

The complaint

Miss D complains about her insurer, One Insurance Limited (One). Her complaint is about how they dealt with a claim under her accidental damage insurance policy.

This decision covers Miss D's claim under her accidental damage insurance policy. It doesn't cover Miss D's separate home insurance policy with another insurer (C). Miss D initially made her claim to C, who declined it as their policy didn't cover accidental damage. At that point, Miss D approached One to consider her claim.

References to One include their agents who handle claims.

What happened

In August 2021 a cupboard in Miss D's kitchen fell off the wall, causing a second cupboard to also fall, damaging a microwave underneath. An extractor fan was also damaged and fell off the wall. There was also damage to the contents of the cupboards, a worktop and a tile on the floor. After C declined the claim made initially to them, Miss D contacted One, as she had an accidental damage policy with them. One arranged for an surveyor (S) to inspect the damage.

S's report found no evidence of wear and tear with the cupboards and couldn't fully ascertain why they'd fallen. The report went on to say the cupboards fell due to potential workmanship issues when they were installed, as they should have been able to hold the weight of the items within them prior to their fall. Based on this, the report concluded the damage was caused by a maintenance issue, not accidental damage. Based on S's report, One declined Miss D's claim. Unhappy at the decline, Miss D complained to One.

One upheld her complaint in part. In their final response, they acknowledged delays in handling her claim, for which they awarded £100 in compensation. But they maintained their decline of her claim, based on the policy exclusion for accidental damage claims relating to maintenance issues and faulty workmanship.

Miss D then complained to this service, unhappy at what had happened. She disputed One's view that the cupboards hadn't been installed correctly, saying they had. She said the experience had caused her undue stress and anxiety and she'd had to store salvaged items from the cupboards in her lounge due to lack of space, as well as having to borrow items from family and friends. She wanted One to accept her claim.

Our investigator upheld the complaint, concluding One hadn't acted fairly. She thought the incident would fall under Miss D's policy, as the damage was unexpected, unintended and caused by something sudden and not deliberate. She thought One hadn't provided enough evidence to support their decline of the claim under the policy exclusion they'd relied on. She thought One should put things right by paying Miss D's claim (and paying interest on the claim settlement, if Miss D had already replaced items damaged in the incident).

One disagreed with the investigator's conclusions and requested an ombudsman review the complaint. They said S's report said the cupboards fell due to potential workmanship issues

when installed, as they should have been able to hold the weight of the items contained within them. One also said S's report indicated Miss D was in the process of renovating her kitchen and hadn't purchased the upgraded cupboards damaged in the incident.

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.

My role here is to decide whether One have acted fairly towards Miss D.

In considering Miss D's complaint, the main issue is whether One fairly applied the policy exclusion for maintenance and poor workmanship. Within this, there are two key questions to consider. First, whether the events in the case constitute accidental damage under the terms and conditions of the policy. And, second, whether One have fairly applied the policy exclusions to decline the claim.

On the first question, I've looked at the terms and conditions of the policy. They state:

"When we use the term accidental damage we mean damage that is unexpected and unintended caused by something sudden and which is not deliberate."

From what I've seen about the incident, when the cupboards fell from the kitchen wall and caused damage, I think it's clear the incident fits the definition of accidental damage. So I've concluded the damage would fall to be considered under the policy.

However, while One accepted this, they've relied on a policy exclusion to decline the claim. That decline, as set out in their final response, is based on the policy exclusion for accidental damage relating to maintenance and faulty workmanship. Their final response referred to the following policy exclusion:

"Structural alteration, extension, restoration, dismantling, renovation, repair, maintenance, redecoration

Faulty design or workmanship, defective design or the use of faulty materials"

Miss D says the cupboards were installed correctly. One refer to the findings in S's report to support their use of the exclusion to decline the claim. Given the latter, I've considered S's report carefully. The key parts of the report state:

"Our building surveyor can confirm no evidence of wear and tear however upon our inspection we could not fully ascertain as to why the why the kitchen units had fallen and we believe this was due to potential workmanship issues when the units were installed as cupboards should be able to hold the weight of the items situated within the cupboards prior to them falling."

The report also goes on to state "...we recommend repudiation [of the claim] in its entirety due to maintenance..." The report also states the peril (the cupboards falling down) isn't consistent with a gradual operating cause (something that happens gradually over time).

Taking all these factors into account, I'm not persuaded it was fair or reasonable for One to use the exclusion to decline Miss D's claim. I've concluded this for several reasons. First, where an insurer uses an exclusion clause to decline a claim, the onus is on them to show the exclusion applies (rather than the consumer to show an insured event or peril has occurred – which I've concluded was the case). I don't think S's report, together with the

other information and evidence available, provides clear evidence to support the exclusion. The key parts of the report aren't persuasive, for example references to 'could not fully ascertain' and 'potential' [workmanship issues]. The report also rules out wear and tear and gradual operating causes as issues, which I don't think point to a maintenance issue.

Having concluded One acted unfairly in applying the exclusion to decline the claim, I've considered what I think they should do to put things right. Given the length of time since the incident, I think One should settle Miss D's claim in line with the remaining terms and conditions of the policy, without relying on the exclusion. I've also considered One's second point when disagreeing with our investigator's view. I think settling the claim will involve considering the evidence provided by Miss D to support the losses she's incurred from the incident, as well as what S's report says about repairing the damage and replacing damaged items. Given the elapse of time, I also think One should pay interest (at 8% simple) on any replacement items already purchased by Miss D which One reimburse when settling the claim (from the date of purchase to the date One settles the claim).

My final decision

For the reasons set out above, it's my final decision to uphold Miss D's complaint. I require One Insurance plc to:

- Settle Miss D's claim in line with the remaining terms and conditions of the policy (without relying on the exclusion for maintenance and faulty workmanship).
- Pay interest (at 8% simple) on any replacement items already purchased by Miss D which One reimburse when settling the claim (from the date of purchase to the date One settles the claim).

If One Insurance plc consider they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss D how much they've taken off. They should also give Miss D a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 6 July 2022.

Paul King
Ombudsman