs M made in relation to this, I don't think it's practical or in line with the informal nature of our service to respond to every point they've raised. Instead, I've sought to focus on what seem to me to be the key issues; those which would impact the outcome of the complaint. Mr and Mrs M have also raised wider concerns including about what happened following the previous final decision on their complaint. But I'm aware we've previously responded to points Mr and Mrs M have made about this. In any case the issue I'm considering in this decision is the complaint Ageas responded to in its final response dated 5 February 2024.

I've looked first at the terms and conditions of Mr and Mrs M's policy with Ageas. That says *"we agree to provide the cover in this Policy subject to the terms, conditions, exclusions and limitations provided that...we deem that there are at least 51% Prospects of Success"*. It defines 'Prospects of Success' as *"the prospects of successfully proving liability in Your favour, and additionally where relevant of obtaining a costs or other Order or Judgement and successfully enforcing the same...We must be satisfied at all times that such prospects are and remain at least 51% in order for indemnity to be granted and/or to continue in force."* The policy goes on to say *"we reserve the right to withdraw cover at any time where upon review of the Prospects of Success we consider that these have fallen below 51%"*

So I think it's clear (and this is in line with legal expenses policies more generally) that a claim needs to have prospects of success for cover to be provided. And as an insurer isn't a legal expert we don't think it's in a position to carry out that assessment and it should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not.

In this case I appreciate the claim was considered to have prospects of success by Mr and Mrs M's barrister. I understand he set out his thinking on that in opinions dated 15 October 2020, 30 November 2020 and 1 February 2021. However, I think it's also clear from the policy terms that the requirement for a claim to enjoy prospects of success is ongoing throughout the lifetime of a claim.

Given that I've considered whether it was reasonable of Ageas to say a further assessment of this would be required in November 2023 (prior to legal proceedings being issued). I appreciate the split in funding with other insurers had previously been agreed and I've not seen evidence to show there had been any change to the position on prospects of recovery. But I do think Ageas were right to say there had been other significant developments on the case since the previous opinions were issued. That included the inclusion within it of the impact on the value of Mr and Mrs M's property and attempts to resolve matters with the other side (which had been unsuccessful).

I recognise that Ageas was already aware of those developments. As Mr and Mrs M have highlighted it agreed an expert report should be sought on the reduction in value of their property and that was then provided to it. And Ageas was also aware of the negotiations that had taken place with their neighbours and provided approval for the settlement offers that were made. So I agree this wasn't new information that Ageas wasn't previously aware of.

But being aware of (and providing authorisation for) expert reports and settlement negotiations isn't the same as assessing whether the claim continues to have prospects of success. And as I've already explained that isn't something I'd consider Ageas to be in a position to do in any event because an insurer isn't a legal expert. As this is a legal question it should always be for a suitably qualified lawyer to consider.

Mr and Mrs M say that issue will have been considered by their barrister when he considered the 'Particulars of Claim' in March 2023. I've reviewed the email he sent at that time and it's clear he was content for the claim to be issued. But the phrasing of his email suggests his review was focussed on ensuring Mr and Mrs M's case was being presented in the best way. I don't think that's the same as assessing whether it continues to enjoy reasonable prospects of success. And I haven't seen any other evidence to show he did carry out such a review at that time.

Mr and Mrs M say if Ageas didn't feel their barrister was competent to provide advice on the claim it should have taken further action in relation to this (and didn't). I appreciate that in calls with Mr M, Ageas did reference, amongst other things, how invested they felt their barrister was in the case. But regardless of whether those concerns were justified or not it seems to me the key point here is that the positive opinions the barrister had provided on the claim's prospects of success (which led to it being accepted) were around three years old in November 2023. And the claim had subsequently progressed with further developments having taken place (and the impact of those on the claim's prospects of success hadn't previously been considered).

Given that I think it was in line with the policy terms and fair of Ageas to conclude confirmation should be obtained that the claim did continue to have prospects of success. And while I appreciate Mr and Mrs M feel their own barrister should have been approached to carry out that assessment, I don't think it was unreasonable of Ageas to conclude a fresh perspective on the claim from someone who hadn't previously been involved with it would be appropriate prior to the significant step of issuing court proceedings.

I appreciate that does appear to differ from the position Ageas took in March 2023. Correspondence from that time indicates Ageas agreed to the issue of court proceedings without saying a further assessment of the claim's prospects of success was required. Proceedings weren't then issued because discussions with the other side continued. I'm unclear why that authorisation was given and it's possible that was an error. But I don't think that's something I need to determine. In my view the key issue here is whether Ageas had reasonable grounds for concluding in November 2023 that a further assessment of the claim's prospects of success was required. And for the reasons I've explained I think it did.

I've gone on to consider whether there was delay in Ageas progressing the matter following that. It's not in dispute its systems were impacted by a serious IT issue at that time. And the evidence suggests that did cause some delay to the progress of Mr and Mrs M's claim. When Ageas contacted their solicitors on 6 December 2023 it apologised for a delay in responding and referenced the system issues.

However, there doesn't appear to have been further delay following that. I agree with Mr and Mrs M that Ageas didn't take steps to obtain counsel's assessment until February 2024. But that was because it was in contact with their solicitors requesting file information for that assessment. And while I appreciate Ageas will already have been in possession of some information about developments on the claim it wouldn't have access to the full solicitor's file. I don't think it was unreasonable it asked for that in order to ensure counsel had a full picture of what happened in order to carry out their prospects review.

So whether or not Mr and Mrs M's claim remained accessible to Ageas I don't think the IT issues impacting it had a significant impact on the progress of their claim. Ageas was able to contact their solicitors to request information. And the delay in then progressing the prospects assessment was because it then took time for that information to be provided and for queries in relation to this to be resolved.

Mr and Mrs M subsequently raised further concerns about the time taken to obtain the prospects assessment after counsel had been instructed and the decisions Ageas took once this was available. In particular I understand counsel has now questioned when the date of occurrence of this claim was. However, Ageas appears to have issued a further final response covering those points. So if Mr and Mrs M want to pursue those issues with us they can do so as part of a separate complaint (which I'm aware they're in contact with our investigator about). However, those issues aren't something I'm considering in this decision.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 24 December 2024.

James Park
Ombudsman