

complaint

Mr J complains about Admiral Insurance Company Limited's decision to refuse his home insurance claim for damage to his boiler.

background

I issued a provisional decision in this complaint in April 2016. Mr J replied to say that he accepted my provisional findings. He provided a copy of the invoice for replacing the boiler. He also pointed out that the leak allowed 'oxygenated' water to be drawn into the system rather than 'un-oxygenated' water as stated in my provisional decision.

Admiral replied to my provisional decision to say it didn't accept it. It made the following comments:-

- That the boiler failed due to the formation of rust corrosion inside it which in turn was caused by the lack of rust inhibiting chemicals within the central heating system.
- Open vented central heating systems aren't unusual. They are more susceptible to corrosion problems than closed-circuit systems.
- That my assertions that the engineers report is the only expert evidence on the file together and that Admiral didn't carry out any investigations of its own doesn't automatically lead to a conclusion which supports Mr J's claim.
- The damage as described by Mr J's engineer isn't the result of an insured peril. It is the result of rust corrosion over a period of time. This is excluded from cover by the gradually operating cause exclusion.
- That exclusion cites rust and corrosion as excluded from cover if it happens gradually.
- That there's been no valid escape of water under the policy wording. An internal leak doesn't constitute an escape of water.
- That the escape of water peril covers damage caused by water that has escaped. Here, it isn't the water that caused the damage but the absence of corrosion inhibitor.
- There's no evidence that there's ever been any external escape of water in this case;
- That my interpretation of the escape of water peril has strained its natural meaning. That it doesn't extend to damage caused by water in the process of escaping.
- That my findings mean that Admiral will be open to boiler repair claims under the escape of water peril.

The complaint was passed to me for a final decision.

my findings

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

This is clearly a very finely balanced case.

Mr J has made a claim under his policy for damage to his buildings caused by an escape of water from a fixed central heating unit. The peril Mr J is relying on is: -

"Water escaping from: ... fixed central heating unit"

There's a specific policy exclusion which says there's no cover for:-

"Loss or damage caused: To the fixed domestic water or central heating unit, or domestic appliance itself, or to any drains and pipes, by freeze or wear and tear"

There's a general exclusion relating to damage caused gradually. That says:-

"We will not cover you or be liable for any of the following:

10. Gradual causes

Any loss or damage caused by anything that happens gradually including wear and tear, wet and dry rot, damage due to exposure to sunlight or atmospheric conditions due to normal settlement or any due to mildew, rust, corrosion, birds, insects, woodworm, pests or vermin".

Mr J had a leak in his central heating system. The leak was located in pipework at the back of the airing cupboard and was hidden from sight. The heating engineer's report mentions that there were leaks. The leaks went undiscovered by Mr J. Mr J has explained that his heating system is an open-vented one which tops itself up automatically. I think that it's reasonable to conclude from this that there was *'water escaping from... [a] fixed central heating unit'*.

So, Mr J has overcome the first hurdle. He has shown that an insured peril has occurred – water has escaped from a fixed central heating unit. Whilst Admiral has referred to it as an 'internal leak' I'm not persuaded that its description is accurate, given the evidence available.

The next hurdle to overcome is whether there is damage to Mr J's buildings that came about as a direct result of the water escaping and is, therefore, covered by the policy. Admiral has said that only damage caused directly by the water that has escaped is covered, i.e. water damage to, for example, the walls of the airing cupboard. This may well be what Admiral wanted the policy to cover. However, that's not what the policy says. The policy covers damaged *caused by* water escaping – it doesn't specify that it has to be the escaped water that has to cause the damage.

In this case we have an expert saying that the water that escaped caused the heating system to re-fill itself. That constant re-filling meant that the chemicals contained in the heating system to stop the type of damage that was caused here, were so diluted that they ceased to work effectively. This caused what was a fairly new and good quality boiler to rust and cease to work at an early stage in its expected life. I'm satisfied, by the expert opinion about how the damage came about and the information about the age and quality of the boiler, that the damage to the boiler can be linked to the escape of water, rather than age or

maintenance related issues. So, Mr J has suffered damage to his buildings caused by one of the perils listed in the policy. As this is the case, Admiral must accept the claim unless it can show that one of the policy exclusions can be applied to successfully defeat it.

As I explained in my provisional decision, the specific policy exclusion excludes damage caused only by wear and tear or freeze. I explained in my provisional decision why I thought that exclusion couldn't be successfully applied to defeat the claim and nothing Admiral has said in response to it has led me to alter my view.

Admiral seems to be making two arguments in response to my provisional decision. Firstly, it seeks to persuade me why the gradual operating cause exclusion applies. Unfortunately, for Admiral the fact still remains that regardless of the validity of this clause, this service doesn't consider it fair that it's applied to defeat claims where the insured didn't know the peril or damage was taking place. Nothing Admiral has said in response to my provisional decision deals with this issue. I've no reason to doubt that Mr J had no idea that water had escaped from his fixed heating installation. So, I don't think it's fair to apply the gradually operating cause exclusion to defeat his claim.

I'm not sure what Admiral seeks to imply when it says that the existence of Mr J's expert report coupled with its own lack of investigations into the cause of damage shouldn't automatically lead me to conclude the claim is valid. I hope that I've fully explained why I've reached the conclusion I have. Whilst my findings aren't based on these two facts alone, they have, of course, played a part in the decision I've reached.

I can't agree with Admiral that there's no evidence that there's been an escape of water. The engineers report refers to "*leaks on radiator valves and connections to the hot water cylinder*". He also refers to staining in the airing cupboard. Leaks are external escapes of water. The water that has escaped has caused damage by allowing fresh water into the heating system that's corroded the boiler.

I don't agree that Admiral will be open to boiler claims under the escape of water peril. I remain of the view that this case very much turns on its own facts.

my final decision

My final decision is that I uphold this complaint. I require Admiral Insurance Company Limited to do the following:-

- pay Mr J his reasonable costs for replacing his boiler;
- pay interest on that amount at the rate of 8% simple per annum from the date Mr J paid the invoice to the date of payment;
- pay Mr J compensation of £100 for inconvenience caused to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 6 May 2016.

Claire Woollerson
ombudsman

Copy of Provisional Decision

complaint

Mr J complains about Admiral Insurance Company Limited's decision to refuse his home insurance claim for damage to his boiler.

background

I issued a provisional decision on this complaint in March 2016. Since then I've received a response from Mr J that has materially changed my view of the outcome of this complaint. So, I'm settling out the background to this complaint which includes reference to the new comments I received.

In April 2015, Mr J reported to Admiral that he had a leak in his central heating system which had damaged his boiler beyond repair. Admiral appointed a loss adjuster to handle the claim. The loss adjuster said it was necessary to carry out a pressure test to the central heating system to make sure the damage was covered under the policy. Mr J arranged for his heating engineer to carry out the test, during which a radiator burst and damage was caused to the carpet. After the test was done, Admiral told Mr J that his claim wasn't covered. It said that the damage had been caused gradually, something that was excluded from cover under the policy.

Mr J complained to Admiral. He provided a report from his central heating engineer which said that the boiler damage was caused by a leak in the central heating system – specifically to radiator valves and connections to the hot water cylinder. As the water leaked out, fresh, un-oxygenated water was drawn in to the system diluting the rust inhibiting chemicals within it. This caused internal corrosion to the boiler. The engineer reported that the leaks were unnoticeable because the water dried out on the warm pipes from where it leaked.

So, Mr J argued that Admiral had unfairly relied on the gradually operating policy exclusion because he was unaware of the damage until the boiler failed. Mr J's heating system was an open-vented one fed from an expansion tank containing a float and valve which topped itself up automatically without intervention from him. His heating system wasn't the pressurised type, so had no pressure to lose. He also said the leaking pipe was hidden from view at the back of the airing cupboard.

Admiral then told Mr J that the clean water entering the heating system caused the damage, not the escape of water. Mr J responded and said Admiral was directly contradicting the heating engineer's view that the damage to the boiler was caused by a leak. Admiral then argued that damage to central heating units was excluded under his policy. But Mr J pointed out that the damage to the central heating unit was excluded by the policy only if caused by freeze or wear and tear – it wasn't excluded from all water damage.

Admiral investigated the matter further and wrote to Mr J to say that there had never been a leak at all so the damage wasn't insured under the policy. It said there was no visible water damage and that it hadn't been able to locate the leak. It did accept that the damage to the carpet was covered by the policy.

Mr J made a complaint to this service. Our adjudicator investigated the complaint and recommended that it was upheld. He thought the damage was covered by the policy terms and conditions and that Admiral had unfairly declined the claim. He recommended that Admiral pay the reasonable cost of replacing the boiler along with £100 compensation for the inconvenience caused to Mr J.

Admiral disagreed with our adjudicator. The complaint was passed to me for a decision.

my provisional findings

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

I accept that Mr J's central heating system is, somewhat unusually, an open-vented one that tops itself up automatically. Consequently, I've no reason to doubt his explanation about why he didn't know there was anything wrong with the heating system until the boiler actually failed. It's clear that the leak was hidden from view so he couldn't have known either that water was escaping.

In these circumstances, I don't think it's reasonable of Admiral to rely on the gradually operating exclusion clause in order to defeat Mr J's claim. This service has a well-established approach to the use of this exclusion, as Admiral is no doubt aware. We consider it unreasonable for an insurer to rely on this clause to defeat a claim where the insured is unaware damage is happening.

Mr J's policy covers him for damage to buildings by water escaping from a fixed central heating unit. The damage to the boiler was caused by water escaping. The policy says, under '*what is not covered*':

*"Loss or damage caused:
to the fixed domestic water or central heating unit, or domestic appliance itself, or to any drains
and pipes **by freeze or wear and tear** [my emphasis]"*

I've seen the engineer's report. This is the only expert evidence on the file (Admiral carried out no investigations of its own) and it's clear the engineer thought the system has suffered an escape of water. I don't think it's reasonable to conclude otherwise. Mr J's policy covers him for damage to buildings (which under the policy definition includes a home's permanent fixtures and fittings). I think it's reasonable to consider a boiler is a permanent fixture or fitting. It, and the carpet, has been damaged.

The policy excludes damage to central heating units in two specific circumstances - where it is caused by freeze or wear and tear. Admiral has said that this clause excludes any cover for damage to the boiler, but I can't agree. That isn't what the clause says. I think Admiral has interpreted this clause unreasonably.

There is no suggestion that the damage was caused by freeze. At the time the boiler was damaged, it was less than five years old, and had been serviced within the last twelve months. So, I don't think it can be said to have been damaged by wear and tear either. There was clearly a leak which allowed fresh, un-oxygenated water to be drawn in to the system diluting any rust inhibiting chemicals within it. But for the leak, the internal corrosion to the boiler wouldn't have happened. I don't think Admiral's argument that there is a break in the chain of causation (by clean water being introduced into the system and the fact the damage wasn't caused by water escaping) is reasonable

I don't think it's reasonable of Admiral to try to limit cover to damage caused only by water which has escaped. I think a fair interpretation of the policy term is that it provides cover for damage caused by water (in the process of) escaping not just damage caused by water once it had escaped. The damage to Mr J's boiler was caused by water escaping. His boiler was fairly new and well maintained. Had the water not escaped it wouldn't have been damaged. There is a link between the two events.

Admiral has expressed a concern that this complaint may open it up to boiler repair claims under the escape of water peril. I don't agree that it would. This is a very unusual, almost unique, case and one which very much turns on its own facts. As I said in my previous provisional decision, if the heating system is a closed circuit system it requires manual intervention to top it up in the event of a loss of pressure caused by a leak. If there's manual intervention, there's knowledge that something is wrong and the gradually operating cause exclusion can be successfully used. The majority of heating systems are closed circuit so the reasoning that applies in this particular case couldn't be applied in those situations.

I understand Mr J paid to replace his boiler. He has provided us with a copy invoice for £5986.16. The invoice is dated May 2015 and says it's for 'installation as per quotation'. I haven't seen the quotation so am not sure precisely what works were undertaken. Mr J should provide Admiral with a copy of this invoice and the quotation. Mr J has been 'out of pocket' for this amount so I think, in addition to paying his reasonable costs for replacing the boiler, Admiral should pay interest on the amount it pays at our usual rates.

Admiral has also put Mr J to some inconvenience in the way it has handled his claim, particularly in the way it's changed its mind about the reason for declining the claim. I think it should pay Mr J compensation of £100 for this inconvenience it caused him.

my provisional decision

My provisional decision is that I uphold this complaint. I require Admiral Insurance Company Limited to do the following:-

- pay Mr J his reasonable costs for replacing his boiler;
- pay interest on that amount at the rate of 8% simple per annum from the date Mr J paid the invoice to the date of payment;
- pay Mr J compensation of £100 for inconvenience caused to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 12 April 2016.

Claire Woollerson
ombudsman