

The complaint

H, a limited company, has complained about its commercial property insurance broker MacDonald Group GI LLP, as it believes it caused it to incur losses by delaying notifying insurers of H's claim for water damage.

What happened

Water damage was found to H's property in June 2018 with flooring having to be replaced. H called MacDonald to notify it of the claim but was told a claim couldn't be made as the damage might have been caused by a lack of maintenance. H set about challenging that. But, later, when H went directly to the insurer, the insurer initially refused the claim, as the policy required notification within a set time period. However, after receiving details of the contact H had made to MacDonald, the insurer accepted the claim and paid for floor repairs.

H felt that if MacDonald had referred the claim to the insurer earlier it wouldn't have had to pay for a leak report at a cost of £702. MacDonald wouldn't cover that cost though. It felt that was a cost H would always have had to pay to evidence its valid claim. But it accepted it could have provided a better service so offered £200 compensation. H accepted the £200 as compensation for inconvenience caused by MacDonald's service failings. But still wanted it to make up for the financial loss. H complained to us.

Our investigator felt the leak report was a cost H would always have had to incur in order to show a valid claim. He didn't think its cost had been incurred due to any failure or delay by MacDonald. So he didn't recommend it reimburse the sum of £702. H was unhappy and the complaint was passed for an ombudsman's decision.

In short I felt that MacDonald had, effectively taken on the role of the insurer by requiring H to prove it had a valid claim. And I noted MacDonald's concerns related to a lack of maintenance being a possible cause of the damage – which the leak report showed was not the case. So I thought that MacDonald should reimburse the cost of the report, plus interest* and issued a provisional decision to explain my views.

H said it felt that was a positive outcome. MacDonald said it disagreed with my findings.

MacDonald said that when the damage was found the cause wasn't known. MacDonald said the onus for showing an event covered, and not excluded, by the policy had occurred always remained with H. And until the leak report was obtained, there was "*no proof or indeed hint*" of an event subject of the cover having occurred. It later acted to assist H with getting the insurer to accept the claim.

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 said provisionally:

“In short MacDonald should, I think, have notified the insurer of the claim as soon as it was intimated to it. The insurer would expect a fair amount of proof to validate the claim but what it would want to see or be prepared to accept is really a matter for it to decide – not MacDonald (and here it seems the insurer ultimately did not want to see a leak report). But in refusing to pass on the claim until it was satisfied it had been proven, MacDonald took on the role of the insurer.

It is absolutely the case that a policyholder will sometimes have to bear costs for validating their claim. And they'll certainly have to put in time and effort, cooperating with the reasonable requests of the insurer. But most insurers, where evidence, obtained at a cost to the policyholder, is submitted which changes the course of a claim, will cover the cost incurred. And certainly, where complaints that turn on such issues are made to this service, we're often of the view, that where key evidence, paid for by a policyholder, is concerned, that turns the tide of a claim or complaint, that cost should be reimbursed by the insurer.

Here MacDonald, acting in the role of the insurer, wanted H to show that the water damage had been caused by something the policy covered. And I understand an initial and main concern was that maintenance of pipes might have been an issue. So I can understand H getting a leak report, and I think its cost was reasonable. The report was crucial in evidencing that no leaks had occurred to cause the damage. I think MacDonald reasonably needs to reimburse the £702 H paid for this report, plus interest from the date it was paid for until settlement is made.”*

Turning to MacDonald's objection to my provisional findings, I don't think it matters that, when the claim was notified to it, the claimant didn't know what had caused the damage. The claim was notified as one of (potential) flooding, and water damage was in evidence. That's usually enough as a starting point for any insurer to take on and begin considering a claim. The insurer might then appoint a loss adjuster or ask for other evidence – but it would be for it to choose how it handles things and what it asks for. But MacDonald took on that claim handling role here.

It would also have been for the insurer to show, if it had wanted to, that an exclusion applied to prevent the cover from responding to the damage – such as because of a lack of maintenance. So it's unlikely that the insurer would ever have demanded H obtain a leak report in order to satisfy it that an exclusion didn't apply to defeat the claim.

I appreciate that MacDonald may have wanted to assist H by presenting its claim to the insurer in the best possible light. Doing so would mean that H would be protected from having made a non-valid claim (if the damage reported wasn't fairly covered) and, in theory assured H's best chance of a quick successful claim outcome. But in doing that MacDonald was acting to assess and validate the claim. In line with our usual approach in respect of complaints against insurers where evidence, which has only come at a price, changes the course of the claim and/or complaint, the outlay incurred in gaining that evidence should be reimbursed. MacDonald clearly would not have progressed this claim on H's behalf without H, in the first instance, having got the leak report. It follows that I think MacDonald fairly and reasonably needs to reimburse H for the cost incurred in obtaining it.

Having considered MacDonald's reply to my provisional findings, my view on the complaint has not changed. My provisional findings, along with my response to MacDonald's reply, now form the findings of this, my final decision.

Putting things right

I require MacDonald to reimburse the £702 H paid for the leak report, plus interest* from the date it was paid for until settlement is made.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs requires MacDonald to take off tax from this interest. It must give H a certificate showing how much tax it's taken off if it asks for one.

My final decision

I uphold this complaint. I require MacDonald Group GI LLP to pay the redress set out above in "*putting things right*".

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 22 April 2022.

Fiona Robinson
Ombudsman