

complaint

Mr and Mrs R complain Ageas Insurance Limited has unfairly declined a claim they made on their commercial buildings insurance policy for damage caused by subsidence.

background

In early 2019, Mr and Mrs R made a claim on their commercial buildings insurance policy. They say their tenant had told them about some damage which they were concerned could be caused by subsidence.

Ageas declined the claim as it said the damage had happened before the policy had started in September 2018. It said the tenant had reported the damage as starting in the summer of 2018. So it said their previous insurer should be responsible for the claim.

Mr and Mrs R's previous insurer also declined the claim, so they complained to Ageas. Ageas accepts that there's likely some damage caused by subsidence. But it says the claim isn't covered because the damage happened before the policy started, and this is excluded under the policy.

Unhappy with Ageas' response, Mr and Mrs R brought the complaint to our service.

In February 2021 I issued a provisional decision in which I said:

"In insurance claims, if an insurer wants to rely on an exclusion to decline a claim, it is for the insurer to show it can rely on it. The relevant term in Mr and Mrs R's policy says:

*"what is covered: Damage caused by subsidence, ground heave or landslip of the site on which the property described on the schedule stands but not damage:
d) which originated before this cover cause was effective"*

Ageas' report doesn't have a lot of detail but does say "We have noted the damage to the property was first discovered by the tenant during summer 2018 and this predates the policy inception. The damage also appears to have been getting worse since."

Mr and Mrs R say they weren't told about the damage until March 2019. But from everything I've seen, I think it's likely the damage started before this point. It seems that the tenant only got in touch with Mr and Mrs R when things had continued to get worse, but the tenant told Ageas it had started in summer 2018. So, whilst I accept Mr and Mrs R didn't know about the damage until later, I'm satisfied that the exclusion still applies as it refers to when the damage started, not when it was discovered by the policyholder.

What I need to decide is whether the exclusion extends to any damage suffered while the policy was in force, if that damage started before the policy did. Ageas has argued that it does and therefore the claim shouldn't be covered. And I think this is a reasonable decision.

The exclusion covers damage which 'originated' before the policy was in place. I've taken that to mean damage that began before the policy started. In this case, I'm satisfied the damage started before the policy did, so I don't think Ageas needs to cover any of the claim.

I accept the report from Ageas says the damage has been getting worse since the policy started. So it's arguable that Ageas could be expected to cover any damage that happened

whilst it was on cover from September 2018. But I think the exclusion, and particularly the word 'originate' means that if the damage began before the policy did, it doesn't need to cover any worsening of that damage that might have happened once the policy was in place. So I think Ageas can fairly rely on the exclusion to decline the claim.

I've considered Ageas' points about the ABI agreement not applying in this case. But I don't need to make a finding here on whether it should apply or not, as I'm satisfied Ageas can fairly rely on its policy exclusion to decline the claim.

I realise this will come as a disappointment to Mr and Mrs R, but I don't think Ageas needs to consider their claim for damage caused by subsidence."

Ageas had no further comments to make. And Mr and Mrs R didn't respond to the provisional decision.

my findings

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

Neither party has added any further information for me to consider, so I see no reason to depart from the findings set out in my provisional decision. So Ageas doesn't have to consider Mr and Mrs R's claim for damage caused by subsidence.

my final decision

My final decision is that I'm not going to ask Ageas Insurance Limited to do anything differently.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 24 March 2021.

Michelle Henderson
Ombudsman