

The complaint

Mr F and Ms R are unhappy that St Andrew's Insurance Plc has declined their claim for flood or accidental damage to their drainage system. They are represented by a company, N.

What happened

Mr F and Ms R own a property which is served by a septic tank drainage system. In early 2018 they had the tank emptied, which usually took place once a year. Over the course of the next eleven months the tank had to be emptied five times, and on each occasion it was found to be overflowing. The drainage company, G, carried out jetting to the system and a CCTV survey. It said that groundwater had come up to the inlet and that the soakaway was no longer functioning as intended and was flooding the system. The water from the system drained through a distribution chamber and into the soakaway which is under a field to the rear of the property. G determined that due to the ground conditions and the failure of a percolation test, a new drainage field wasn't viable or possible under current regulations. It recommended the installation of a new 12 person package sewage treatment plant with final effluent pump at a cost of around £12,000.

St Andrew's also carried out a survey and its engineer reviewed the evidence. It determined that the failing in the pipework was a consequence of the ground - arguably at some considerable distance from the discharge points - not draining away (evidenced by the large area of saturation). It doubted there was a flood, rather it was a wholly expected gradual seepage into the ground happening each time the drains were used.

St Andrew's further pointed out that there's an exclusion in the policy for damage caused by a gradually operating cause. It said the build up in the soakaway must have been gradual eventually causing the pipes in the system to back up. It also said the policy exclusion for wear and tear applied.

The investigation also revealed that the septic tank system was installed in 2011, but that it was connected to a then existing soakaway. As the soakaway had failed it's likely that it's quite a few years older than the system. The failure to build a new soakaway system meant that St Andrew's considered it right to apply the exclusion for faulty workmanship, poor design, defective or inherently unsuitable materials.

On referral to this service our investigator said that the reason for the loss of function of the system was because the drainage wasn't working properly, due to it having been connected to the old soakaway that had failed. The flood was a by-product of this rather than the cause. He said it was fair to apply the exclusion for faulty workmanship, poor design etc, as G's report showed that the current drainage field wasn't suitable in accordance with building regulations.

N disagreed and pointed out that it was for the insurer to show that the exclusion applied rather than for Mr F and Ms R to show that it didn't. It further said that in accordance with our approach to gradually operating cause, Mr F and Ms R couldn't have known about the damage until it appeared. So St Andrew's should pay for the repair, which to be fully effective means that the new system needs to be installed.

The matter has been passed to me for further consideration.

What I've decided – and why

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

The issues I have to decide are 1. whether there was a flood, 2. whether the flood or another peril caused the damage to the system and 3. whether it was fair for St Andrew's to apply the exclusions.

flood peril

Flood isn't defined in the policy so it can include a slow build-up of water such as where, as alleged here, there's a rise in the water table. There are two reports, one from G, a firm of drainage contractors employed through N, presumably with some input from engineers and the other from St Andrew's loss adjuster, which is supplemented by a desktop review by a named chartered building engineer.

The reason for the flood, according to G is that its engineers reported groundwater had come up to the outlet once it had been exposed. It said the soakaway was flooding the system and it didn't deem it serviceable. On the other hand St Andrew's says that the system was backing up due to the soakaway having failed. I'm not persuaded that whatever the cause, there wasn't a flood at the time. This was clearly shown in the drainage field, which I understand has since dried up.

cause of the damage

The policy says that St Andrew's will cover loss or damage to the buildings caused by flood. Buildings includes services and as this includes pipes, drains etc. I think it fair to say that if the flood caused damage to any part of the drainage system including the soakaway, (which we've previously held to be a drain), it would be covered.

The problem I have here is determining whether the flood caused the damage, or if flood was a result of the damage to the system due to some other cause. The flooding of the drainage field dried up, so there was no direct damage to it. But it's been said that the system backed up due to the flood, meaning that the soakaway is no longer serviceable.

My view is that the reason for the damage to the system is the failure of the soakaway. Both parties agree with this. G says it didn't notice any damage when it emptied the tank previously though I'm inclined to agree with St Andrew's that a contractor emptying the system wouldn't be likely to notice any damage to the soakaway. It appears that the system first started flooding in January 2018 when a smell of effluent was noticed and the drains blocked. But if there was a flood as G described I can't see that it would have damaged the soakaway as to require a complete replacement. Rather I think it most likely that the soakaway had itself become damaged over the years so it was no longer functioning properly. In other words I think the cause of the flood was the soakaway losing its function rather than the soakaway, and the rest of the system being damaged by a flood.

There is cover for accidental damage to underground services. This is defined as:

"An accident that causes physical damage, which is caused suddenly by an outside force and is not expected and not deliberate."

It was suggested that a fallen tree in the field may have damaged the outlet pipe but I understand that this happened after the flood so is unlikely to be the cause. And any blockage in the pipe was cleared and didn't cause any physical damage. In any event the flooding of the system was a slow build up rather than something which was caused suddenly.

exclusions

The exclusions which St Andrew's has sought to rely on are for:

- gradually operating cause
- wear and tear
- faulty workmanship, poor design or defective or inherently unsuitable materials.

I appreciate that it's for St Andrew's to show whether it is most likely that an exclusion applies. But I think it has shown in my view that all three exclusions apply in this case.

In respect of gradually operating cause, our approach is that where the damage is caused by an insured peril e.g. flood or escape of water and the consumers can't have been expected to know the damage was happening, then it's not fair to apply the exclusion. But in this case I don't think the damage, though gradual, was caused by flood, rather it was caused by the soakaway no longer functioning and coming to the end of its useful life. In light of that I think the soakaway was affected by wear and tear, so this exclusion applies as well.

In respect of alleged faulty workmanship. I understand the septic tank and its system were installed during building works in 2011.

G said in its report on the claim: "*A new drainage field is not deemed viable or possible under current regulations.*", and went on to recommend that a new sewage treatment plant should be installed.

St Andrew's Engineer said: "*..building regulations at the time stated, as they still do now, that a septic tank outlet must be discharged to a level and contained drainage field with no overflow.*"

I haven't seen anything to dispute this conclusion, so I think it likely that the septic tank shouldn't have been installed to the existing soakaway, rather it should have been installed with the system currently proposed by G. I understand that the building work in 2011 consisted of a substantial enlargement of the property. So it appears to me to be most likely that the soakaway and drainage were not suitable for the property as rebuilt and that would come under faulty workmanship and/or poor design. So I think this exclusion applies.

My final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Ms R to accept or reject my decision before 29 December 2020.

Ray Lawley

Ombudsman