

complaint

Mr and Mrs A were unhappy that Legal & General Insurance Limited (“L&G”) declined their claim for damage caused by an escape of water.

background

Part of Mr and Mrs A’s kitchen ceiling collapsed following an escape of water from an enclosed waste pipe in the bathroom above. L&G said that the leak was gradual and that damage caused this way was excluded from the policy. It also said that the deterioration of the ceiling would have been evident to Mr and Mrs A before it collapsed as a result of water staining and bowing of the ceiling. L&G gave Mr and Mrs A £40 in recognition of some poor service in responding to their claim.

Mr and Mrs A have told us that they were unaware of the problem. They have said that the only apparent damage in the lead up to the ceiling collapse was some damp on one of the external walls, which they believed to have been as a result of rising damp outside, and a minor drip that had occurred a week previously when the children were taking a bath.

Following the ceiling collapse, L&G recommended a contractor to attend and locate the cause of the leak. As the relevant pipework was concealed, the contractor had to remove some panelling, in the process of which some damage was done to the tiles and lino. The contractor fixed the leak relatively simply by reconnecting the wastepipe which had come away from the bath. The contractor told Mr and Mrs A that he considered that the additional damage that he had caused in tracing and accessing the leak should be covered by the policy. L&G have not addressed this.

Our adjudicator upheld the complaint and considered that L&G should deal with the claim. L&G did not agree and have requested an ombudsman’s review of the case.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

As L&G should be aware, this service takes the view that it is unfair for an insurer to rely on a gradually operating cause exclusion to defeat a claim of this nature if the problem was not apparent to the policyholder. It is for L&G to show that the exclusion applies and so it is for L&G to show that Mr and Mrs A were aware of the damage that had been gradually occurring.

The wording of the policy is as follows:

“The buildings are insured against loss or damage caused by: Escape of water from any washing machine, dishwasher or plumbed in domestic water or heating installation.

We will not pay for ... Loss or damage that happens gradually over a period of time”.

It is difficult to dispute that the majority of the damage most likely occurred gradually as a result of the waste pipe to the bath leaking over time. The joists were rotten and the photographs of the incident clearly show extensive water staining to the supporting woodwork. This would, however, have been concealed above the ceiling before it fell down.

L&G's loss adjuster considers that the damage will have occurred over many months or indeed years. Given the leak started under the bath, the only way damage would have been evident is from staining to the ceiling and/or adjacent walls as well as any bowing that the loss adjuster believes should have been apparent.

L&G have referred to some photographs showing a portion of the ceiling where the wallpaper is held up by sticking tape. We are told that this had been there for many years, pre-dating Mr and Mrs A's occupation of the premises. That picture appears to show a portion of the ceiling under one of the stair landings. It is remote from the damaged area and shows no sign of water staining. I am not persuaded that it is at all relevant to the damaged area in this case. Any number of things could have caused that wallpaper to become detached and, as this is a kitchen area, there will always have been an element of humidity that could have resulted in the peeling seen.

Looking at the wallpaper bubbles shown in another of the photos, although there is little staining apparent on the bubbles, which are above a fixed wall unit on which Mr and Mrs A appear to store things, they do appear to me to show evidence of water damage. I am, however, not convinced that these were readily visible to Mr and Mrs A due to the storage of items on the top of the kitchen cabinets.

Reference has also been made to some black mould staining on the walls. The photographs of this show some staining well below the level of the ceiling which could well have resulted from outside damp as Mr and Mrs A had believed. The area of wall immediately adjacent to the ceiling does not show similar signs of damp and the remaining ceiling, next to the site of the collapse, also does not show any apparent staining.

Whilst it may be that the damaged section of ceiling did show signs of water staining, I have not been provided with any evidence of that. I am, therefore, not persuaded that it is more likely than not that Mr and Mrs A were aware of the significant problem that had been occurring over time. The leak culminated in a collapse, although this would appear to have come without warning. The dripping a week before might have given cause for some investigation to take place but as it stopped quickly, I am not convinced that this can be seen as a pre-cursor to the collapse that ultimately occurred.

Having looked at Mr and Mrs A's policy, they do have cover for tracing and accessing leaks. I consider that the damage to the tiles covering the boxed pipework and the surrounding floor lino were caused in the process of tracing the leak. These should be considered under the policy.

Overall, it is my finding that it is not fair or reasonable for L&G to rely on the gradually operating cause exclusion to refuse to deal with Mr and Mrs A's claim.

I have considered the delays in L&G appointing the loss adjuster and also their not returning a call when they said that they would.

I consider that the £40 compensation offered by L&G for the inconvenience of this was a reasonable sum in the circumstances.

my final decision

It is my final decision to uphold this complaint. I require that Legal & General Insurance Limited deal with Mr and Mrs A's claim under the terms of the policy.

This should include damage directly attributable to the leak from the bath and their consideration of any damage occasioned as a result of tracing and accessing the cause of the leak.

James Kennard
ombudsman