

complaint

Mrs E complains that Ageas Insurance Limited refused a claim on her legal expenses insurance policy.

All references to Ageas Insurance Limited include reference to its claims handlers.

background

In July 2012, Mrs E employed an architect to provide drawings and obtain planning permission for a new building. The architect prepared some revised planning drawings in September. He then prepared some working drawings in October that Mrs E could use to get quotes for the construction work.

Mrs E took out the legal expenses policy in February 2013. In March, she asked the architect to provide final drawings after some small amendments had been made, including changes to windows and a chimney. He provided these on 5 March, with further drawings showing final adjustments later that month.

During the building work, it became apparent that the working drawings weren't exactly the same as the planning drawings. As a result, the building would be too high. After discussions with the planning authority, Mrs E agreed to make changes to the building.

Mrs E wanted to sue the architect. She said the error was in the drawings the architect produced in March 2013, after the policy started, and made a claim on her policy.

Ageas refused Mrs E's claim. It said the error was in the earlier plans, which were prepared in 2012 – before she bought her policy.

Ageas also said Mrs E wasn't likely to be successful with her case. She would need expert evidence to prove that the architect was in breach of his duties to her. Ageas said proving she had suffered a loss as a result of the architect's actions would be difficult, as Mrs E had managed the building project, and was at least partly responsible for some of the mistakes.

When Mrs E complained to this service, our adjudicator thought it was reasonable for Ageas to refuse her claim on the information it had available.

Mrs E said the changes requested to the chimney and window in March 2013 were only minor, and weren't relevant. The major issue was the error in the height of the building in the drawings provided on 5 March. This was after the policy started. She provided further information, including letters from an architect, planning consultant and builder.

After considering these, Ageas accepted they would probably be enough to show Mrs E did have a reasonable chance of success. But it maintained that the claim was based on plans prepared before the policy started, so it still wasn't covered.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The policy terms say a claim must have prospects of success; in other words, it must be more likely than not that the policyholder will win their case. Terms like this are common in legal expenses policies. They mean insurers don't have to meet costs for claims that are unlikely to be successful.

Ageas initially said it didn't think Mrs E was likely to be successful in her claim. It explained the reasons for this view, and said she would need to provide further information, including expert evidence, showing that she did have a good claim. After Mrs E recently provided comments from an architect, planning consultant and builder, Ageas accepted that these were probably enough to say she was likely to be successful.

I think that was a reasonable approach for Ageas to take. It's entitled to request information supporting the claim before satisfying itself that the claim has prospects of success; the policy allows Ageas to ask a policyholder to get expert advice on their claim. If Ageas does accept the claim, any costs of getting the evidence will be covered.

But despite the further information, Ageas has still refused cover, because it says the event leading to the claim happened before the policy started.

Mrs E bought a policy that is specifically designed for 'self-build' projects. The policy covers claims arising from contracts relating to the project, including claims against an architect. It doesn't cover a claim for something that happened before the policy started. Again, that's a common term in legal expenses insurance and isn't unreasonable. It's in line with the basic purpose of most insurance, which is to cover future risks, rather than something that's already happened.

Ageas has said Mrs E needs to show that the drawings from March 2013 showed the wrong height of the building, and the earlier drawings showed the correct height. I think that's an accurate summary of the key point here.

If Mrs E's claim relates to the earlier drawings, that were prepared months before she took out the policy, it would be reasonable for Ageas not to cover this. Mrs E says the architect's error was in the later drawings. But looking at the claim she submitted to Ageas, she said the working drawings were prepared in October 2012. She then asked the architect to prepare further drawings in March 2013 because they were making some relatively minor changes. It doesn't seem to me that this was an entirely fresh set of drawings.

The further evidence Mrs E provided recently indicates that she has a reasonable chance of success, and that there were errors by the architect in some of the drawings. But it's notable that none of the documents confirms when that error happened – they don't actually say whether the October drawings were wrong, or the March drawings. And that's the key point. There doesn't seem much doubt that something went wrong, but there is still doubt about when it happened.

On the information I've seen, it's difficult to say precisely when the error occurred. Ageas has said it will reconsider the matter if Mrs E provides evidence confirming it was the later drawings that were wrong, not the earlier ones. I think that's reasonable, and Ageas was entitled not to accept her claim on the information currently available.

my final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 4 January 2016.

Peter Whiteley
ombudsman