

complaint

Mrs D has complained about Legal & General Insurance Limited (L&G) not completing repairs to her fire damaged home correctly.

background

Mrs D had a fire at her home and L&G took on reinstatement of that property. The reinstatement did not go as Mrs D might have hoped and she made a complaint. Following the involvement of this service L&G agreed to pay Mrs D £1,000 compensation. Mrs D accepted this but advised that the repairs that had been completed at the time she complained to this service had begun to fail and she made a new complaint to L&G.

L&G looked into the situation at Mrs D's property and asked her to obtain quotes for sorting out the walls which it accepted had not been dried properly by its contractors during the original reinstatement. However it also felt that there might be a problem with the damp proof course but as this may have been damaged during the fire, it agreed to bear the cost of reinstating this too. Mrs D said that the newly installed wood at the property would need replacing too but L&G did not consider this until after the walls had been rectified. When the laminate flooring at the property was then taken up the concrete floor beneath was found to be soaking wet (as the walls had been). By this time the repairs to the walls had started to fail again; Mrs D refused to pay the contractors that had most recently done work on them and the contractor threatened to take her to court.

Regarding the floor; L&G said it would cover the cost of replacing the laminate but that the damp proof membrane below the floor had, most likely, been installed incorrectly and so this would need replacing which it would not do. It said that the internal doors at the property had failed because they had been installed incorrectly leaving them vulnerable to changes in the moisture levels present within the property. It said it would replace these. In respect of the walls it said it had not been responsible for the latest work so Mrs D would have to sort things out herself with the contractor concerned.

Mrs D was dissatisfied with this and said it surely must be the case that the dryness of the floor was never checked before L&G's contractor laid new laminate following the fire. Currently, heaters and de-humidifiers had been in use at the property for five months and it still was not dry. Mrs D said the damp proof membrane below the floor had probably extended up the sides of the floor as L&G said it should have but this being the case it would have melted during the fire leaving the floor exposed to damp coming in from outside. She said L&G had given her no choice about which contractor to use and she felt it was unfair of it to leave her in this position at this time. Mrs D pointed out that she is now living in the upstairs of her home, most of her belongings are in storage and those that are not are deteriorating due to the current state of the house.

Our adjudicator felt that L&G had not acted unreasonably here because there was no evidence that the floor's damp proof membrane had failed due to the fire or anything L&G's contractors had done. He said that the contractor who had recently done work on the walls had been contracted by Mrs D and not L&G and so it was not responsible for any of that contractor's failings.

Mrs D was unhappy with the adjudicator's findings in general and explained that the recent installation of a wood stove, (which has been on constantly for three months following its installation) had nearly dried the floor which suggests there is no real problem with the damp

proof membrane. She requested that L&G monitor the floor over the next few months to determine if it is now, finally, dry.

I then considered this complaint and issued a provisional decision on it. I have reproduced my findings from that decision below in italics.

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. Having done so, I am not sure that L&G has acted as well as it should have done here and I think Mrs D has lost out as a result. I am issuing this provisional decision to explain my views on these matters.

the walls

L&G found that the walls had not been dried properly by its previous contractor and that the damp proofing may have failed. Mrs D provided it with estimates for repair and told it that she would prefer to use Builder Z; whose quote included replacement woodwork, this would enable her to get everything done at once. This estimate included work to re-plaster all of the walls and the other two estimates from Mrs D only provided prices for re-plastering certain areas of the walls as necessary.

L&G's file shows that it understood that Mrs D wanted to use Builder Z, although it makes no comment about her desire to get the woodwork all done by the one contractor. L&G's claims handler did note that Builder Z had priced for re-plastering all the walls and advice was sought from the loss adjuster as to whether doing this was desirable or, as per the other, cheaper estimates, whether doing just certain areas would be acceptable. The loss adjuster replied stating that all the plaster should be taken off as the full extent of the damage cannot be known. However, L&G then contacted Mrs D and told her to go with one of the other two contractors, Builder Y. Builder Y then completed the work but using the wrong type of plaster, the repairs failed and Mrs D now has the threat of court action hanging over her.

I have no idea why L&G left Mrs D in the position of having to instruct her own contractor to sort out this issue – there may have been an underlying issue with the damp proofing but it accepted that it had not dried the walls properly during its insured works following the fire. It should never have tried to wash its hands of the matter by passing responsibility for the rectification works on to Mrs D. This left her in a vulnerable position and I do not doubt that even merely organising estimates, let alone overseeing the work, would have been immensely stressful for her.

I also note that L&G's loss adjuster entered negotiations with Builder Y when they met at Mrs D's property. This in itself could be seen as L&G having entered a contract with Builder Y for the work. However, L&G entered into a contract for repair of Mrs D's property following the fire and the fact it did not carry out those repairs properly means it did not discharge its liability under that contract. This means that, in my view, paying cash for fixing its mistakes should not have been done and, if it was done at Mrs D's request, a very clear and specific warning should have been given to her. I do not see that this ever occurred. To my mind it is not fair for L&G to leave Mrs D with this problem because this problem would never have arisen if it had done what it was supposed to do and correctly discharged its liability to her under the initial contract of repair.

I am not sure whether Builder Y has initiated court action yet but I do believe that Mrs D has still not paid it the money sent to her by L&G. I suggest that Mrs D sends that money back to L&G and it takes on responsibility for sorting out the situation. By that I mean rectifying the walls at Mrs D's property and the dispute with Builder Y. If Mrs D has experienced further costs because of any of this, then L&G will have to reimburse these to her.

internal doors

Mrs D has said that the doors are no longer swollen. I am not sure whether she still wants these replacing or not. L&G has said they need replacing as they will be prone to any changes in the moisture levels at the property; this may mean that the doors might swell again with the changing seasons. L&G has agreed to replace these and so, if Mrs D wants it to, this should be done. However, the walls (see above) and floor (see below) will need to be sorted properly before it would make sense for new doors to be installed.

concrete floor

Mrs D feels the floor is now dry but believes it was not dried properly before the laminate was replaced. There is no record of drying being completed at the property and the company that undertook this work is no longer trading. L&G say the floor would have been dried to how it was before the incident and it may be that the floor was already damp at that time. On the whole, I tend to believe Mrs D and, particularly given that we know the walls were not dried properly, I find it highly likely the floor was not dried properly either.

Now it may well be that the original contractor could not get the floor to dry because of a pre-existing problem with the damp proof membrane but were this the case then this should have been brought to Mrs D's and L&G's attention, rather than reinstatement just being completed anyway. I do not believe, and from its files nor did L&G's claims handler, that the membrane can coincidentally have failed so completely and catastrophically in the months after the property was supposedly fully reinstated. I might believe this if there was properly completed paperwork regarding drying the property and no other failures in the drying process had occurred, but that is not the case here.

L&G's investigations though suggest that the membrane had not failed so much as not been installed correctly in the first place. If this were the case though then the problem with the floor would definitely have been evident when the property was initially, supposedly dried. Also I note that the laminate at the property had only been installed around a year before the fire and if the membrane could cause so much of an issue after the reinstatement of the property, surely it would have been causing the same sort of problem then. I do not believe that Mrs D would have installed laminate flooring on top of a wet floor.

So, either something had changed at the property to now make the previously successful damp proof membrane ineffective or the floor was only wet because the property had never been dried properly. Mrs D thinks the property is now dry but in my experience it should not have taken this long for that to occur if there was no other problem/on-going water ingress. L&G will be familiar with this service's stance on insured work having to be long-lasting and the lengths we will expect insurers to go to ensure that is the case. That being said, I do not think it is safe to draw any conclusion as to what is currently needed at Mrs D's property in order to safeguard repairs. I do not want to extend the reinstatement period unnecessarily but neither do I want Mrs D to proceed with reinstatement before it is clear what the exact situation and/or risks are.

To resolve this I intend to make L&G instruct an independent surveyor from a list of three provided by Mrs D. The surveyor will have to assess the current moisture levels at the property and may choose to take samples to determine the type of damp, if any, that is present. The surveyor may have to assess the property over a period to ensure that there is no on-going problem being masked by the newly installed wood stove. If the membrane needs replacing in order to make the remaining reinstatement works durable then L&G will have to take responsibility for this and/or any other work recommended by the surveyor.

stored and damaged contents

I know L&G was covering the cost of storing some items; I trust this arrangement has continued. It will need to continue still further until Mrs D's property is returned to a suitable state for these items to be returned to her.

For items that have remained in the property (and for any that L&G may have returned to her); I can only suggest that L&G assesses these items – this may as well be done by the independent surveyor – and determines whether they have been damaged by the on-going state of the property and what can be done to rectify them. If they cannot be rectified then they may need to be replaced.

compensation

Mrs D had already made a complaint about the initial reinstatement process and compensation was awarded. Anything I look at now has to be from the point of those works concluding. However, given the previous history it must have been even more frustrating and disappointing for Mrs D when things went wrong again. I note especially that Mrs D has not had full use of her home since these problems were found. To compound the situation the extent of the problem has only become obvious in stages because of the way L&G opted to handle things when Mrs D first told it of the problem with the walls. She also has had to manage some of the repairs and deal with the issues surrounding the court action threatened by Builder Y.

Overall I think that Mrs D has been let down by L&G and she has suffered greatly as a result. As such, I intend to award Mrs D a further £1,000 compensation.

L&G, in the main, agreed with my proposals but it said that, in order to ensure a suitably qualified person is appointed, it should provide the list of three surveyors for Mrs D to choose one from. It said it hoped this would minimise any further inconvenience to Mrs D.

Mrs D replied at length and it seems her situation has moved on somewhat recently. Mrs D said she recalls only being paid around £500 in compensation previously by L&G. She said she eventually paid Builder Y as the threat of court action was too much for her. She explained that she has now restored most of her home as she believes it to be dry; including replacing the internal doors. She said L&G had paid for the flooring and decoration downstairs but refused to pay for redecorating the bedrooms where paintwork is water stained and the wallpaper is coming away.

my findings

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

If Mrs D wants to allow L&G to provide a list of three surveyors for her to pick one from then I see no problem with that but I will leave this to be her choice. Mrs D may prefer for L&G to do the ground work to find a suitably qualified surveyor but she may wish to do this herself. I see no reason to step away from this service's established approach in this respect by saying that L&G gets to make that short-list.

The agreement L&G previously reached with this service was to pay Mrs D £1,000. I trust it did this but it should check its records and provide proof to Mrs D of what it did pay.

I can understand why Mrs D finally opted to pay Builder Y. While this payment may be unfortunate for L&G, this should not prevent it from correcting any poor work Builder Y carried out but it may be that Mrs D has already corrected this work herself. The surveyor can check all the work at the home as part of their assessment, including the bedroom and if any work that needs to be re-done (whether that be Builder Y's work or any diy done by Mrs D to correct Builder Y's work and/or L&G's initial failed repairs); then L&G will need to carry this out.

L&G had agreed to replace Mrs D's internal doors and so it will need to discuss with her what is owed for her having replaced them. Whether it will be liable for all of her costs for doing this is something that will need to be considered. I do not know what Mrs D's costs were or what L&G intended to pay for this work or how many doors were involved. I trust though that this, and any other costs Mrs D has had to pay to restore her home, can be resolved without any further need for complaint.

my final decision

My final decision is that I uphold this complaint and order Legal & General Insurance Limited to do a number of things to put matters right. Legal & General Insurance Limited must:

- Pick an independent surveyor from a short list chosen by Mrs D or, at Mrs D's choice, provide her with a short-list of three for her to pick one from.
- Appoint the chosen surveyor to assess the current moisture levels at the property and to determine what is needed to ensure any reinstatement work to be done will be durable and long-lasting.
- The surveyor will also need to assess the standard of work that has been completed at the property so far and report on whether any reinstatement still remains necessary to restore Mrs D's home to its pre-incident condition.
- The surveyor will also have to assess the contents at Mrs D's home and provide a report on them as detailed in my provisional decision.
- Both parties will be bound by and to follow the recommendations of the surveyor; including seeing any necessary works through to completion.
- Reimburse Mrs D any extra costs she has had to pay due to Builder Y's actions following its work at her property and/or its own failed repairs.
- Pay Mrs D £1,000 compensation for the upset these poor repairs have caused her.

I do not make any other award.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs D to accept or reject my decision before 9 April 2015.

Fiona Robinson
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