

The complaint

The late Mr E had a home insurance policy that was underwritten by Royal & Sun Alliance Insurance Plc ('RSA'). He left his home to his daughter, Ms E, who has since continued to pay for the policy and is also the sole executor of her father's estate. Ms E complains that RSA declined a claim she made on the policy unfairly.

What happened

The policy has been in force for over thirty years. Towards the end of Mr E's life, he resided in a care home. Ms E was unable to access the property during that time as she didn't think she had the right to and in any event she didn't have a key.

When Ms E took ownership of the property, she noted some water damage. It isn't quite clear how the damage was discovered. Ms E says it was observed by a gasman who had a need to lift the floorboards. But RSA's notes say Ms E spotted water on the living room walls.

Ms E instructed a damp specialist to produce a report. The specialist's opinion was that the concrete path leading up to the property had become defective. Over time, rainwater had built up beneath the surface and collected under the lounge floorboards. In turn, this had caused the floorboards above the water to become rotten and develop woodworm.

They were able to prove this theory by directing running water at the front of the property via a hosepipe. After fifteen minutes three inches of water had collected under the lounge floor.

Ms E raised a claim with RSA and forwarded them the specialist's report, as well as a quotation for the necessary repair work. RSA felt the report indicated that the damage had occurred gradually over time, and not due to any of the one-off events the policy covered. Accidental damage cover hadn't been added either. Therefore, it declined the claim.

Although Ms E challenged RSA's decision by making a complaint, making reference in particular to the insured event of 'escape of water', it didn't change its mind. It also pointed out that the policy excluded damage caused by or resulting from rot, wear and tear, damp and anything that happened gradually.

Our investigator considered RSA had declined the claim fairly as she didn't think Ms E had established, on balance, that the damage resulted from any of the events the policy covered. Ms E didn't agree, so I've been asked to review the case afresh and make a final 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.

In order for me to say that RSA should pay the claim, I need to be satisfied that the damage was caused by one of the events listed in the policy. I also need to be satisfied that none of the general exclusions RSA has made reference to apply.

In the first instance, the burden of proof rests with Ms E to establish that the damage was caused by an event the policy covers. If Ms E can meet that test, the burden of proof then switches to RSA to establish that an exclusion applies. The standard of proof in both cases is on the balance of probabilities.

Whilst Ms E has made reference to 'escape of water', I can see that our investigator explained that this refers to water escaping from an appliance, such as a washing machine, dishwasher, fixed water or fixed heating systems. It's clear from the specialist's report that it's rainwater that's entered the property, so I don't think this insured event applies.

Having said that, I can see the policy also covers damage caused by storm or flood. Flood hasn't been defined in the policy document. But we consider that a flood can occur when water enters (or builds up) in a property slowly and steadily. The key factor is that water has built up, regardless of where the water came from.

I'm satisfied the circumstances Ms E has described meet an everyday definition of flood. That's because the specialist identified that an inch of water had pooled underneath the floorboards before they carried out their tests. And it was this water that caused the damage to the floorboards above in the form of rotting and woodworm.

In my view, Ms E has been able to show that the damage was caused by an insured event. I've therefore gone on to think about whether RSA has been able to establish that an exclusion applies.

RSA has highlighted a general exclusion, which applies to the policy as a whole, which says it won't cover:

Any loss, damage, liability, cost or expense of any kind caused by or resulting from wear and tear, depreciation, corrosion, rusting, damp, insects, vermin, fungus, condensation, fading, frost or anything which happens gradually...

The principle of proximate cause applies, so if I think, on balance, that the flood damage wouldn't have occurred were it not for one of the causes listed above, I'd conclude RSA could fairly rely on the exclusion.

In this case, I can see the specialist concluded that the concrete path which runs around the front of the property had become 'defective'. Their report included pictures of the defects. It's evident that, over time, the concrete has come away from the front wall and the rest of the driveway, creating gaps through which rainwater could collect underneath the surface. There's widespread cracking to the path as a whole, and some visible holes in the concrete. The specialist felt it needed replacing.

In my view, it was reasonable for RSA to conclude that general damage like this was more likely to have resulted from wear and tear than an identifiable event. I think that's in line with the overall condition of the concrete path (visible from the pictures), the fact the specialist used the term 'defective' to describe it, and the fact they recommended it be replaced in full. There's nothing which indicates to me that the damage to the concrete path was caused by a specific event, and that it would otherwise have been in a good state of repair.

The specialist was able to identify this as the point that water was entering the property because three inches of water gathered under the floor boards when running water was directed at the area where the concrete path meets the front wall. They highlighted that water had been coming into the property in this way for a very long time, which in turn suggests that the defects in the concrete path had also been present for some time.

Taking all of the evidence into account, I think RSA has shown, on balance, that the water damage, although consistent with an everyday definition of flood, ultimately resulted from wear and tear to the concrete path, so the exclusion referred to above applies to the claim.

I acknowledge that Ms E has been going through a difficult time, and I can see she's mentioned that the events described above have caused her a lot of anguish. I appreciate it must have been distressing to have been faced with a significant repair bill at a time when she was grieving the loss of her father.

I also recognise Ms E's argument that, for a long time before she took ownership of the property, Mr E was either unwell or in a care home. Clearly, this would have impacted his ability to maintain the property. But a contract of insurance only covers unexpected events which may or may not happen in the future. It isn't a contract of maintenance. Wear and tear isn't unexpected therefore damage resulting from it is commonly excluded. And I think RSA has relied fairly on its exclusion for wear and tear here.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E (as executor of Mr E's estate) to accept or reject my decision before 8 December 2020.

Mike Walker
Ombudsman