

## **complaint**

The rejection of a claim under Home insurance by Lloyds Bank General Insurance Limited is unfair.

## **background**

I issued a provisional decision in November 2013. An extract is attached and forms part of this final decision.

Lloyds' response to the provisional decision included:

- Mrs M said the water had escaped from a downpipe (as evidence of this it submitted a note made by a staff member);
- claimants must establish that an insured event has caused damage;
- a staff member did tell Mrs M dry rot was excluded from the cover for accidental damage (it provided a recording of this conversation);
- it accepted that the cause of the damage was escape of water from fixed domestic water installations because that was what Mrs M said.

Mrs M said she had responded in writing but her letter has not been received. She told us she had said:

- she had not claimed for the damage caused to decorations and carpets, nor for costs of alternative accommodation;
- she considers the rot was caused by storm.

## **my findings**

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

I have carefully considered the responses to the provisional decision.

I accept that the evidence provided with Lloyds' response does indicate Mrs M was told dry rot was excluded from the cover for accidental damage. However, it did not rely on that when it set out its final response to the claim.

The note that Lloyds says mentions Mrs M having said the water had escaped from a downpipe was provided to us previously and I had taken it into account. It includes "*I ... had agreed to contact her surveyor ... I did ring him, but unfortunately didn't follow this up ... customer advised that rot has been found to have spread to her bathroom, but her builder has again confirmed that the cause of the outbreak is the leaking downpipe*". In my view, this is unclear – it is equally consistent with the remark about the downpipe having been made by the "*surveyor*"/"*builder*" during the separate conversation mentioned.

When we asked for evidence Lloyds said there was no conversation with the contractor. That is inconsistent with the note and with Lloyds' final response letter.

I accept that it is the responsibility of those claiming on insurance to establish, on the balance of probabilities, that an insured event has caused damage, but in its final response letter Lloyds said the cause of the damage was a water leak.

Subsequent evidence casts some doubt on this, although the woodworm and dry rot specialists were non-committal as to the cause and the plumber only ruled out one downpipe.

Mrs M suggests the damage was caused by storm but I am not aware of any details of the weather event(s) in question having been submitted. For a claim for storm damage to be valid there should be evidence of storm conditions having been experienced and of those conditions being the dominant or effective cause of the damage.

As I understand it, dry rot is usually associated with the affected item(s) having a significant moisture content, and, in the absence of evidence to the contrary, an escape of water from a fixed domestic water installation seems to me the most likely cause of the outbreak.

In these circumstances I do not think a response to a provisional decision is a fair way for Lloyds to seek to alter its position and say the damage has not been established to have been caused by an insured event.

**my final decision**

Lloyds Bank General Insurance Limited should resume dealing with the claim, subject to the terms of the policy.

S Lilley  
**ombudsman**

**PROVISIONAL DECISION**

**background**

Mrs M's contractor considered the likely cause of the dry rot was water escaping from defective external plumbing. Lloyds says the contractor said the plumbing in question was a downpipe. The claim was rejected on the basis that the policy did not cover damage caused by dry rot and the cover for loss or damage caused by "*escape of water from ... fixed domestic water installations*" excluded "*damage caused by the escape of water from guttering, rainwater downpipes, roof valleys and gullies*".

Subsequently, Mrs M provided us with a letter from woodworm and dry rot specialists that stated the cause of the outbreak could not be determined and a later letter from someone she identified as a plumber that said the downpipe had been inspected and found to be in good condition.

Our adjudicator considered that if the downpipe is not defective there is no evidence to show the damage was caused by an event that was insured by the policy. She was of the view the cause was water escaping from guttering. She said the cover for accidental damage excluded dry rot.

Mrs M disagreed. I understand she suggested the damage had been caused by storm conditions.

**my provisional findings**

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

Lloyds says the contractor said the plumbing in question was a downpipe. We asked it for evidence of this conversation but it has not provided any.

I have seen a report from the contractor referring to defective external plumbing as the cause of the dry rot. That could mean a water supply pipe, but as I understand the insured property is a first floor flat I think that is unlikely. It could also mean guttering or a rainwater downpipe. The exclusion relied on by Lloyds embraces the escape of water from either.

However, in my view there is insufficient evidence that the rainwater equipment was defective and water from it caused the damage: the first contractor did not specify the nature of the defect and said there was no proof water from it caused the damage (although this was considered likely), the woodworm and dry rot specialists said the cause of the dry rot could not be established, and the plumber said the downpipe was not defective.

Therefore, I consider Lloyds has not produced sufficient evidence to support reliance on the exclusion. I am not satisfied its rejection of the claim was also on the basis that the damage was not caused by an escape of water from a fixed domestic water installation. Although Lloyds' notes suggest its representative was not satisfied there had been an escape of water, it seems she wrote to Mrs M but, although I have not seen that letter, I believe it stated only that dry rot was not covered by the policy. Lloyds' final response asserted that there had been an escape of water from a downpipe, but subsequent evidence undermines this.

Also, Mrs M's policy appears to have included cover for "*any other accidental damage to the buildings of your home*" and it defined "*accidental damage*" to mean "*damage caused suddenly by external means which is not expected and not deliberate*". This cover excluded "*damage caused by ... wet or dry rot*". However, I am not satisfied Lloyds' rejection of the claim was communicated to Mrs M as based on the damage not amounting to accidental damage or on the dry rot exclusion. Although its notes include "*tried to decline [the claim] as [dry rot is excluded]*", the reference to having attempted to do that (rather than actually having done so) is unclear and I have seen no evidence in support of the note. Further, Lloyds' letters to Mrs M do not seem to mention the accidental damage cover.

In the circumstances, therefore, I consider Lloyds should resume dealing with the claim, subject to the terms of the policy. If, after it has done that and after completing its complaint procedure, Mrs M is dissatisfied with its response, she could submit another complaint to us.

**my provisional decision**

Lloyds Bank General Insurance Limited should resume dealing with the claim, subject to the terms of the policy.

S Lilley  
**ombudsman**