

The complaint

Mr D complains about Royal & Sun Alliance Insurance Plc's decision to decline his home insurance claim for damage caused by an escape of water.

What happened

Mr D took out a home insurance with RSA towards the end of October 2020 for a property he was purchasing. He moved into the property in the first week of November 2020. About 10 days later he heard a loud noise beneath his kitchen floor tiles that sounded like running water. Mr D turned off the water at the mains and called a plumber.

The plumber attended and carried out trace and access and found a saturated sub-floor caused by a pin-hole in a copper pipe located beneath the tiles, screed and floor insulation. The pipe exhibited evidence of oxidation. The plumber removed (and disposed of) a section of the pipe and installed a joint and no further leaks were experienced.

A couple of days later Mr D made a claim to RSA for a repair of the concrete screed, trace and access costs, repair of the kitchen floor tiles and other subsequent damage. RSA appointed loss adjusters to validate the claim and they visited the site in early December. Following the loss adjusters' visit, RSA decided to appoint its forensics experts and they attended in early January 2021. They confirmed to RSA that the sand and floor insulation in the sub-floor were saturated. They also said that in the area of the floor that had been excavated, there were three 15mm copper pipes present, the outer surfaces of all showed evidence of corrosion. The forensic experts said the leak had saturated the area surrounding the pipe creating an environment that promoted corrosion.

In early February 2021 RSA repudiated the claim on the grounds that the corrosion was extensive and had been ongoing for some time and certainly before the policy inception. RSA told Mr D that its forensics experts had said the pipe had corroded over time because of the presence of water. It said the pipe was situated below the floor tiling but above the floor slab in the extension part of the kitchen which'd been built in 2005/2006. RSA said that modern building regulations would've required a damp-proof membrane (DPM) to be installed below the slab so, it thought, the water that had caused the corrosion had come from the leak in the pipe and not from any other source. It said that the leak would most likely have pre-dated the corrosion on the pipe and given the extent of corrosion evident, it was fair to assume that the leak first occurred before the policy was taken out.

Mr D was unhappy with RSA's decision to decline the claim so he complained. He said to RSA that he believed the leak had happened whilst on cover with RSA and that there was no evidence that the escape of water was pre-inception.

RSA looked into Mr D's complaint but maintained its decision that it'd been correctly declined. RSA thought that there was no evidence of an insured peril operating or, if there was, there were two clear policy exclusions that could be successfully applied to defeat the claim in any event: one for corrosion and one for pre-inception damage. It said it'd been in touch with Mr D's local building control and was able to confirm that the installation of a DPM was included on the plans for the kitchen extension was built so it felt it was likely one had

been installed. RSA said that meant the source of the water causing the corrosion was the leaking pipe which it'd already explained had been going on pre-inception. RSA did however consider that it should consider Mr D's trace and access costs under the policy terms.

Mr D replied to RSA to say that he would try and get evidence to prove that the damage happened whilst on cover with RSA. RSA said that if he could do so it would reconsider the claim but unless that happened, the claim would remain declined.

Unhappy with the outcome of his complaint to RSA, Mr D complained to this service. He said that RSA had assumed a DPM was in place so that the corrosion couldn't have been caused by ground water. Mr D said he had asked his own expert to attend and dig a trial hole to see if a DPM was present or not. Mr D said he'd send us the report as soon as he had it. Our investigator said she'd review it upon receipt but warned Mr D that if his expert discovered there was no DPM, then RSA would likely look to apply the policy exclusion for damage that was the result of poor workmanship.

Shortly after, Mr D forwarded his report to our investigator. The report said there was no DPM above the sand. And Mr D sent a copy of a letter from building control confirming that the works were carried out in line with building regulations. Mr D said he'd proved that the corrosion and damage to the copper pipe weren't necessarily caused by a slow leak which began pre-inception and that the pipe burst after RSA started to provide cover.

Our investigator looked into Mr D's complaint and recommended it was upheld. She said RSA should reconsider the claim in line with the remaining policy terms and conditions. She said she didn't think RSA had fairly applied the exclusions to defeat Mr D's claim because there was no evidence to confirm when the escape of water had occurred. Our investigator also sent Mr D's expert's report to RSA to review.

Mr D agreed with our investigator's findings but RSA didn't. In response it said the debate centred around when the pipe started to leak. It said there was physical evidence to show the pipe was corroded and leaking and that it was speculative to suggest this was the result of a failed DPM. RSA said there was no evidence that ground water/moisture contributed to the pipe's failure. It said that, on balance, the evidence was that the water beneath the floor escaped from the pipe over time. So it said this remained its technical position on the claim.

RSA also referred to the comments of the plumber who attended to repair the pipe and said he'd said that the leak was likely to have been ongoing for some time, probably before Mr D moved in. RSA said it was reasonable to assume that the plumber's view was based on the extent of the damage he revealed. RSA said its policy indemnified Mr D against damage but that pre-inception damage wasn't covered no matter what caused it – be that groundwater or a leaking pipe. RSA said a recent leak, discovered as a result of hearing a noise under the tiles would not have caused the damage complained about. So it remained of the view that the damage predominantly, if not exclusively, occurred pre-inception of the policy.

As an alternative, RSA said the policy excluded damage that was the result of corrosion in any event (and the pipe leaked because it was corroded) and it said that any damage caused by groundwater was uninsured damage. RSA said that Mr D needed to show that the damage was proximately caused by a peril during the lifespan of the policy. It said that, whatever the source of the water, it must have been present to a significant extent before inception.

Our investigator looked at Mr D's complaint again and didn't recommend that it was upheld. She said that the evidence indicated that a wet environment had been present for some time before inception and it was this environment that had corroded the pipe that led to the leak. She explained that there was a policy exclusion for damage caused by corrosion so any

damage that related to the corroded pipe wasn't covered. Our investigator said that the lack of a DPM had no bearing on the outcome of the claim as either way, events leading up to the pipe's failure would've occurred pre-inception resulting in the same outcome, namely that the claim was declined.

Mr D replied to say he disagreed with our investigator's findings. He said RSA should pay his claim because there was no way he could've known that the damage had been happening gradually.

Our investigator responded to Mr D to say that it was always difficult, where works had been undertaken before an insurer had had time to inspect the damage sustained, because the insurer's position was compromised.

Mr D asked for his complaint to be referred for an ombudsman's decision.

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.

With regret for the disappointment I know this decision will cause Mr D, I don't think his complaint should be upheld. I'll explain why.

Not all damage a home sustains is covered by a home insurance policy. Only damage that's caused by one of the insured perils listed in the policy terms – fire, theft, flood, escape of water – is covered. Providing the policyholder is able to show the damage has been caused by one of the perils listed in the policy then the insurer must pay the claim *unless* it is able to successfully apply one of the policy exclusions to defeat it. The burden of proving a policy exclusion can be successfully applied falls to the insurer.

I accept that Mr D finds himself in an unfortunate situation. He had only just moved into his new home when the damage occurred. And it was only a short time that RSA had been on cover. That being the case, RSA understandably wanted to be sure that the damage Mr D was claiming for had happened whilst it'd been on risk.

I can see that RSA carried out some extensive forensic investigations before deciding it would decline Mr D's claim by relying on the policy exception for damage caused pre-inception. I don't think it has done so unreasonably.

Whilst there's no definitive evidence about when exactly the pipe burst (and it is unfortunate that the damaged piece of pipe had been disposed of before RSA had had a chance to inspect it), the evidence does confirm that the ground conditions beneath the tiles were moist and that the remaining copper pipes were corroded. RSA had only been on risk for three weeks when the damage manifested itself. It's not unreasonable to think that corrosion of the extent evident on the three remaining pipes would've taken significantly longer than 3 weeks to have developed.

Consequently, I don't think that RSA unreasonably decided to rely on the policy exclusion for damage caused before the policy's inception. The policy does provide cover for damage caused by one of the insured perils listed but excludes damage that's caused pre-inception no matter what caused it – be that groundwater or a leaking pipe. It's reasonable to think, given the extent of the damage claimed for, that it couldn't have been caused by a recent leak, discovered as a result of hearing a noise under the tiles. So I don't think RSA unreasonably concluded the damage occurred predominantly, if not exclusively, before it went on risk.

And latterly, in response to Mr D's own expert report, RSA has also pointed out that the policy excludes damage that was the result of corrosion in any event (RSA stated that the pipe leaked because it was corroded). I don't think, taking all the evidence and circumstances into account that that was unreasonable conclusion for RSA to have reached. And whilst the policy does indeed provide cover for damage caused by water escaping from washing machines, dishwashers and fixed water heating systems, there's no cover provided for any damage caused by groundwater. So I don't think that RSA concluded that, even if the corrosion was the result of groundwater coming into contact with the pipe owing to a lack of a DPM, then such damage was uninsured damage in any event.

So whilst it's clear that there has been an escape of water from fixed water system, I don't think that Mr D has been able to show that it occurred whilst RSA was on cover. Consequently, I think that RSA has been able to rely on certain policy exclusions in order to defeat his claim. Taking all the circumstances into account, I don't think it did so unfairly.

Mr D has said it's not fair that his claim isn't covered because he couldn't have been aware that the damage was happening gradually. But RSA hasn't relied on the policy exclusion for gradual damage in order to decline his claim; it relied on the existing pre-inception damage exclusion, and latterly, the exclusion for damage caused by corrosion.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 December 2021.

Claire Woollerson
Ombudsman