

complaint

Mr I complains about a landlord insurance policy that Barbon Insurance Group Limited sold to him. He's unhappy the policy didn't cover his loss of rent when he claimed for damage caused by his tenants.

background

Mr I took out a landlord insurance policy through Letsure Limited, which later became part of Barbon. This means that Barbon is responsible for the policy sale and this complaint.

Ageas Insurance Limited is the insurer that underwrites the cover, and this means Ageas is responsible for any claims. At the time the policy was taken out, it was underwritten by Groupama Insurance Company Limited. But because Groupama later became part of Ageas, Ageas is responsible for any claim decisions Groupama previously made.

For ease, I will simply refer to Barbon when referencing the actions of Letsure; and to Ageas when referencing the actions of Groupama.

Barbon says that Mr I took out a policy in 2010. Mr I has made the point that he first took out policies with Barbon around 2005. The policy taken out in 2010 covered several of his rental properties. Barbon says the policy lapsed in 2011 because premium payments were missed. It says it therefore gave Mr I two options: he could either bring his premiums up-to-date to continue with the same cover, or he could start a new policy. Barbon says Mr I decided to start a new policy, which began in April 2011. Mr I says he didn't miss any payments, but rather, there was a problem with the renewal date which meant a new start date was needed. He says he was told it would be the same policy, providing the same cover.

Mr I's previous policy covered malicious damage caused by tenants as standard. However, on his new policy this cover was optional, and it wasn't added. Mr I says after he received the documents for his new policy, he spoke to Barbon and it confirmed he had cover for malicious damage and loss of rent. Mr I said he asked about this because the policy literature was misleading.

Mr I says he made two claims for malicious damage caused by his tenants; in May 2011 and June 2013. He says whilst the damage was covered, his loss of rent wasn't. He made a third claim in August 2014, and on that occasion, he was told neither the malicious damage or his loss of rent was covered. Mr I complained to Barbon that malicious damage had previously been covered. Barbon responded to the complaint in 2015.

Barbon has told this service that it no longer has details about the 2011 claim. So, it doesn't know what was claimed for, or what was settled. But it says the 2013 claim was settled by mistake, and this was due to the third party handling the claim not being aware that Mr I's new policy didn't include the optional 'malicious damage by tenants' cover.

When responding to the complaint in 2015, Barbon explained that the 2014 claim had been correctly declined by the insurer on the basis the optional cover hadn't been included in his policy. However, Barbon accepted it had sent Mr I misleading policy documentation due to the insurance certificate indicating malicious damage was included. So, Barbon offered to assume responsibility for considering the claim (rather than Ageas, the insurer) as if the optional cover had been included.

Mr I went on to refer his complaint about the 2014 claim to this service. In 2015, one of our adjudicators thought Barbon should also cover Mr I's loss of rent for the 2014 claim. This was on the basis the repairs had been delayed by Ageas declining the claim. Barbon accepted his recommendation.

In 2018, Mr I brought a further complaint to us against Barbon. This complaint was about his 2011 and 2013 claims and his loss of rent not being covered. Mr I said he had remembered that his two earlier claims were identical to his 2014 claim. So, because his loss of rent had been settled on the 2014 claim, he didn't think he had been treated fairly on the two earlier claims. He also pointed towards policy documentation sent by Barbon, which in his view supported loss of rent was covered.

When responding to Mr I's 2018 complaint, Barbon explained that the loss of rent cover only applied to the first eleven events listed in the buildings section of the policy, and malicious damage caused by tenants fell outside of those eleven events. So, Barbon concluded the claims had been assessed correctly. Barbon also explained that whilst it had covered lost rent for the 2014 claim, this was due to the claim delays – not because loss of rent was covered under the policy terms. One of our investigators considered the complaint and agreed with Barbon. Because Mr I was unhappy with the outcome she reached, the complaint was passed to me to decide.

After the case was passed to me, Barbon clarified that it does *not* act as an agent for Ageas in respect of responding to complaints about claim decisions. Barbon explained it had been handling Mr I's complaint from a sale and literature perspective only.

Barbon says the policy was sold during a phone call on a 'non-advised' basis, and the policy documents were sent to Mr I immediately after the sale so he could ensure the cover was suitable for his needs. It also says documentation was sent at the subsequent renewals. Barbon is of the view that no errors were made during the sale, and it says the policy literature clearly showed loss of rent *wasn't* part of the 'malicious damage by tenants' coverage.

I issued a provisional decision in January 2020. I explained I didn't intend to uphold the complaint:

"I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where evidence is inconclusive or incomplete, I have reached my decision on the balance of probabilities – this means I have determined what I consider is more likely to have happened, based on all the evidence that is available and the wider surrounding circumstances."

There are two separate issues here: was the policy mis-sold by Barbon and were the policy terms applied correctly and fairly when the claims were considered by Ageas. I'm unable to consider both issues under this complaint. I can only consider the issues that relate to the business this complaint is against. Mr I made his complaint to, and about Barbon, so I will therefore consider the sale."

This means, although I will be commenting generally on what's covered by the policy terms, I won't be considering Ageas' specific decisions in 2011 or 2013 in relation to those claims. We would need details from Ageas about those claims, via a separate complaint, before giving the matter consideration. Therefore, if Mr I still believes the policy terms weren't applied appropriately in 2011 or 2013, he needs to complain to Ageas and give it the opportunity to respond. He can then return to us if he remains unhappy.

Mr I's lapsed policy covered malicious damage by tenants as standard, and this type of claim covered loss of rent. However, under Mr I's new policy, malicious damage by tenants wasn't covered as standard; the cover was optional, and it had to be added separately. The policy did cover loss of rent as standard, but only for the first eleven events listed in the standard buildings section – which didn't include the optional 'malicious damage by tenants' cover. Therefore, the new policy didn't cover loss of rent when malicious damage was caused by tenants. In my view, this "reduced" loss of rent coverage is the crux of Mr I's complaint against Barbon, in terms of the sale. So, that's the matter I've considered here.

Barbon says the new policy was taken out during a phone call in 2011. It hasn't provided a recording of the call, and we also haven't been given the 2011 point of sale documents, or the 2012 renewal documents. But this isn't unusual after so much time has passed.

However, we have been given the documents that were sent to Mr I for the 2013 and 2014 renewals, and the emails showing they were sent. On balance, given Barbon had a duty to provide Mr I with his policy details, I consider it likely that similar information would have been provided to him in 2011 and 2012.

Barbon says the policy was sold on a non-advised basis, and if so, this means it was Mr I's responsibility to make sure the policy met his needs – rather than Barbon's responsibility to make sure the policy was suitable for him. I haven't seen anything that leads me to believe advice was given to Mr I about the policy, and the renewal information I've seen confirms Barbon wasn't giving advice or making a recommendation, but rather it was for Mr I to decide how to proceed. Therefore, on balance, I accept the sale was non-advised.

Whether advice was given or not, Barbon had to give Mr I information in a clear, fair, and non-misleading way so that he could make an informed choice about whether to take the policy out.

Barbon has already accepted its policy documents were misleading in respect of the optional 'malicious damage by tenants' cover. Due to incorrect wording in the endorsement section of the insurance certificate, Barbon accepted it could be interpreted the cover was included, when it wasn't. However, Mr I says Ageas covered the damage on his first two malicious damage claims, so I can't reasonably decide that he was disadvantaged by this issue on those occasions. Although Ageas declined the damage on the third claim, Barbon has already put matters right by assuming responsibility for it.

So, what's left to consider here, is whether the policy literature issued by Barbon was also misleading about loss of rent when malicious damage is caused by tenants. I've reviewed the available renewal documents, but I haven't seen anything that suggests loss of rent is covered in these circumstances. The renewal invitations show a monetary limit for loss of rent, but the accompanying policy terms clearly explain this cover only applies to eleven scenarios, which doesn't include malicious damage by tenants.

I appreciate Mr I's lapsed policy covered loss of rent when malicious damage was caused by tenants; and I accept he may not have been aware his new policy didn't, when it first started. However, the onus was on Mr I to review his policy documents to ensure the new terms met his needs – and overall, I don't consider the documents to be misleading about the loss of rent cover.

In any event, on balance, I'm not persuaded that Mr I would have done anything differently even if the loss of rent difference had been highlighted to him at the time of the sale. I say this because Mr I continued to keep the same policy in place after he knew it didn't cover loss of rent when malicious damage had been caused by tenants, following his 2011 and 2013 claims."

Both Barbon and Mr I responded to my provisional decision. Barbon explained it didn't have anything further to add. However, Mr I provided relatively comprehensive comments about the sale and his three claims. I will summarise the points he made that are relevant to this complaint, which is about the sale:

- In the past he's been told that providing a tenancy agreement is valid, a loss of rent would be covered when tenants maliciously cause damage. He says he regularly asked about this during the first few years.
- Mr I says at no point was he informed malicious damage was now optional cover and that loss of rent wasn't covered. He says he wouldn't have agreed to remove either cover as one of his properties had previously been maliciously damaged by tenants and he had lost rent as a result.
- Barbon admit sending misleading policy documents, which is why it dealt with the 2014 claim via its indemnity insurance.
- He was honest during his three claims – he didn't challenge an underinsurance issue which cost him about £90,000. He says this supports he's being honest here, about being told a loss of rent would be covered if tenants cause malicious damage.
- He says he attempted to claim for loss of rent in 2011 and 2013, and at that time he complained the policy had been mis-sold on the basis loss of rent wasn't covered; but his complaints were rejected over the phone and the complaints procedure wasn't explained to him. He says he wasn't made aware of our service.
- He felt he had no choice but to accept the 2011 claim settlement for the damage and move on – and he did so on the understanding the next policy would cover loss of rent when damage had been caused maliciously by tenants. He says during the following renewal he was told he had cover on the condition of a valid tenancy agreement.
- Mr I says Barbon has said he was simply not covered for loss of rent. However, he says he's spoken to Barbon on several occasions, and it's told him it does provide cover for loss or rent. He also says the terms explain he's covered for loss of rent providing there's a valid tenancy agreement, and Barbon has confirmed this to be correct when he has read the terms back to its advisors.

- Mr I points towards his policy schedule and terms. The schedule shows a malicious damage policy endorsement, and this explains that cover is extended to damage by malicious persons, excluding malicious damage caused by paying guests without a formal tenancy agreement. The terms explain a loss of rent is covered for the first eleven events listed in Section A, but in the event the property is unoccupied or unfurnished at the time of the damage, loss of rent is only covered if a tenancy agreement had been entered into prior to the incident.
- Mr I says Ageas has told him that because the 2011 and 2013 claims were before it acquired Groupama, it would be up to Barbon to handle complaints about those claims.
- Mr I had to borrow money in order to cover the repairs to the properties, which he says the loss of rent would have covered. He says he's been put into financial distress and his health has been affected.

my findings

I have reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is inconclusive or incomplete, I have reached my decision on the balance of probabilities – this means I have determined what I consider is more likely to have happened, based on all the evidence that is available and the wider surrounding circumstances.

Having done so, I've reached the same outcome I reached in my provisional decision for the same reasons. Mr I has made many of the same arguments and it's clear he disagrees with my interpretation of the policy literature in terms of what is and isn't covered. But I'm afraid there's not much more I can add to what I said in my provisional decision. I will however, comment on the new points he's made regarding the sale, in addition to clarifying some points I previously made.

Under "*Section B Buildings – Additional Cover*" the policy *does* cover a loss of rent when a tenancy agreement is in place, but this is *only* for the eleven events listed under "*Section A Buildings – Standard Cover*". Malicious damage caused by tenants *isn't* one of the eleven events listed in Section A; it's listed under "*Section C Buildings – Accidental Damage and Malicious Acts Optional Extension*". Although 'malicious acts' is one of the eleven events, this specifically excludes damage caused by tenants lawfully on the property. Therefore, these terms mean a loss of rent isn't covered when malicious damage is caused by the tenants.

I appreciate the documents refer to a tenancy agreement. However, these references simply mean that a) malicious damage by tenants is only covered if they held a tenancy agreement, and b) loss of rent is only covered for those specific eleven events if tenants with a formal agreement were renting the property at the time. The references to a tenancy agreement don't mean a loss of rent is covered when tenants maliciously cause damage. Again, this isn't one of the eleven events.

All parties agree the policy schedule is misleading in regards to the inclusion of the optional malicious damage extension. The schedule shows this extended cover was in place at the time of the claims, even though the additional premium hadn't been paid. However, I can't reasonably uphold this complaint based on malicious damage not being included given all three malicious damage claims were settled despite Barbon's error. Mr I is unhappy with how Barbon handled his third claim under its indemnity insurance, but this service has already considered that matter in 2015; so, I won't be commenting further here.

For me to uphold this complaint, I would need to be persuaded the policy had been mis-sold in respect of loss of rent, *and* that Mr I would have otherwise taken out alternative cover so his loss of rent would have been covered for 'malicious damage by tenants' claims. But as explained in my provisional decision and here, I'm not persuaded the policy literature was misleading in respect of loss of rent; and as explained in my provisional decision, I'm also not persuaded Mr I would have arranged alternative cover.

I've also now considered Mr I's recollections about what he was told – to see if this changes my conclusions – but I've not been persuaded that he was misled verbally at any stage. I'll explain why.

Mr I says after his first claim in May 2011, he was told his "next policy" would cover a loss of rent when damage is caused maliciously by tenants. But he also went on to renew the policy further in May 2014, after his second claim in June 2013, when his loss of rent was again not covered. This is despite the false reassurances he says he was given after the 2011 claim, and the mis-sale complaints he says he had made. In my view, the renewals don't support he had previously been misled about his loss of rent cover. If Mr I had been misled as he recalls, on balance, I consider it likely he would have arranged alternative cover via a different business after his first or second claim.

If Mr I still believes the policy terms weren't applied appropriately in 2011 or 2013, it's still my view that he needs to complain to Ageas and ask for a formal response. He can then return to us if he remains unhappy. I accept Letsure may have been involved in the handling of those claims, but the insurer still remains responsible for any claim decisions. The insurer was Groupama, which is now part of Ageas.

my final decision

I'm sorry to hear about Mr I's difficult circumstances. But for the reasons I've set out above, and in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 19 March 2020.

Vince Martin
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