

The complaint

Mr H and Mrs H complain about Ageas Insurance Limited (“Ageas”) for increasing their insurance premiums following a claim which was not their fault. They want Ageas to amend their policy premium to remove the loading that has since been applied.

What happened

Mr H and Mrs H live in an area where homes have their own external fuel tanks. They insure their home with Ageas.

In Summer 2021, Mr H and Mrs H noticed the smell of kerosene at the boundary of their property. They alerted their neighbour. Over the following months the neighbour commissioned an inspection of their fuel tank and was advised to replace it. They did so, and evidence of corrosion was found, but there was no evidence identified of an active leak or an immediate risk of leak.

In the meantime, the ground at Mr H and Mrs H’s property had become substantially contaminated with kerosene. The submitted a claim to Ageas, who also insured the neighbouring property.

Ageas processed the claim and works were undertaken to remove the contamination. The claim ultimately cost around £70,000. Mr H and Mrs H paid their claim excess and hoped that the claim would be recouped from their neighbour, as it appeared likely that the leak had come from the neighbouring property.

Ageas was unable to recoup the costs of the claim from the neighbour and advised that liability had not been accepted and it had not demonstrated negligence on the part of the neighbour.

In the meantime, Mr H and Mrs H received their new home insurance premium. It had increased by more than 70% due to the claim.

Mr H and Mrs H complained to Ageas. They felt that this was unfair as the escape of fuel had not been their fault, yet they were suffering ongoing consequences from the claim.

Ageas sent its final response letter in early 2023. It did not uphold the complaint and explained that as no negligence had been demonstrated it was not able to recoup the costs of the claim and had to hold these costs against Mr H and Mrs H’s policy.

Mr H and Mrs H were unhappy and contacted us.

One of our investigators has looked into this matter and did not recommend upholding the complaint. They considered that Ageas had acted reasonably in recording the claim.

Mr H and Mrs H did not accept that view and asked for an ombudsman decision.

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.

I understand Mr H and Mrs H's upset in respect of this matter, it must be very frustrating to have been caused the disruption of the decontamination works, and also the increased costs (both in the excess and the higher premium) when the escape of oil appears to have occurred from another property, and when it was outside of their control.

Nonetheless, I agree with my colleague's view, and I do not uphold this complaint.

Mr H and Mrs H have set out very clearly their view that it is morally unfair for them to suffer consequences as liability was not accepted by the neighbour, but they feel it is likely that the escape of oil came from the neighbour's fuel tank. They feel that the claim has limited their options to obtain alternative insurance and that they will have additional loading on their premiums for around 5 years.

I understand this, and can fully appreciate their position, but the insurer appears to have acted appropriately in the circumstances.

Ageas has explained that in order to recoup the costs of the claim from another policy, it would need to demonstrate legal liability. This may be through the neighbour accepting liability, or it being demonstrated that there was negligence on the part of the neighbour, which led to the escape of oil occurring.

In this case, there appears to have been a reasonable effort to investigate the cause of the leak, and Ageas has not been able to demonstrate negligence. The investigators were not able to find evidence of an active leak, and the neighbour replaced the tank which had signs of corrosion following advice.

In such circumstances, Ageas is correct to say that it cannot recoup the costs of the claim, and so cannot remove them from Mr H and Mrs H's claim's history.

I appreciate that this feels unfair, but it is the normal functioning of insurance, in much the same way that the insured person is not at fault when storm or flood damage occurs at their property, but they end up bearing the excess and increased premiums.

Mr H and Mrs H feel that Ageas has not pursued vigorously the investigation of whether there was negligence, because as insurer to both neighbours it makes no difference to Ageas which neighbour bears the losses. I understand that view, but I consider that Ageas has provided an adequate explanation of the investigations it has undertaken and the evidence it found and did not find.

As a result, whilst I appreciate that this will be disappointing to Mr H and Mrs H, I do not consider that Ageas has acted wrongly in applying a loading to their new premium, and I do not uphold their complaint.

My final decision

For the reasons given above, I do not uphold Mr H and Mrs H's complaint and do not ask Ageas Insurance Limited to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 2 August 2023.

Laura Garvin-Smith
Ombudsman