

## The complaint

Mr M and Ms M complain about AWP P&C SA's ("AWP") decision to decline their claim under their home emergency insurance.

## What happened

Mr M and Ms M noticed a leak coming through the ceiling of their extension on 13 October 2021 so they instructed a roofing company to carry out repairs. The roofing company carried out the repairs the same day and charged Mr M and Ms M £180. Mr M and Ms M then contacted AWP the following day to say they noticed a leak the day before and had instructed a roofing company to carry out repairs. They explained the work that had been carried out and asked AWP to reimburse the £180 they'd paid. Mr M and Ms M explained they appreciate AWP may have wanted to instruct their own roofing company to complete the work but they needed someone out the same day to prevent further damage to their home. AWP declined the claim, so Mr M and Ms M complained about their decision.

AWP responded and explained Mr M and Ms M's home emergency policy is in place for any sudden and unforeseen circumstance which would deem their home unsafe or insecure. They said Mr M and Ms M must make contact with AWP first and within 48 hours of noticing the home emergency. AWP said they had considered Mr M and Ms M's claim in line with the policy terms and it had therefore been declined correctly.

After considering all of the evidence, I issued a provisional decision on this complaint to Mr M and Ms M and AWP on 29 April 2022. In my provisional decision I said as follows:

*"My starting point is Mr M and Ms M's home emergency policy. This sets out the terms and conditions and, under a section headed 'General conditions' it says "We will only pay the benefits under this policy if you contact us first within 48 hours of discovering the emergency." And, the policy goes further to set out the steps a customer must take when making a claim and says "It is important to remember that you must phone [insurance product provider] first. Please do not make any arrangements yourself as we cannot refund any costs if you do not get our prior authorisation."*

*There's no dispute here that Mr M and Ms M instructed their own roofing company to carry out repairs without contacting AWP first or seeking their authorisation to use their own roofing company. The terms and conditions of their policy requires them to report any emergency to AWP within 48 hours of discovering it – and I can see they've done that. The issue here though is that they haven't reported it to AWP first. So, I've looked into whether AWP have acted fairly in declining the claim on this basis.*

*I understand Mr M and Ms M say they instructed their own roofing company as they needed someone out the same day to prevent further damage. I understand why they wanted to minimise any damage but the fact is there has been a breach of one of the terms and conditions here as they didn't contact AWP first. That said, I've considered relevant provisions of the Insurance Conduct of Business Sourcebook*

*("ICOBS") here. Firstly, ICOBS: 8.1.1 R says an insurer must not unreasonably reject a claim and, secondly, ICOBS: 8.1.2A G sets out the circumstances where it would be unreasonable for an insurer to reject a claim. This section refers to the Insurance Act 2015. The relevant provision which applies here is S.11 of the Insurance Act 2015 which refers to terms which aren't relevant to the actual loss. This goes further to say:*

*"11. (1) This section applies to a term (express or implied) of a contract of insurance, other than a term defining the risk as a whole, if compliance with it would tend to reduce the risk of one or more of the following—*

- (a) loss of a particular kind,*
- (b) loss at a particular location,*
- (c) loss at a particular time.*

*(2) If a loss occurs, and the term has not been complied with, the insurer may not rely on the non-compliance to exclude, limit or discharge its liability under the contract for the loss if the insured satisfies subsection (3).*

*(3) The insured satisfies this subsection if it shows that the non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred."*

*I'm required to take account of the law, and regulatory rules, when reaching fair and reasonable decisions and so it's right that I take account of both ICOBS and the Insurance Act 2015 when reaching my decision. And, in summary, this says, if there has been non-compliance by a customer of a term within the policy, a claim rejection by an insurer would be unreasonable unless the circumstances of the claim were connected to the non-compliance of the term.*

*So, applying this to the facts of this complaint, I can see Mr M and Ms M first discovered the leak on 13 October and they arranged the repairs themselves and then reported it to AWP the following day. So, while this satisfies one limb of the relevant term in the policy to report it to AWP within 48 hours, it doesn't satisfy the second limb – which is the requirement to report it to AWP first.*

*When applying ICOBS: 8.1.2A G and S.11 of the Insurance Act 2015, it's clear a loss has occurred and the term requiring Mr M and Ms M to report it to AWP first hasn't been complied with. So, AWP can only rely on Mr M and Ms M's breach of this term to justify their decision to decline the claim if their non-compliance has increased the risk of the loss which occurred. Looking at the information, I don't think that's the case here.*

*The invoice from the roofing company shows they repaired the damage the same day Mr M and Ms M discovered the damage – so, within 48 hours. While I agree they didn't report it to AWP first, I can't say this non-compliance with the term of the policy is connected to the circumstances of the claim.*

*Mr M and Ms M confirm the leak stopped so the damage costs were mitigated. I can't see that, Mr M and Ms M not reporting the problem to AWP first, has resulted in the loss occurring or the resulting damage becoming worse. I'm therefore not persuaded Mr M and Ms M's non-compliance with the term increased the risk of the loss occurring in the particular circumstances of this case. In accordance with ICOBS and the Insurance Act 2015, AWP is unable to exclude or limit their liability under the policy. I see no reason to depart from the law here and as such I'm not persuaded AWP has applied their terms fairly when considering Mr M and Ms M's claim."*

So, subject to any further comments from Mr M and Ms M or AWP, my provisional decision was that I was minded to uphold this complaint.

Following my provisional decision, Mr M and Ms M responded to say they have no further comments to make. AWP responded and said, while they take on board my reasons, they would like to refer to a section on page 3 of the policy. This says *“We aim to provide rapid, expert help if you suffer an emergency arising from an incident covered under this policy. We will arrange for one of our list of approved contractors to attend and take actions to stabilise the situation and resolve the emergency.”*

Given that both parties have responded, I see no reason to delay making a final 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.

Having done so, I see no reason to depart from my provisional decision. So, I’ve decided to uphold the complaint for the reasons set out in my provisional decision and copied above.

In relation to the section AWP have referred to, I note this sets out the steps AWP will take following an insured event. I can’t say this changes my decision as the issue I’m considering here is whether AWP acted fairly in declining the claim based on the specific term requiring Mr M and Ms M to report it to AWP first. And, for the reasons I’ve given, I don’t think it’s fair for them to decline the claim on this basis.

I’m satisfied it’s clear within the policy that Mr M and Ms M needed to contact AWP first, before incurring any costs. This is so that AWP can check the policy covers the situation being claimed for and manage the costs for anything covered by the policy – and AWP weren’t given an opportunity to do this first. As this is the case, I recognise that AWP acted in line with the terms and conditions of the policy when declining the claim. However, my remit here is also to consider what is fair and reasonable in the circumstances of the case. And, based on what I’ve seen, and taking into account the relevant law and regulatory rules, I can’t say Mr M and Ms M’s non-compliance with the term increased the risk of the loss occurring or the resulting damage becoming worse in the particular circumstances of this case.

### **Putting things right**

I’ve taken the view that AWP have acted unreasonably in declining Mr M and Ms M’s claim on the basis of their non-compliance of the term of the policy requiring them to report it to AWP first. So, AWP should now reconsider Mr M and Ms M’s claim further, in line with the remaining terms and conditions of the policy. It is of course open to them to make any other further enquiries they feel are necessary but I don’t think it’s reasonable for them to use the reason they have to decline the claim.

### **My final decision**

My final decision is that I uphold the complaint. AWP P&C SA must reconsider Mr M and Ms M’s claim in light of the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M and Ms M to accept or reject my decision before 21 June 2022.

Paviter Dhaddy  
**Ombudsman**