

## **The complaint**

Mrs W has complained that AA Underwriting Insurance Company Limited ('AA') declined a claim under her buildings insurance policy following water damage to her property.

## **What happened**

In March 2022, Mrs W noticed black marks on the skirting board of her utility room. She wiped these away, however the marks reappeared a few days later. She said she contacted AA as soon as she peeled back the wallpaper and saw damp underneath the wallpaper. AA advised Mrs W to contact a plumber or builder to perform 'trace and access' work to locate the source of the problem. Mrs W did so, and the workman removed floor tiles, discovered a burst pipe and carried out the repair. Mrs W updated AA and it arranged for its surveyor to assess the damage a few days later.

AA said that its surveyor submitted a report which confirmed the presence of damp on the walls and provided photographic evidence of this. AA said that the report indicated that mould had spread across the walls and door frame of the room. As the leak was found underneath the floor tiling, it thought that this was not a one-off event but that the leak and damage had occurred gradually.

Mrs W said that while the leak had been repaired, she wanted the damage caused by water and also the trace and access damage to be repaired and for the cost to be covered by her AA policy. Mrs W said that the floor pipes were still exposed, and the walls were damp. AA declined Mrs W's claim for this damage. She then complained to AA however it maintained its position and so she referred her complaint to this service.

The investigator upheld Mrs W's complaint and said that the service would expect an insurer to show that the consumer had knowledge or should have had knowledge of the damage for some time before contacting them. He didn't think this was the case here or that the photographs clearly showed mould on the door frame and he noted that some had been taken after wallpaper and tiles had been removed. He thought that AA should re-assess Mrs W's claim without the gradual damage exclusion clause and pay her £150 for the distress and inconvenience caused, as she had to live with exposed floor pipes for six months.

AA didn't agree with the investigator's decision. The matter has therefore been referred to me to make a final decision in my role as Ombudsman.

## **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.

The key issue for me to determine here is whether AA acted in a fair and reasonable manner in its application of the terms and conditions of the insurance policy in declining Mrs W's claim. I consider that AA hasn't acted in a fair and reasonable manner in this instance.

My starting point is the policy wording and I note that it covers 'escape of water' in principle. It states that AA will pay for loss or damage to the building caused by water '*as a result of a burst, leaking or overflowing domestic water or heating installation, appliance or piping. This includes damage to any water installation caused by freezing or bursting. We will also pay up to £5,000 in total for the costs we have agreed in advance for locating the source of the damage including the reinstatement of any wall, flooring or ceiling removed or damaged during the search*'.

The policy then contains some standard exclusions from cover. This includes the following: - '*General Exceptions - The policy does not insure the following... Loss or damage arising from gradually operating causes including deterioration, wear and tear, corrosion, rot or similar causes.*'

Turning to what the parties say about the matter, Mrs W said that when the black marks reappeared on the skirting board, wallpaper was removed to further investigate the matter further. She said this revealed mould and water damage underneath. She hadn't noticed the damp walls until she'd lifted the wallpaper. She said she didn't know the source of the water at this stage. Mrs W said that any photographs taken by AA's surveyor would have been taken after the wallpaper had been removed. She said that the surveyor had suggested that AA would arrange for dryers to be sent to her home, but this didn't happen.

Turning to what AA has said about the matter, it explained in its final response letter to Mrs W that insurance policies didn't cover every eventuality. It said that it's very common for insurance policies to exclude cover for damage caused gradually over time and its policy included such a clause. It thought that damage to the doorframe would have been visible to Mrs W earlier. It said '*The Financial Ombudsman Service has set out guidance that states that in the event of an insurer repudiating a claim under the gradually operating clause, the insurer must also show that the policy holder would have been reasonably aware of the damage occurring.*' Here, it thought that Mrs W should have been aware of the leak. Although the walls were covered with wallpaper, it was peeling off and AA said the door frame showed visible mould. It considered that there was early evidence of a leak which should have been raised with it sooner.

Looking at AA's case notes, they noted initially, '*Leak was under floor can see replaced pipe so a valid Escape of water.*' The case-notes also referred to '*Adv PH to get quotes and images for the T&A. Make sure that they are reasonable and necessary. If we can validate, we would then look to reimburse these costs. But do not cover the cost of the fixing of the leak.*' As to the photographic evidence, AA said that this showed that, '*The section of the wall which juts out and next to a cupboard in the kitchen clearly shows mould growing on inner section of the wall.*' Also, '*The delamination of the wallpaper in the utility room would have also been a good indicator of a gradual operating clause.*'

Turning to the report of the surveyors instructed by AA, it provided a summary of the internal damage as follows '*Policyholder had damp up the walls, she only noticed when the wallpaper was starting to come away from the walls, she called a plumber to source any leaks and he could not find anything, she called a builder and he traced the leak to under the floor where a water pipe was leaking..*' It also recommended four weeks of drying.

Having considered all photographic and written evidence, together with the submissions of the parties, I've noted that the photographs show quite severe mould and water staining in the utility room and that there are black marks in the door frame recess. It also seems the wallpaper was peeling away from the wall. I consider that the peeling wallpaper and damp behind it would have become increasingly noticeable and so, this to be a finely balanced judgment as to when the extent of the problem should have been noticed.

AA has itself set out the service's approach in relation to gradual damage and it has recognised that the leak had occurred underneath floor tiling. On balance I consider that the leak damage was largely hidden, and I'm satisfied that Mrs W couldn't reasonably have been aware of the damage occurring until the utility room walls became quite damp. As the leak was under the floor, damage would not have been immediately obvious. I'm therefore satisfied on the balance of probabilities that Mrs W didn't see any signs of the leak until the wallpaper in her utility room started to peel so that she lifted the wallpaper and saw the damage. I'm satisfied that Mrs W then quickly contacted AA about her concerns. I therefore agree with the investigator that it's more likely than not that she hadn't appreciate that there was a leak until that point. In the circumstances, I consider that AA hadn't applied the terms and conditions of Mrs W's policy and treated Mrs W in a fair and reasonable manner.

In conclusion, I uphold Mrs W's complaint in relation to her claim for escape of water under her buildings insurance policy. I also require AA to pay compensation of £150 for the distress and inconvenience caused to Mrs J in having to pursue this matter for many months and having to live with exposed floor pipes and damp walls for this time.

### **My final decision**

For the reasons given above and in the provisional decision, I uphold Mrs W's complaint against AA Underwriting Insurance Company Limited. I therefore require AA to:

- carry out the necessary repairs and drying or pay Mrs W for the cost of these repairs and drying (following provision by Mrs W of a receipt or invoice) less any relevant excess amount, within 28 days of her acceptance of this final decision.
- to pay Mrs W compensation of £150 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 30 December 2022.

Claire Jones  
**Ombudsman**