

The complaint

Mr W complains Ageas Insurance Limited unfairly declined his buildings insurance claim and cancelled his policy.

What happened

In December 2022 a property owned by Mr W suffered an escape of water. He claimed for the damage against his Ageas buildings insurance policy. But Ageas declined the claim. It said the property was unoccupied and unfurnished, so the claim was excluded under the terms of the policy. Ageas then said it couldn't continue cover, so it cancelled the policy with effect from mid-January 2023 – so from about a month after the loss. It since explained the cover was cancelled as Mr W had misrepresented his occupation of the property when taking out the cover.

Mr W complained about Ageas' actions. It issued a complaint response in February 2023. It didn't change its position on the claim. But it apologised for delays experienced on its phone lines. In March 2023 Ageas issued a further complaint response. It said its decision to cancel the policy was correct as Mr W misrepresented his occupation of the property when taking it out.

Mr W wasn't satisfied with that outcome. So he came to this service. He feels the claim was unfairly declined. Mr W says if Ageas had acted properly the property wouldn't have suffered further damage. He said he had evidence that that he didn't misrepresent his occupancy status. He sold the property without repairs being made, but feels that lost him around £50,000. He wants Ageas to cover the loss. He also wants recognition of the impact its actions have had on his health.

Our Investigator felt Mr W didn't take reasonable care when telling Ageas the property was his permanent home. He was satisfied that had the insurer been told the correct information it wouldn't have offered cover. He felt its decision to cancel the policy and decline the claim, based on the exclusion, was fair. So he didn't recommend it do anything differently. Ageas accepted that outcome. As Mr W didn't the complaint was passed to me for a final decision.

I issued a provisional decision. In it I explained why I intended to find Ageas unfairly relied on the exclusion to decline the claim, but that Mr W hadn't shown this caused him a loss. I said I would require it to pay him £350 compensation for that part of his complaint. I also explained I intended to find the cancellation was unfair – and if I did I would require Ageas to cover additional insurance premium costs incurred as a result of the cancellation – and pay further compensation of £250. As the reasoning forms part of this final decision, I've copied it in below.

what I've provisionally 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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Mr W or Ageas provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted

The claim

As Mr W's pointed out the policy was cancelled after the date of loss. So cover was in place at the time, regardless of the misrepresentation and cancellation issue. Because of that I've first considered the circumstances and policy terms to decide if Ageas fairly declined the claim.

Mr W's policy covers the building against loss or damage caused by water leakage from fixed domestic water, heating or drainage installation. As far as I'm aware the damage resulted from leakage from a pipe. There's a video showing leaking water. So on the face of it damage would be covered.

However, Ageas has referred to a policy exclusion to deny the claim. It says the following isn't insured:

'The damage when your home is unoccupied (for 60 days or more in a row) or unfurnished.'

Unoccupied is defined by the policy as 'A home not lived in or not intended to be lived in for more than 60 days in a row'.

Unfurnished is defined as 'A home with not enough furniture to be fully lived in'.

As this is an exclusion it's for Ageas to show its reasonable for it to be relied on to decline the claim. So it needs to provide persuasive evidence that the property wasn't lived in or wasn't intended to be lived in for more than 60 days in a row. Alternatively it needs to show it was a home with not enough furniture to be fully lived in.

Ageas appears to have based its application of the exclusion on information Mr W gave in the notification of loss call and a video stream inspection of the property. Unfortunately the video wasn't recorded, so I haven't been able to view it. Notes provided by the agent during have been provided.

Mr W's explained he lived between two properties. He inherited the insured property and was undertaking modernisation, or other work, on it the time of loss. He had moved furniture out to facilitate this.

'Lived in' isn't defined by the policy. A reasonable definition might be for someone to be living in the property on a regular basis. I consider Mr W's reported use of the property to fulfil that.

But it seems to be accepted he had been visiting the property every two to three weeks, staying for two to three nights at a time. In addition Ageas hasn't shown that Mr W had an intention to 'not live in' the property for more than 60 days in a row. So Ageas can't fairly say the property was 'unoccupied' as defined by the policy.

That leaves 'unfurnished'. For this to apply the property would need to be lacking enough furniture for it to be 'fully lived in'. That phrase isn't defined by the policy. But I think a reasonable understanding of the term would be – sufficient furniture to facilitate common domestic tasks – like sleeping, sitting, washing and eating.

As I've said I've been unable to view the video inspection. But the agent's notes describe a completely unfurnished living room, three unfurnished bedrooms and a barely furnished dining room.

Mr W did say to Ageas that the property wasn't fully furnished. But the exclusion doesn't require the property to be 'fully furnished'. Mr W explained he had cleared the property of his mother's possession over preceding months and started work to revitalise the property. He said there wasn't a lot of furniture. But that which remained included a table, chairs, mattress, bedding, cooker and a washing machine. He said that was more than sufficient furnishings for him to live comfortably whilst there.

The limited number of photos Mr W's submitted provide some support for his description of the furniture in the property – over that provided by the agent. They show a table and chairs, washing machine and some other items. He's also been consistent on with his description of the furniture. So I'm persuaded that whilst the furniture in the property was limited there was likely enough to perform common domestic tasks. So Ageas can't fairly say the property was 'unfurnished.'

That means Ageas' decision to rely on the exclusion to decline the claim was unfair and unreasonable.

Impact of the unfair decline

The usual resolution here might be to require Ageas to reconsider the claim without reference to the exclusion. But that's not so easy in this case as Mr W has sold the property without completing any repairs. So it would be impractical for the claim to be reconsidered. So I've considered if I can fairly say Ageas caused him a loss.

I've looked at the policy terms and considered the damage reported by Mr W. I haven't seen an obvious policy reason why the claim wouldn't have been payable. So it seems likely Ageas would have had to investigate the claim further. The outcome can't be known now, so I've had to consider what I think is most likely based on the evidence.

If Mr W had used other funds to complete the repairs invoices might provide evidence of loss, so I might require Ageas to reimburse him. But he didn't do that. The property was sold unrepaired.

I've tried to gain an understanding of the extent of the damage. Mr W hasn't provided much pictorial evidence. Just a few photos. They show some damp and peeling wallpaper in a couple of rooms. He's said plaster was affected, but there's no photos to support this. He hasn't provided any quotes or schedules of works for repairs for me to consider. He hasn't provided much in the way of detail of the damage for me to be able to consider.

I've been able to find a sales brochure, on a website, for the property. This seems to be from March 2023 – so after the loss. It lists an asking price of £210,000. Mr W has reported the property selling in June 2023 for £197,500. I don't know if the photos are from before or after the loss. Mr W can let me know if they pre-date the loss.

However, there's no reference in the brochure text to any unrepaired water damage – significant damage or otherwise. The photos show all rooms, except one, to be in presented in reasonable condition – with no signs of obvious damage. There is one room with what appears to be bare plaster. That seems to be a bedroom, rather than

one of the ground floor rooms affected by the escape of water. In any event the plaster doesn't appear to be damaged – just lacking wallpaper in places.

I accept there may have been permanent or long-term damage, after drying out, from the escape of water. But unfortunately for Mr W I haven't seen evidence of it. I realise its long after the event so hard for him to show now. I also note his point that his health conditions made dealing with the situation difficult at the time. But I still need to be persuaded there was damage covered by the policy that Ageas should have covered – and that its failure to do so caused him a loss. I just haven't seen that so far.

So I haven't, so far, seen enough to persuade me Ageas' unfair decline of the claim, based on the exclusion, did result in a loss for him. Neither have I seen evidence that its response resulted in additional damage as he has claimed.

Furthermore, even if I accepted Ageas should have covered some water damage I haven't seen enough to persuade me its failure to do so resulted in a reduced sale price. As I've said the brochure shows a property in reasonable condition without any obvious water damage. Mr W, so far, hasn't provided anything else that very persuasive.

Property sales are unpredictable. Prices achieved can vary on a range of factors. It's difficult to attribute a final sale price to one individual factor. And I haven't seen enough to persuade me damage resulting from the escape of water most likely did directly result in a reduced sale price.

So based on what I've seen so far, I don't intend to require Ageas compensate Mr W for financial loss. I will consider any new evidence provided in response to this provisional decision.

Whilst Mr W's been unable to show his loss, I still feel UKI's unfair reliance on the exclusion to decline his claim has caused him some unnecessary distress and inconvenience. He's explained how it exacerbated his health conditions. And I can see he's committed a fair amount of time and effort to refuting UKI's decision on the exclusion. So I intend to require UKI to pay him £350 compensation. As part of this award I've also taken into account concerns Mr W raised about Ageas' customer service – including the time he waited for calls to be answered.

Cancellation of the policy

Ageas says Mr W misrepresented, when taking out the policy, his occupation of the property. As he's a consumer, the relevant legislation for me to consider is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). An insurer can take certain action, like avoiding a policy, if a 'qualifying misrepresentation' has been made in line with (CIDRA).

The first consideration is – was there was a misrepresentation? Ageas says Mr W misrepresented his occupation of the property by incorrectly claiming it to be his permanent residence – when in reality he stayed there only occasionally. Mr W disputes having given that information.

I've seen Mr W's policy statement of fact. On this the relevant question is 'Is this your permanent residence?'. The answer given is 'yes'. Considering his intended use and occupation of the property I'd consider that, on its own, to have been a misrepresentation. The pattern of use set out above, combined with intention to sell

the property and his use of his other home mean it can't reasonably be described as a permanent residence.

However, Mr W disputes having answered 'yes'. He's provided screen shots of the aggregator site. This gives the question 'Is the property your main residence?'. That's a different question to that on the statement of fact. But for the same reasons, I'd consider 'yes' to have been a misrepresentation to that question as well.

However, Mr W's provided a document from the aggregator site showing questions he was asked and answers he provided. The date on it seems to be consistent with when his Ageas policy was set up. I don't know for certain if it was the information passed to Ageas for this policy. I haven't closely compared all its questions and answers with those on the statement of fact. But they appear to be broadly consistent.

Ageas hasn't had an opportunity to consider the document. It's important it's allowed to. But currently I intend to find the cancellation was unfair. I will consider Ageas and Mr W's responses to this provisional decision before I issued my final one.

Returning to the aggregator document – I've noticed a couple of inconsistencies between it and the statement of fact. There may be others I haven't spotted. It records Mr W's as stating he was employed. The statement of fact has him as 'not in employment'.

Second is the inconsistency referred to above. The aggregator document records Mr W as answering no to the question about main residence. It then includes a follow up question 'When will the property be permanently occupied?'. This, as shown by Mr W's screenshot of the actual aggregator website, appears to be a question asked when 'no' is the response to the 'main residence' question. So it seems possible Mr W did answer 'no'. In that case, if this was the information passed to Ageas, it wouldn't be reasonable for it to say he made a misrepresentation on that question.

The aggregator document records an answer, to the follow up question, of 'within 30 days of the policy start date'. The statement of fact doesn't, for obvious reasons, record this information.

Mr W's information from the aggregator site has cast doubt on whether he did make a misrepresentation – or to which question he did make one. So I ask Ageas, and Mr W if he wishes, to provide further information.

Ageas has so far provided little to support its misrepresentation case. It hasn't provided the sales journey – including the questioned Mr W was actually asked (rather than that recorded on the statement of fact) – or the information it asked for and was provided with by the aggregator site. Neither has it provided any evidence from its underwriting guide – or a statement for a senior underwriter to evidence its position that it wouldn't have offered cover without a misrepresentation. It's provided a statement attributed to 'our underwriting team' but that isn't enough. It hasn't given the name and title of the author.

Within its response I request Ageas to provide an explanation of the differences shown between the aggregator answers provided by Mr W and those shown on the statement of fact it produced.

So overall there's not currently enough for me to find all of the following CIDRA requirements have been met – that there was a misrepresentation, that Mr W failed

to take reasonable care not to make one and that had he not done so Ageas wouldn't have offered him cover. I need to be persuaded of all three to find the cancellation was fair. If Ageas' provides reasonable evidence of all three in response to this provisional decision, I will likely find the cancellation was a fair outcome (I note CIDRA doesn't provide cancellation as a remedy. But as it would likely have a lesser impact on Mr W, than the full avoidance of the policy, I would consider it to be a fair outcome).

But if it doesn't, I intend to find it wasn't. In that event I'll likely require it to remove any record of it having cancelled the policy. I'll require it to cover additional insurance premium costs incurred as a result of the cancellation. I'm also likely require it to pay further compensation, of £250, to recognise the impact on Mr W.

In response to the provisional decision Mr W and Ageas provided further evidence and comments for me to consider. Having thought about some new information from Ageas I wrote to it and Mr W.

I explained Ageas had provided further information about Mr W's insurance application. I said having considered it, and relevant legislation (CIDRA), I now intended to find the cancellation of the policy was fair and reasonable. I said I no longer intended to require Ageas to remove any record of cancellation, pay the relevant compensation or reimburse additional premiums.

Ageas provided further information from the aggregator site. Mr W's reported as having made, within a few minutes, multiple applications for quotes. The aggregator site has said after not receiving quotes he amended information. He then received quotes and went on to accept one from Ageas. Ageas provided a screenshot, from the aggregator, that supports this. I've provided Mr W with a copy for his comments.

Ageas also provided a screenshot it says shows Mr W's answers, regarding occupancy, for the quote he finally accepted. These correspond to the questions and answers he provided from the aggregator – as outlined in my provisional decision.

Ageas accepts Mr W did answer 'no' to the question 'Is the property your main residence?'. But it points out he went on to choose 'within 30 days of the policy start date' in response to the follow up question - 'When will the property be permanently occupied?'.

I explained I felt it fair to consider that a misrepresentation. Considering Mr W's account of his use of the property, as set out in my provisional decision, he didn't intend to occupy the property permanently himself within 30 days. Neither could he have reasonably considered a future purchaser would be permanently occupying within that timescale.

I said I accept the question and answer aren't the ones given on Mr W's statement of fact. Ageas appears to have translated Mr W's answers into current 'permanent residence' for that document. However, the question he was asked was clear. I'm satisfied Mr W knew of his own intentions for the property regarding occupation. So it's fair to say he failed to take reasonable care not to make a misrepresentation.

I set out that CIDRA also requires Ageas to show the misrepresentation made a difference. I said having considered its underwriting guidance and commentary I was satisfied, without the misrepresentation, it likely wouldn't have offered Mr W cover at all. So there was a qualifying misrepresentation. For those CIDRA provides specific courses of action, or remedies, for the insurer.

I explained cancellation isn't one. Although avoidance of the policy (treating it as though it never existed) is. Ageas has said when cancelling it believed it was acting in the best interest of Mr W. I agreed a cancellation record is likely a better outcome for him than an avoidance, particularly in this case where a claim occurred during the period Ageas was covering the risk (before it enacted the cancellation). So I couldn't say the cancellation was unfair in the circumstances.

Ageas had said in hindsight cancellation should never have happened. It would have preferred to avoid the cover. I explained that it's too late now for it to reasonably avoid the policy, so I was still considering the claim. I said I would consider his latest information in support of his loss – along with any responses to my change of position on the cancellation.

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.

In response to my change of position on the cancellation Mr W explained he had only received two quotes. These were returned multiple times. He says the quotes were provided within seconds of each other. So this doesn't support the notion of him manipulating the quotes in some way. Instead the multiple quotes, he explained, likely result from a poor internet connection.

What Mr W says is plausible. However, it doesn't change the outcome. That's because, regardless of the consistency of answers given for any previous applications, it's the those given for the accepted policy that are key.

Mr W's said he considers he was in permanent residence of the property. So when answering it would be permanently occupied within 30 days he made the most appropriate choice of from available. Having considered his use and plans for the property I'm not persuaded by what he says. He was asked when the property would be 'permanently occupied'. The available option of '*Greater than 30 days from the policy start date*' would have been more appropriate.

So I'm still satisfied Mr W did fail to take care not to make a misrepresentation – and that had that not happened, Ageas, ultimately wouldn't have offered him cover. So I'm still persuaded the cancellation was fair and reasonable.

In my provisional decision I said the cancellation had been put in place after the date of loss – so Ageas still needed to consider the claim as the policy was active at the relevant date. I explained why I intended to find Ageas unfairly relied on an unoccupancy exclusion to decline the claim, but that Mr W hadn't shown this caused him a loss.

Ageas hasn't provided anything to challenge my intended outcome on its application of the unoccupancy exclusion. So I still feel its decision to rely on it to decline the claim was unfair. Mr W provided further evidence to support his position that the decline caused him a financial loss.

He provided evidence of two valuations for the property from the summer of 2022 – so before the escape of water. However, these are of limited value as they date from a year before the actual sale. And, as far as I'm aware, the property failed to sell first time around when advertised at a price closer to the level of those valuations.

Mr W provided further evidence including a video of the property from a few months following the escape of water. He also provided a recording of a call with an estate agent.

The video does show some damage that appears consistent with an escape of water – including some bare plaster walls as well as some plasterwork and wallpaper in poor condition.

In the recording the estate agent explains he's reviewed the footage. He says the damage doesn't look like anything major or a big issue. He does feel it could potentially put some people off. So he suggests setting the asking price at around £200,000 – considering the works required and slowing property market since the last time Mr W listed the property for sale.

So Mr W's provided more persuasive evidence of water damage. I accept its possible there was a lower sale price than might have otherwise been achieved. However, I still haven't seen enough to persuade me that it most likely did.

I said in my provisional decision that the sales brochure shows a property in reasonable condition without any obvious water damage. There's no reference to it in the description of the property. I provided Mr W with a link to the brochure. But he didn't respond with a clear explanation of the brochure in response. So I'm still not certain of the actual condition of the property, and accepted water damage, when it went up for sale the second time.

And as I've said property sales are unpredictable. Prices achieved can vary on a range of factors – for example Mr W's estate agent explained he was selling in a slowing market following interest rate rises. So it's difficult to attribute a final sale price to one individual factor. Ultimately, I still haven't seen enough to persuade me damage resulting from the escape of water most likely did directly result in a reduced sale price.

So based on what I've seen so far, I'm not going to require Ageas compensate Mr W for financial loss. I will, for the reasons given in my provisional decision, require it to pay him £350 compensation.

My final decision

For the reasons given above, I find Ageas unfairly relied on the exclusion to decline the claim, but that Mr W hasn't shown this caused him a loss. I require it to pay him £350 compensation for that part of his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 March 2024.

Daniel Martin
Ombudsman