

## **The complaint**

Ms C complains about the way Ageas Insurance Limited has handled a claim she made on her home insurance policy for damage caused by subsidence.

## **What happened**

This is a long running claim; as the background is well known to both parties, I've provided only a brief summary below.

In 2013, Ms C made a claim on her home insurance policy for damage to an annex in her garden. Her insurer at the time accepted the claim as damage caused by subsidence. That claim was concluded in 2015. I'll refer to this as the '2015 claim'.

In August 2020 Ms C reported new damage, to the same area. Ageas declined that claim, it relied on a policy exclusion relating to '*faulty design*' of the foundations. Ms C complained about Ageas' decision to decline the claim.

That complaint was considered by the Financial Ombudsman Service in February 2022. Our Investigator didn't think Ageas could fairly rely on a '*faulty design*' exclusion to decline the claim. But he noted Ageas had also relied on a '*pre-existing damage*' exclusion to decline the claim.

He didn't think Ageas had acted unfairly in declining the claim on this basis, so he didn't recommend Ageas do anything differently. He said Ms C may wish to contact her previous insurer – who completed the 2015 claim - to see if it could assist, given its duty to carry out a lasting and effective repair.

It transpired the previous insurer, who handled the 2015 claim, had acted on a delegated authority, with the policy also being ultimately underwritten by Ageas. So after further involvement from this Service, Ageas agreed to review the 'new' damage to see what vegetation was causing the current damage. It said that would then determine how the claim was progressed. Both parties accepted the outcome of that complaint.

Following those complaints, Ageas did accept the claim for the new damage as covered under the policy. Its experts thought the subsidence had been caused by a eucalyptus tree. In August 2023, Ageas responded to a further complaint made by Ms C, this was in relation to the excess payable on the policy. Ms C had complained this shouldn't be payable, as the damage was related to the previous claim, for which she'd already paid an excess. Ageas said its experts had found the new episode of subsidence to be caused by different vegetation, which hadn't been implicated in the earlier claim. As such, it said that a further excess was payable.

Ms C was unsatisfied with Ageas' response. She said the eucalyptus tree should have been removed as part of the earlier claim. And as Ageas had ultimately been the underwriter of the policy for both of her claims, she shouldn't have to pay a further excess for works that should have been carried out years previous. So this complaint was also brought to this Service for an independent review.

Our Investigator said Ageas should consider this claim as a continuation of the previous one, and so not charge Ms C a further excess before dealing with the claim. She said whilst Ageas had delegated authority to a different insurer to handle the 2015 claim, it had ultimately been the underwriter for both policies. She said Ageas would have to work out

internally which part of its operation dealt with her recommendations. She said Ageas could have split the complaint and issued separate responses, but as it hadn't done so, she would provide her recommendations to Ageas under this complaint.

Our Investigator also recommended Ageas pay £100 compensation for the unnecessary distress caused in delaying the claim whilst the excess issue was in dispute.

Ageas didn't provide a response to our Investigator's view, so it was assumed it hadn't been accepted, and the matter was referred for an Ombudsman's decision. Ageas at that point did respond but didn't provide any further information to be taken into account.

Ms C paid the policy excess in September 2023, and works have now started to the annex.

### **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.

When making a claim on an insurance policy, it is for the policyholder – so in this case Ms C – to show that they've suffered damage covered by the policy. If she is able to do so, then Ageas must accept the claim, unless it can fairly rely on a valid exclusion to decline it.

In this scenario, Ageas has accepted the claim, and I understand repairs are ongoing, so the dispute is as to whether this should be considered as a continuation of the earlier claim, or a new one. Ageas has charged a further excess, so it considers this a new episode of subsidence; unrelated to the first. It says there were five years between the previous claim being concluded, and the current damage being noted. It also says the conifers identified as causing the initial damage had been removed, and so as they hadn't regrown, the 'new' damage can't have been caused by the same trees.

However, I have seen mention on Ageas' file that its experts did question the vegetation management that had been carried out during the first claim. It is noted to have thought it wasn't extensive enough. But this matter wasn't pursued further as Ageas, at that stage, sought to decline the claim by relying on other exclusions.

Ageas now says the evidence shows the previous arborist (from the 2015 claim) didn't consider the eucalyptus (which is the primary cause of the current damage) to have been implicated previously. But it hasn't shown any arborist report from the 2015 claim in support of this. Ageas says it doesn't have access to any information relating to that claim, as whilst it was the underwriter, it gave another insurer delegated authority to deal with it. That might be the case, but if it doesn't have access to the previous arborist report, or any claim information, then it hasn't been clear how it knows that the eucalyptus tree wasn't previously implicated.

I also consider five years between the claims to be a relatively short period of time, considering the damage has occurred in the same area, and vegetation has been outlined as the cause for both. So without persuasive evidence that any vegetation initially implicated was removed or reduced as recommended, I'm not minded to say Ageas has shown a lasting and effective repair was previously carried out. And given Ageas has confirmed it was ultimately the underwriter for both policies, I don't consider it fair or reasonable to charge a further excess.

Ageas seems to be basing its assertion on the fact that the previous claim was closed, as the monitoring had showed stability. But I haven't been provided with the monitoring reports from that claim, so I can't agree Ageas had made a reasonable decision not to consider this as a continuation of an earlier claim. I also don't accept Ageas couldn't gain access to previous reports, even if a different insurer was involved. Nor has it provided any evidence that it has sought to gain access to the information and been declined.

I consider enough time has passed for Ageas to gather this information to show Ms C, and this Service, that a new excess should therefore be applied, and it hasn't. So I don't think it would be fair to allow it a further opportunity to. I also consider this isn't information that would be easy for Ms C to provide, given she wouldn't have been in possession of it in the first claim, and is now no longer a customer of the previous insurer who handled the 2015 claim.

So having considered matters, I'm not persuaded Ageas has been fair in charging a further excess on the claim, and as I understand Ms C has already paid it, it will need to reimburse Ms C the £2,500 she paid, plus 8% simple interest per annum from the date that she paid it, until the date of settlement.

Ageas will also need to pay Ms C £100 compensation for delaying the claim for a short time as a result of unfairly charging the excess.

Since our Investigator issued her findings, Ms C has alluded to further issues with Ageas, I want to be clear that I haven't considered how Ageas has handled this current claim, beyond charging the excess. If Ms C does have any concerns, this Service can look into a further complaint, once Ageas has had an opportunity to respond to it, and subject to the usual rules and time limits that apply.

### **My final decision**

My final decision is that Ageas Insurance Limited needs to:

- Reimburse Ms C the £2,500 excess payment she made, plus 8% simple interest per annum from the date she paid it, until the date of settlement
- Pay Ms C £100 compensation for unnecessary distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 2 August 2024.

Michelle Henderson  
**Ombudsman**