

## **The complaint**

Mrs D complained that Lloyds Bank General Insurance Limited (“Lloyds”) unfairly declined her claim under her home insurance policy. Mrs D was represented throughout this claim, but for ease and simplicity I will only refer to Mrs D.

## **What happened**

Mrs D made a claim under her policy in April 2019 for water damage caused by a leak from the toilet on the first-floor bathroom.

Lloyds asked Mrs D to provide a cause of damage report to support the claim. Lloyds also appointed a surveyor to validate the damage. Based on the surveyor’s report and a subsequent report provided by Mrs D’s own plumber, Lloyds decided to decline the claim. Lloyds said a leak had been ongoing for some time, so it said it wasn’t covered by the policy due a policy exclusion clause for gradual causes.

Mrs D appointed a contractor to repair a leak. Mrs D then commissioned a different plumber to attend to fix a different leak. Mrs D has provided a testimony from her plumber that the leak was long standing in nature. However, he believed it was likely this went undetected by Mrs D due to the nature of the leak and Mrs D’s own vulnerable circumstances. So, Mrs D felt that Lloyds had unfairly applied the exclusion clause as she hadn’t detected the leak earlier.

Our investigator decided not to uphold the complaint. He thought Lloyds had been fair in declining the claim as he thought there was evidence of staining on the ground floor ceiling, so thought Mrs D should reasonably have been aware of the leak. Mrs D disagreed, so the complaint has been referred to an ombudsman.

## **My provisional decision**

I issued a provisional decision on this on 4 May 2022. I said:

*“Mrs D escalated this complaint to our service more than six months after she received the final response from Lloyds. Normally this would mean our service doesn’t have jurisdiction to consider this complaint. However, as Lloyds has consented to our service considering this complaint, I will consider whether I think it has been fair in declining the claim.*

*In escape of water claims, it’s normal for the policyholder to need to evidence that damage has occurred. And then, if an insurer has relied on an exclusion clause to decline the claim, it needs to provide evidence to support its conclusions.*

*I can see that there is no dispute whether there has been damage caused by the escape of water, so I’m not going to look at this point. However, Lloyds has relied on an exclusion clause to decline the claim, so I have considered whether I think Lloyds has acted fairly in doing this.*

*Lloyds has evidenced the policy does include a general exclusion clause that applies to the whole policy. I have checked the policy, and it does have an exclusion in the policy for: "a gradually operating cause. This is something that happens gradually over a period of time, for example corrosion, damp, condensation, decay or decomposition". Therefore, if Lloyds has shown a gradual operating cause was likely to have caused the damage, then I'm likely to conclude it has been reasonable in declining the claim.*

*However, I will also need to consider that Mrs D said she didn't notice the leak until a week or so before she reported it. If I think Mrs D shouldn't reasonably have been aware of the damage happening gradually – and that she made the claim, or took reasonable action, as soon as she became aware – I'm likely to say that a fair and reasonable outcome is that Lloyds can't rely on the exclusion and should pay the claim.*

*Both Lloyds and Mrs D have provided reports where experts have shared their views on what happened. So, I have reviewed them, and any conclusions made to see if I think Lloyds has been fair in declining the claim.*

*I don't think the report provided by Lloyds' expert surveyor is compelling as it concluded the damage had possibly been caused by failing sealant around the bath. This was contradictory to testimonies provided by two other contractors who worked at Mrs D's property to stop the leak.*

*However, Lloyds did rely on some of the testimony from Mrs D's plumber to decline the claim. The plumber said "on further investigation I found the basin vanity unit was damaged beyond repair due to the long-standing leak. The only possibility being the tap connector as the damage had been sustained over a long period of time. This is evident as the MDF construction of the vanity unit is swollen and black in appearance. This happens after a long period of soaking".*

*As Mrs D's own plumber commented on the long-standing leak it does seem there was a gradual cause to the damage. However, for me to say Lloyds has been reasonable in declining the claim for this reason, I need to be satisfied that Mrs D should've been reasonably aware of the leak to take action to prevent further damage. I don't think this is clear. I don't think Lloyds has shown it was more likely than not this damage was evident earlier. I'll explain why.*

*Lloyds has relied on the plumber's testimony the vanity unit was damaged over a long period. However, it's not clear that this damage was evident – no pictures have been provided of this damage. The damage may not have been easily visible. I have also seen a statement from Mrs D's plumber "it is perfectly possible a leak would not be detected as the floor is covered in vinyl and water could have run directly under the vanity unit". The plumber commented on Mrs D's vulnerability. I think this vulnerability could've made it harder for Mrs D to identify if or when a leak had started, including spotting some mild staining on the ground floor ceiling and subsequently concluding it was due to a leak.*

*I've taken account that Mrs D commissioned two separate contractors in reasonably quick succession to fix leaks – I think this shows that she was keen to stop any further damage to her property once she was aware of a problem. I have also considered the confusion that there seems to be on what caused the leak – Lloyd's surveyor and each contractor seem to have reached different conclusions, so I can see why it may have been difficult for Mrs D to make the right conclusions or have the ability to spot damage from a leak.*

*So, as I don't think Lloyds has proven Mrs D should've reasonably known the leak had started a long time ago, I don't think it's reasonable in these circumstances that Lloyds has utilised the exclusion clause to decline this claim. Therefore, I intend to uphold this*

*complaint. I intend for Lloyds to settle the claim in line with the remaining terms and conditions of the policy. Mrs D has said she has suffered mental and emotional stress over an extended period and "[her] bathroom as a result of the damage is left in a pitiful state causing heartache". I can understand how these conditions would've been difficult for living in. Therefore, I intend to award £500 compensation for the distress and inconvenience she has suffered".*

## **Responses to my provisional decision**

Lloyds accepted my findings and didn't have anything more to add.

Mrs D replied. She was concerned the costs of labour and materials had increased recently and she asked our service to contact her contractor for updated costs.

## **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.

My provisional decision concluded that Lloyds should settle Mrs D's claim. To explain, this means that Lloyd's are required to settle the claim in line with the terms and conditions of its policy. So, Mrs D should expect Lloyds to carry out the remedial repairs at her property in respect to the claim or to provide a cash settlement of equivalent value. In other words, Lloyds need to settle the claim in today's prices.

Given neither party has provided any new information, I see no reason to change my provisional decision.

## **My final decision**

My final decision is I uphold this complaint, I require Lloyds Bank General Insurance Limited to:

- Settle the claim in line with the remaining terms and conditions
- Pay Mrs D £500 for the distress and inconvenience caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 12 July 2022.

Pete Averill  
**Ombudsman**