

## **complaint**

Mrs and Mr E complain that Admiral Insurance (Gibraltar) Limited declined a claim under their home insurance policy.

## **background**

Mrs and Mr E have a home insurance policy with Admiral which covers buildings and contents.

In 2015, Mrs and Mr E made a claim relating to an escape of water at their home. They made an earlier complaint to us about the handling of that claim, but it's not for me to go into those issues again now.

In 2018, Mrs and Mr E discovered dry rot in their home. In short, they believe this was caused by damp conditions created by the escape of water in 2015 and by subsequent leaks after the first attempt at the necessary repairs. And so they believe Admiral should cover the damage caused by the dry rot.

Admiral declined Mrs and Mr E's claim because on the balance of probability they believe the dry rot wasn't caused by the incident in 2015.

Mrs and Mr E were unhappy with this and complained to Admiral. When Admiral's position didn't change, Mrs and Mr E complained to us.

Our investigator looked into it and thought Admiral should accept the claim. He was persuaded by the fact that following an expert report - commissioned by Admiral – the expert said, when asked directly, that the escape of water in 2015 was the cause of the dry rot attack discovered in 2018.

Admiral disagreed and asked for a final decision from an ombudsman.

Because I disagreed with our investigator's view, I issued a provisional decision before making my final decision. This allowed both parties to comment on my thinking before I make my final decision – which is the Financial Ombudsman Service's last word on the case.

## **my provisional decision**

In my provisional decision, I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mrs and Mr E's policy includes a general exclusion which says that Admiral will not cover:

*"Any loss or damage caused by anything that happens gradually including... wet and dry rot..."*

Mrs and Mr E's claim was for damage caused by dry rot, so on the face of it, given a strict interpretation of the policy terms, it is excluded from the cover provided.

However, Mrs and Mr E's argument is that the dry rot was in turn caused by an insured event - the escape of water in 2015 - which is covered under the policy terms.

I also think it's unfair - as our investigator said when he gave his view - for an insurer to rely on an exclusion clause about gradually operating causes if the consumer couldn't reasonably have been expected to be aware that the damage was happening.

So, there are two fundamental questions I need to address.

One, is the current damage the result of the previous escape of water? If so, the claim shouldn't be declined on the basis Admiral suggest. The damage may have taken some time to manifest itself, but is a consequence of the sudden event - the escape of water - in 2015.

And two, whatever the cause of the current dry rot attack, could Mrs and Mr E reasonably be expected to have known that the damage was occurring? If not, again, the claim shouldn't be declined.

So, if either of the answers to those questions goes in Mrs and Mr E's favour, I think Admiral should accept the claim.

However in fact I don't think either answer works in Mrs and Mr E's favour. I think it's likely the dry rot wasn't caused by the 2015 escape of water. And I think Mrs and Mr E might reasonably have been expected to be aware of the damage to their property as it was occurring. I'll explain why.

#### *The cause of the current outbreak of dry rot*

There are two main pieces of evidence to support Mrs and Mr E's assertion that the dry rot was caused by the 2015 escape of water.

They've sent us copies of an expert report on the neighbouring property, which also has a dry rot problem. This report says it's "plausible" the dry rot in the neighbour's house is caused by the escape of water in 2015 affecting the party wall and the sub-floor area in the neighbour's house. This, the report says, "could have created enough water to allow the fungus to develop".

As mentioned above, Mrs and Mr E are also aware of an email exchange between Admiral and the company they instructed to provide an expert report after they reported the dry rot in their home. In this email the expert says *"I do feel the dry rot attack has been caused by the escape of water in 2015"*.

I'm not convinced the expert report about the issue next door is persuasive in terms of what caused the dry rot in Mrs and Mr E's home. There are factors which may have caused damp conditions in Mrs and Mr E's home which may not be present next door. I'll come to these in more detail below.

To put it bluntly, that report isn't about Mrs and Mr E's house. And its evidential value in terms of diagnosing the causes of the dry rot in Mrs and Mr E's house is therefore limited. In any case, the 2015 escape of water is only cited in the report as a

"plausible" explanation of the problem, which "could" have created the conditions for the dry rot to occur.

The email to Admiral from the expert they appointed is, in itself, more convincing. However, it does appear to contradict the findings contained in the report itself.

The report said:

*"It is difficult to know the exact cause of the dry rot attack.... There is certainly not enough sub-floor ventilation which has not helped the problem."*

The report also states that one sub-floor vent has been covered entirely with the floor to a new extension. And it refers to high damp meter readings due to rising damp.

This echoes what Admiral's contractors found when they were carrying out repairs after the escape of water in 2015. At that time, the loss adjusters were unable to issue a certificate to confirm that drying out had been fully completed.

They say this was because they found rising damp on the walls and historic damp issues. And they reported pre-existing maintenance issues which the consumer(s) should have addressed in order to avoid damage to their property.

I'm also aware of an email message sent to Mrs E by one of the project managers working on site, which advised her the builders had discovered "rot / wood worm" on the floor joists. The email said this would not be covered by Mrs and Mr E's insurance policy and offered to obtain quotes in case they wished to ask the builders to undertake the required works.

Taking all of that into account, it would appear very likely the property had serious damp issues before the escape of water in 2015. And these were at least in part due to inadequate sub-floor ventilation. In that context, I don't think it's unreasonable for Admiral to suggest that on the balance of probabilities the dry rot was not caused by the escape of water in 2015.

*Should Mrs and Mr E reasonably have known the damage was occurring?*

From the evidence we currently have, I can't see any suggestion that Mrs and Mr E carried out any remedial works in 2015 to address the issues identified by the contractors and loss adjuster when they were dealing with the 2015 incident. If they did - and they have evidence to show that - they should provide that information / evidence in response to this provisional decision.

I've already referred to the email from the project manager which alerted Mrs and Mr E to the problems with their house. And I know Mrs E was aware there had been no comprehensive drying out certificate issued. She told the expert who provided the report in 2018 that this was the case. It seems Mrs and Mr E were given the reasons for the full certificate not being issued 2015.

Bearing all of this in mind, I don't think it's unreasonable to suggest Mrs and Mr E would have - or should have - known that damage was almost certainly occurring in their house. And that at the very least, they should have taken it upon themselves to check for any signs of problems associated with damp.

Finally, although I don't think it's crucial to the reasoning I've set out above, I do note that Mrs and Mr E's policy (at general condition 3) does require them to:

*"... maintain your property in a good state of repair and take care to prevent any... loss, damage or injury."*

Unless there is further information or evidence I currently don't have, it seems to me that this alone might justify Admiral's decision to decline the claim. The information Mrs and Mr E were given in 2015 appears to me to suggest that there are issues at the property which needed to be addressed if further damage or loss was to be avoided.

On that basis, my provisional decision was that Mrs and Mr E's complaint should not be upheld.

### **the responses to my provisional decision**

Admiral didn't respond to my provisional decision with any further comment or evidence. I assume this is because they broadly agreed with it.

Mrs and Mr E did respond. They put forward a number of reasons for disagreeing with my provisional decision. I'll try to summarise these.

They say there were no indications of a significant problem with damp in their home before the escape of water in 2015.

They had a survey carried out before they bought the house in 2014. This identified an issue with damp in their kitchen, but in a place distant from where the dry rot has now manifested itself.

They say when the house was stripped back in 2015 – after the escape of water - there was no evidence of any problem with dry rot. They say the builders identified inactive woodworm in the kitchen floor joists, but that problem had to be rectified before the works carried out by the insurer's builder were allowed to continue.

Mrs and Mr E say the dry rot has manifested itself now in the exact area where the leaks continued after the initial repair work was completed (unsatisfactorily) – which indicates the escape of water (finally fixed many months after the initial incident in 2015) caused the dry rot.

They say that although the expert report provided in 2018 said it was difficult to say what had caused the dry rot outbreak, the expert later clarified his position and said the escape of water was definitely the cause.

They say the high damp readings to which the 2018 expert report referred were not in the same area where the dry rot has now manifested itself. And the causes of that damp have now been dealt with.

They agree inadequate ventilation has been identified as a problem with their home, but say Admiral haven't – and can't – prove that it was this that cause the dry rot outbreak.

They say they've maintained their home well since they bought it. And they've given a number of examples of work they've had carried out – including the addition of more air vents under the house after the 2018 expert report.

Mrs and Mr E question why Admiral carried out the repair works in 2015 – at considerable cost – if they felt there were underlying damp issues which had not been resolved. And they say Admiral have no evidence they made Mrs and Mr E aware of any remaining issues with their house – other than the email about inactive woodworm.

They say further tests carried out at the home after 2015 show there wasn't a problem with rising damp. And that all issues were – or should have been – dealt with in 2015 by the builder for the insurer, except the issue with ventilation later identified by the expert in 2018.

Finally, Mrs and Mr E have explained the dire impact it will have on them and their young family if Admiral don't pay the claim, given that their housing will be at risk.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've also considered again the conclusions I reached in my provisional decision. Having done so, I haven't changed my mind. I'll explain why.

First of all, I should say I understand the situation in which Mrs and Mr E's find themselves. The problems they've had with their house are very unfortunate and I'm sure this has been a nightmare for them from start to finish. I also understand the significance of Admiral not paying the claim in terms of what happens from here on in.

But it's my obligation to remain impartial and to make a decision about what's fair and reasonable in light of the circumstances of the case. No matter what the implications might be, I can't decide the case in Mrs and Mr E's favour unless that's justified by the facts.

This is a very difficult case. The main reason being that I don't think anyone can be absolutely certain what has caused the dry rot outbreak in Mrs and Mr E's home. I have to make judgements based on the evidence I have in front of me – and my decision will be based on what is *most likely* to be the cause of the dry rot outbreak.

In my view, it's also very likely that there is more than one contributory cause of the dry rot outbreak and I have to try to work out which of those causes is likely to be most significant.

Mrs and Mr E's comments are sensible, measured and have made me think again about the logic underlying my provisional decision. As I say, I haven't in the end changed my mind about the outcome. But Mrs and Mr E deserve a full explanation of my current thinking and my responses to the points they've made. I'll try to set these out below. As far as possible, I'll avoid repeating what I said in my provisional decision.

In their response to my decision, Mrs and Mr E are understandably keen to suggest that their house had little or no issue with damp except for that caused by the escape of water in 2015 – and through the next few years after the initial repairs proved unsatisfactory.

That version of events appears to me to be slightly optimistic. There's a significant amount of evidence to suggest that there's an underlying problem with damp which wasn't caused by the escape of water.

One – it seems there's no dispute that the house had inadequate sub-floor ventilation until at least 2018. One vent has been completely covered over by an extension to the house. One of the reasons houses need ventilation is because otherwise they are likely to encounter problems with damp.

Two – before the repair work was carried out in 2015, the contractors were unable to issue a comprehensive drying out certificate. This was due to on-going damp, which they decided was caused by the level of water in the ground underneath the building. The works proceeded on the basis this was unlikely to change. Mrs and Mr E were told there could be no comprehensive drying out certificate – and it seems they were told why.

Three – in connection with the above point, in 2015 the contractors noted an on-going problem with damp at the property. They referred to this as rising damp. I believe Mrs and Mr E say later tests showed this wasn't rising damp as such. However, it's clear the contractors felt there was an on-going damp problem.

Four – in 2015, one of the surveyors undertaking work at the home emailed Mrs and Mr E to say there were a number of issues with their home that they might wish to resolve before the insured works continued. These included "rot / woodworm" in the kitchen floor joists. Mrs and Mr E have referred only to "inactive woodworm" – which they say they addressed. The most natural reading of the email would suggest there were problems with *both* rot and woodworm. It's very unlikely the rot would have been caused so quickly by the escape of water in 2015.

Five – Mrs and Mr E say their 2014 survey prior to purchase of the house showed no significant damp. In fact, they've admitted the survey did pick up a problem with damp in the kitchen. Mrs and Mr E say this is in a different area to the current dry rot outbreak, but it would still indicate underlying issues with damp at the property.

Six – the expert report in 2018 identified an on-going damp issue in the home. It mentions "*rising damp*" with a "*high level of salts*". It notes the inadequate ventilation – and recommends a remedy for that. And it suggests a new damp proof course. It's difficult to see how the latter in particular would be necessary if there was a fully-functioning damp proof course already in place and no issues with damp in the property.

As I understand it, dry rot needs two things to grow and flourish. One is wet timber. The other is poor ventilation.

The on-going damp issues in the house would suggest that the escape of water in 2015 wasn't the only possible cause of the timber being wet. And it certainly didn't cause the inadequate ventilation.

Admiral are effectively saying the poor ventilation was the primary or dominant cause of the dry rot outbreak. And the policy doesn't include this as an insured peril. Just to be clear, that being the case, the onus is on Mrs and Mr E to demonstrate they have a claim and not – as Mrs and Mr E seem to think – on Admiral to prove the opposite.

In cases like this, where there's a dispute about the cause of damage (and whether that is insured), we look for the primary, dominant or 'operating' cause. As an example, if a storm takes off a roof, but only because the roofing timbers are rotten from years of neglect, we'd tend to say the storm simply highlighted the underlying, primary cause of the problem – the rotten timbers.

In this case, identifying the primary cause is more difficult. And that's mainly because dry rot requires *both* water or dampness *and* poor ventilation. The timbers being wet would alone be very unlikely to lead to an outbreak of dry rot unless there was poor ventilation. And poor ventilation alone wouldn't lead to an outbreak unless there was wet timber.

As I say, it's not unreasonable for Admiral to conclude that the poor ventilation (one 'candidate' for primary cause of the damage) is not an insured peril. And it's not unreasonable for them to conclude – on the basis of the evidence from the various experts who've inspected the property – that the water which dry rot also needs to flourish (the other 'candidate' for primary cause of the damage) wasn't solely or mainly a result of the insured 2015 escape of water.

So, I still think Admiral aren't being unreasonable or unfair when they conclude that the cause of the dry rot outbreak is most likely not an insured peril. On balance, their position seems to be backed by the expert views on the case.

In saying that, I do bear in mind that the expert who inspected the property in 2018 has provided two completely contradictory views on the cause of the outbreak. Having thought about it in light of Mrs and Mr E's comments, I think his confusion may simply reflect the fact that there isn't one single cause of the dry rot outbreak. How the various contributory causes interact is difficult to unravel.

I have to ask Mrs and Mr E to understand that it's not my role to determine the outcome of their claim. In other words, I'm not acting as an alternative claims handler. The question for me is whether Admiral have acted fairly and reasonably. And because they've based their decision on the expert evidence available in this case, I can't say they've been unfair or unreasonable.

I do understand though that deciding on the primary cause of the dry rot outbreak in this case is a very fine judgement. There are potentially two primary operating causes of the damage. One (the poor ventilation) certainly isn't caused by the escape of water. It's arguable that the other one (the moisture in the timber) *is*, even if I think on balance that other factors (underlying dampness in the house) may have played an equally or more significant part.

However, even if we were to allow that the cause of the current problem *is* an insured peril, I think Admiral could reasonably and fairly rely on the exclusion relating to gradually operating causes. I'll explain why.

I said in my provisional decision that if the escape of water in 2015 was *the* cause of the dry rot outbreak Admiral probably shouldn't decline the claim (all else being equal). In that case, the cause of the damage would be an insured peril (an escape of water) and it wouldn't be fair to call that escape of water event a "gradual cause" of the damage.

I'm satisfied though – on balance – that the outbreak of dry rot has two underlying causes which were *necessary* for it to occur. One is the wetness in the timber and the other is the poor ventilation.

Even if we allow that the wetness was due solely to the escape of water in 2015, the outbreak still required the underlying poor ventilation conditions to allow the dry rot to emerge *over time*. And I think this means it is reasonable to think that the “gradual cause” exclusion comes into play.

To try to put it more simply, dry rot doesn't emerge overnight after an escape of water. It's absolutely necessary for there to be poor ventilation to create the conditions in which the fungus can thrive. Dry rot is, by its very nature, a gradual cause of damage. And we can't pin it's emergence back to a single underlying cause - the 2015 escape of water.

So, even if we were to accept that the escape of water in 2015 was the sole cause of wetness in the timbers at Mrs and Mr E's home, I'm satisfied it would be reasonable for Admiral to ask whether Mrs and Mr E should have spotted the gradual damage occurring and done something about it.

I believe Mrs and Mr E when they say they were not in fact aware that the damage was occurring. I can't see what would have motivated them to ignore it if they knew their home was at risk.

But often the key question for us when we look at exclusions for gradually operating causes is whether the policyholder *should* have been aware of the problem and *should* therefore have taken steps to prevent it.

I know Mrs and Mr E will disagree, but I think they should have been aware that damage was occurring and/or was extremely likely to be occurring in their home.

I come back again to the list given above of evidence that there was a damp issue in the home. It's my view that at the latest by the time the work was completed after the escape of water in 2015, Mrs and Mr E should at the very least have been vigilant about damp.

They knew at that point that: the survey carried out when they bought the house had identified damp in the kitchen. They knew the contractors believed there was an issue with rising damp (or similar). They knew there the drying out process hadn't been thoroughly completed or signed off – and why. And they knew about the historical issues with “rot / woodworm”.

If they had investigated this further at the time, they would likely have identified the ventilation issue which they've now put right – following the expert inspection in 2018.

Mrs and Mr E have asked why Admiral carried on with the repair works in 2015 if they were aware of the underlying problems. That's a perfectly valid question, although I'm not sure Mrs and Mr E would have been happy if Admiral had refused to carry on with the work at the time.

Admiral's responsibilities under the insurance contract are primarily to rectify any damage which occurs as the result of an insured event. They aren't required to carry out work which *prevents* any possibility of future damage. To put it bluntly, that's the responsibility of the homeowner.



Of course, we wouldn't expect an insurer to rectify damage – at considerable cost – knowing it was very likely there'd be further damage in future. That wouldn't be in their own interests. Often they will carry out works which mitigate future risk, if that's incidental to the repair works. But ultimately preventative measures aren't usually the responsibility of the insurer in most policies – and they certainly aren't in Mrs and Mr E's policy.

It would be reasonable of course for an insurer who was aware of a potential on-gong problem to make the policyholder aware of it. I'm afraid I can't agree with Mrs and Mr E that Admiral didn't make them aware of the situation.

It's clear from the evidence that Admiral and their contractors believed there was an underlying issue with damp at the home. They said so directly – although Mrs and Mr E didn't accept it was rising damp. And they were clear they weren't issuing a comprehensive drying out certificate because the level of water in the ground was high and likely to remain so.

In summary, I can't say it's unfair or unreasonable for Admiral to decline this claim on the basis that the damage wasn't caused by an insured peril.

The causation of the dry rot outbreak is complex and difficult to identify definitively. But it's clear that one necessary condition for it was poor ventilation – which is not an insured peril.

The other necessary condition – wetness in the timber – is in my view unlikely to have been caused solely by the escape of water in 2015, given the underlying damp issues at the property.

And even if we assume that the escape of water was the main cause of wetness in the timber and the primary operating cause for the outbreak, I don't think it would be unreasonable to apply the exclusion for gradually operating causes.

### **my final decision**

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr E to accept or reject my decision before 18 May 2019.

Neil Marshall  
**ombudsman**