

The complaint

Mr and Mrs M are unhappy with how Ageas Insurance Limited progressed their legal expenses insurance claim from February 2024 (when it issued a final response to a previous complaint).

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.

In November 2023 Ageas said a further assessment of the claim's prospects of success would be required prior to court proceedings being issued. In a previous final decision I said that was fair. And I didn't think there had avoidable delay by Ageas in progressing that prior to February 2024 (when it issued a final response to Mr and Mrs M's complaint).

Ageas says to progress the assessment it needed the full file from Mr and Mrs M's solicitors which it had by the end of March. However, it then needed to respond to a subject access request (SAR) Mr and Mrs M made. That meant full paperwork wasn't sent to solicitors to prepare instructions for counsel until June. A barrister was instructed around a month later. However, they then declined to act so an alternative had to be found. Unhappy with progress Mr and Mrs M complained to Ageas. It issued a final response in September 2024 (I understand the barrister's opinion was provided to Mr and Mrs M in November 2024).

Our investigator set out her understanding of Mr and Mrs M's complaint in an email in December 2024. And she confirmed this complaint would be progressed against Ageas. In response Mr and Mrs M didn't identify any additional complaint points or provide further detail on the ones our investigator had identified. They asked her to complete her investigation once she received the business file from Ageas.

Having considered that, our investigator reached her view on the complaint. Taking into account the circumstances of the case she didn't think there had been delay by Ageas in obtaining the barrister's opinion on the claim. She didn't think Ageas's decision to no longer communicate with Mr M by phone had disadvantaged him as he was still able to do so by email and through his solicitors. She thought Ageas had dealt with his complaint in line with the relevant rules. And in the absence of further information from Mr and Mrs M she wasn't able to respond to other points as they hadn't explained what Ageas had got wrong.

Ageas agreed with her outcome. Mr and Mrs M didn't agree. However, in my view, some of the points they've made relate to other complaints and include matters we're already considered. For example, they queried which insurer should be responsible for their claim and referenced delays they believe had taken place prior to February 2024. In relation to issues more relevant to the issues I'm considering in this decision they said:

- There had been delay by Ageas in obtaining the barrister's opinion and responding to the SAR they'd made shouldn't have prevented it progressing this (given that most of the information was held electronically).
- A solicitor didn't need to be involved in preparing instructions as Ageas could have instructed a direct access barrister. And Ageas told them their case would be progressing to a barrister.
- They didn't accept there had been any delay by their solicitors in providing information to Ageas or that the information it sent in February 2024 didn't include all the relevant material. They thought the prospects assessment should have begun following that (and subsequently suggested that should have been done in November 2023).
- They said Ageas hadn't evidenced the barrister initially instructed declined to progress their assessment and queried whether that barrister had in fact provided a different opinion on prospects that Ageas were seeking to withhold from them.
- They referenced previous terms of appointment for their solicitors which included an indemnity limit of £100,000 and challenged what they said was Ageas's subsequent variation of those terms to include a lower £50,000 limit.
- They said Ageas hadn't offered a panel firm to progress their claim which was something they were entitled to under the policy and would have been to their advantage as the costs charged by a panel firm would have been lower than their own solicitors.
- They challenged Ageas's decision to no longer have telephone contact with them and thought that had disadvantaged them as they weren't able to chase progress on the barrister's opinion.

So I need to reach a final decision.

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 this has been (and continues to be) a long running and extremely difficult issue for Mr and Mrs M. But, as I've already said, it does seem to me they're seeking to introduce into this complaint some issues where the subject matter has previously been considered as part of other complaints to our service. In particular, I explained in a previous jurisdiction decision why I was satisfied Ageas were the correct respondent for the nuisance claim Mr and Mrs M had made. That remains my position.

Mr and Mrs M have also raised issues about the terms of appointment offered to their solicitors. However, I think it's clear the underlying issue here relates to what indemnity limit should apply to this claim. Again that's an issue we've previously considered. Our investigator set out her position on that and that case closed in May 2023. This isn't an issue we'll be revisiting.

I also considered in a previous decision whether there had been delay by Ageas from when it said a prospects assessment would be required in November 2023 until the final response it issued in February 2024. And I explained why I didn't think the IT issues which had impacted Ageas at that time had significantly impacted the progress of the claim. Again that isn't something I'm going to consider in this decision. Nor am I considering those matters Ageas considered in a final response dated November 2024 (including the outcome the barrister reached on their claim and comments their barrister made about this). We've explained to Mr and Mrs M that we can consider those matters as part of a separate complaint if they refer them to us. I understand they haven't done so to date.

I've focussed in this decision primarily on how Ageas progressed the claim between February and September 2024 (when it issued a further final decision on the issues Mr and Mrs M had raised). I've already concluded it was reasonable of it to ask their solicitors for their full file to ensure counsel had a full picture of what happened in order to carry out a prospects review. And while I appreciate the solicitors had provided information by the start of March they didn't confirm until two weeks later that the addition of further correspondence meant the file was now up to date.

There's some debate over whether that file did include information from October 2022 onwards (Mr and Mrs M say it did). But I don't think that's something I need to decide because this issue was resolved in just under a week. And I don't think it was unreasonable Ageas instructed solicitors to prepare instructions to counsel given the complexity of the case and the issues involved.

However, it's clear Ageas was in possession of the full file by the end of March and the claim wasn't referred to solicitors for them to prepare instructions until the middle of June. Ageas says that's because Mr and Mrs M had made a SAR so it needed to review the information it held in order to comply with that. And it couldn't progress the prospects assessment until that had been done.

But while I appreciate some of the information it had been provided with was in paper format it does appear other elements were sent electronically. It's not clear to me why it took Ageas as long as it did to review that information. And in any event if that was something it needed to do I think it could reasonably have informed Mr and Mrs M of that (and the impact that would have on the progress of their claim) so they could decide for themselves whether they wanted to pursue their SAR in the light of that.

I've gone on to consider what delay that's caused to the progress of Mr and Mrs M's claim. I'm mindful of the fact that even if Ageas had made clear to Mr and Mrs M that dealing with their SAR would increase the time taken for their underlying claim to be progressed they might nevertheless have continued with that request.

And in any case given the nature of their dispute, the volume of information provided and the complexities of the issues involved which date back many years I think Ageas would reasonably have needed to spend some time preparing the file and setting out the questions on which it required advice prior to submission to the instructing solicitors. I don't think that would have taken the full period between the end of March and mid-June but I do think it would likely have occupied a proportion of it.

Taking all of that into account and on balance, while I do think there is some delay here for which Ageas is responsible, I don't think the impact of that on Mr and Mrs M is something for which Ageas needs to provide a financial remedy.

Mr and Mrs M have questioned whether the barrister who was first instructed on the case did decline to act and have suggested they might have completed an assessment Ageas was unhappy with. I've not seen anything else which supports that. There's evidence of the barrister requesting further information about the claim after he was instructed but there's no indication in the correspondence I've seen from the instructing solicitors that an assessment had been completed.

Nor have I seen any evidence which would indicate it was anything other than a decision of that barrister not to progress the assessment. It's unfortunate they wouldn't act and that did cause a delay to the progress of the claim. But I don't think that's come about because of anything Ageas got wrong; it did chase up progress in obtaining the barrister's opinion with the instructing solicitors on a number of occasions.

Mr and Mrs M have said Ageas didn't offer a panel firm to progress their claim. They haven't said when they think that should have happened though I can see the terms of appointment between Ageas and their own solicitors are dated January 2022. I've not seen information on what discussions took place at that time. But even if Ageas was at fault here I'm not persuaded Mr and Mrs M have lost out as a result. They've suggested a panel firm would have charged less. But the terms of appointment set out the hourly rate their solicitors can charge which is £125 an hour (plus VAT). That isn't significantly different to the rate an insurer would pay a panel firm in my experience.

In addition, even if Mr and Mrs M had been offered a panel firm, I've not seen clear evidence to show they'd have taken up that offer. They haven't said they would have done so and were clearly interested in using their own firm in line with their initial request. And they've been aware of the option of using a panel firm for some time and don't appear to have taken any steps to change their legal representatives. I'm not persuaded they'd have acted differently if Ageas had offered this earlier.

Mr and Mrs M are also unhappy with Ageas's decision to restrict contact with them. But I agree that decision hasn't had any adverse impact on them. Ageas hasn't prevented contact from them; it's limited the channels through which that can be made (by saying it would no longer communicate by telephone). Mr and Mrs M are still able to communicate by email (or through their solicitors) and have continued to do so on a regular basis.

Finally, they've also expressed concern about how Ageas handled complaints they made. It's not clear to me exactly which complaints they're concerned about here. But in any event complaint handling isn't one of the activities our rules allow us to consider. So I can't look at in isolation. I could look at it when thinking about the overall customer service Ageas provided but I could only make an award for complaint handling if I was also doing so for something related to customer service more generally. That isn't the case here. So I won't be considering this issue further.

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 and Mrs M to accept or reject my decision before 7 May 2025.

James Park

Ombudsman