

The complaint

Mr S complains that Lloyds Bank General Insurance Limited has unfairly rejected a claim for damage under his home insurance policy. He would like it to cover the cost of the necessary repairs.

Mr S has been represented by his daughter, Mrs K, in this complaint. I will refer to Mr S in my decision for ease of reading.

What happened

Mr S says that in December 2019 a heavy glass shower screen, came off its top hinge, and fell into the enamel encased metal bath directly beneath it. The bath has suffered damage to the enamel as a result of this. In addition, damage was caused to a bath seat.

Lloyds sent a Personal Claims Consultant (PCC) to assess the damage. The PCC took photographs of the bath and surrounding area, which shows the damage caused to the bath. The photographs also show the wall the screen was attached to and the fixings. Measurements were taken by the PCC to understand whether the damage claimed was consistent with the screen coming away from the top hinge.

The PCC reported that as the screen rested on the outer rim of the bath, and given its dimensions, it was unlikely that the screen could have fallen into the bath. It was explained by the PCC that if the screen had fallen, it would have most likely hit the opposite wall but could not have caused the damage within the bath.

The PCC also reported that the damage to the bath showed signs of corrosion. And that this was likely to be a sign of the damage having been caused some time ago.

Our investigator decided not to uphold Mr S' complaint. This was based on the available evidence, including the PCC's conclusion that the falling screen would not have caused the damage shown.

Further evidence was provided by Mr S including videos of the screen being held up in order to illustrate how it was likely to have fallen. He was able to demonstrate how the screen could have fallen into the bath. And show the likely impact areas, which match the damage shown in the photographs.

Mr S also supplied an expert witness statement from a Mr P. This was delayed due to the restrictions caused by the coronavirus pandemic. Mr P was not able to visit Mr S' home. However, he was able to establish a view of what happened based on a video call and photographs, in addition to discussion with Mr S and his family.

The expert concluded that the screen was likely to have fallen into the bath, when the top hinge failed. He explained that if the screen was left positioned slightly inwards, over the bath, this would have resulted in the screen falling inwards, causing the damage shown.

Our investigator asked Lloyds to review its decision based on the video evidence and Mr P's witness statement. Its response was to maintain its view that damage was not caused by the

screen falling into the bath, given the PCC's assessment. Lloyds also said that as it was the top hinge that had failed, this is the result of wear and tear, which is not something covered by Mr S' policy.

The investigator maintained his decision not to uphold the complaint. Mr S asked for an ombudsman to review his complaint.

I issued a provisional decision in July 2021 explaining that I was intending not to uphold Mr S's complaint. Here's what I said:

Provisional findings

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

I can understand Mr S' frustration. The videos and photographs he supplied do clearly demonstrate how the screen could have fallen into the bath. In one of the videos the screen is lowered from its starting position attached to the wall, into the bath. The bottom corner of the screen impacts with the base of the bath near the plug hole. As the screen continues to be lowered, the top impacts the far edge of the bath. The points where the screen touches the bath match exactly with where the damage is shown to have occurred.

The PCC took measurements of the screen and bath to support the view that it was not possible for the screen to have fallen in the way described. I accept the PCC genuinely felt the screen could not have fallen in to the bath based on this assessment. However, I am satisfied, based on the videos and photographs supplied, that the damage was most likely caused by the screen falling into the bath.

Mr P's report, in section 3.2, says the screen, "is fitted to the wall profile by means of small rings that fit over lugs mounted on the wall profile." It also says, "There was clear evidence, again by means of a close-up view, that the top lug had broken off. The cause of the break was unknown."

The report refers to the reconstruction Mr S was able to demonstrate of the falling screen. In section 4.3, Mr P highlights the possibility of the screen pivoting on the rim of the bath. In this scenario the screen is positioned inwards, hanging over the bath. Mr P says that in this position the screen lifts off the bottom hinge without causing any damage to it. Again, I note this action was demonstrated in the video supplied by Mr S.

In section 4.2 of his report Mr P refers to the PCC's assumption that the screen was "seated on the bath rim". As mentioned above, this does not take into consideration the possibility that the screen was hanging over the bath, when it fell.

In my view this is an important point, which the PCC has not mentioned. The screen can pivot on its hinges and move inwards over the bath as well as outwards. The screen could have fallen in the way described if its starting position was hanging over the bath.

Mr P sets out another relevant point under section 5.3 of his report. He says the corrosion mentioned by the PCC, is the result of the steel bath having been used since the damage occurred. In his view corrosion is not evidence of the damage occurring earlier, but subsequent to the damage that was caused.

This argument is persuasive, given the damaged enamel exposed the inner surface of the bath. It is reasonable to expect this will show signs of corrosion over time.

Our investigator sent Lloyds a copy of Mr P's report. In its response it says:

“..the top hinge has been broken off ‘initially’ which would suggest wear and tear. There was not any evidence of a hinge on the floor when I visited nor did the PH show me this, so if this is the case then it could be that the hinge had been broken for a period of time before the shower screen fell off. If they were still using the bath etc and moving the screen with the top hinge missing then this would have weakened the bottom hinge and caused the screen to eventually fall off.”

The investigator wrote to Mr S confirming what Lloyds had said in response to Mr P’s report. Essentially, confirming that the company had not changed its position. He concluded that Lloyds’ position was more persuasive and decided a decision not to uphold the complaint was fair.

I take a different view to that of our investigator. Having considered all the information, I am satisfied the damage to the bath was most likely caused by the screen falling into it.

That said Mr S’ policy does have exclusions. Page 45 of the policy booklet says, “This policy does not cover any loss or damage caused by Wear and Tear”.

It also explains “Wear and Tear is damage that naturally and inevitably occurs as a result of normal wear or ageing” and “You are not insured against the costs of maintenance or the costs of any damage caused by inadequate maintenance. Examples include: ..Faulty Workmanship, poor design, or defective or inherently unsuitable materials.”

These are important clauses here, as it has not been demonstrated the failure of the top hinge constitutes an “insured event”. The policy is designed to cover sudden or unexpected events, not problems that have developed over time.

Little is said by Mr S in his correspondence about the cause of the hinge failing other than to confirm this was how the screen fell off the wall. Mr P’s report also has little detail around this point other than to say that the hinge has “snapped off”.

I accept Mr S’ explanation of how the damage occurred to the bath. However, I think it is probable that the hinge breaking, was the result of damage occurring over time. I have not seen evidence of a different cause. The screen is heavy, weighing approximately 30 kilos. It is a reasonable argument to accept that wear and tear over time weakened the top hinge. This eventually resulted in its failure and the damage caused to the bath.

In its response to Mr P’s report Lloyds says the damage was caused by wear and tear and has shown the policy wording includes an exclusion for such damage. On this evidence I think it is reasonable for Lloyds to apply this exclusion and decline the claim.
I said I was intending not to uphold the complaint.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Lloyds didn’t respond. Mr S responded to say he does not accept that the failure of the shower screen was due to wear and tear or lack of maintenance. He supplied fitting instructions for shower screens from two different manufacturers. He says these have similar hinge points and the only point of wear is the point of pivot and not with the part that broke. Mr S says neither of the manuals specify what maintenance is required other than for cleaning to be carried out. He says the spare parts listed do not include the broken hinge. Mr S believes if this part was expected to wear out, it would be included in the list of spares.

Mr S refers to the policy terms referenced in my provisional decision relating to “*wear and tear*” and “*normal wear or ageing*”. He says the shower screen is less than ten years old and most manufacturers provide a ten-year guarantee. Mr S believes this indicates the cause of the damage could not be the result of wear and tear or normal ageing.

Mr S denotes my reference to the policy providing cover for sudden or unexpected events. He says Mr P described the hinge as having “*snapped off*”. He says the dictionary definition of “*snapped*” is “*if something snaps or if you snap it, it breaks suddenly, usually with a sharp cracking noise*”. Mr S thinks Mr P’s report had therefore said the fault was due to a sudden or unexpected event.

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.

I have considered the further comments and information provided by Mr S. I acknowledge his view that the only point of wear is the pivot point for the shower screen and that the screen rests on this point. I also note his point around the age of the screen and the warranty periods shown in the information he provided. However, I don’t think this demonstrates the failed upper hinge was immune from the effects of wear and tear or that this wasn’t the likely cause due to continued use over time.

Mr S’s view is that he’d expect the failed hinge to be listed with the spare parts, if this was a component that was expected to wear out. I understand the point he is making here. However, again, I don’t think this demonstrates that the part couldn’t have failed, or that there is another clear cause of the failure.

Mr P’s report doesn’t refer to the cause of the broken hinge, only that it had “*snapped off*”, resulting in the shower screen falling into the bath. Having considered Mrs S’ comments, I think Lloyds’ view that wear and tear was the most probable cause of the hinge failure, is still the most persuasive.

In summary, I think it’s reasonable to accept the damage claimed was the result of a hinge failure due to wear and tear. Because of this, I think Lloyds acted fairly and in line with the policy terms in declining this claim. So, I cannot fairly ask it to do more to resolve this complaint.

My final decision

For the reasons I’ve explained above, and in my provisional decision, I don’t uphold Mr S’ complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 19 October 2021.

Mike Waldron
Ombudsman