

The complaint

Miss O complains that AA Underwriting Insurance Company Limited were unfair in rejecting her household property insurance claim.

What happened

Miss O says she noticed a damp problem at her property in around June 2021. She contacted several damp specialists over the following months, but had some difficulty in arranging for someone to inspect and repair the damage.

Eventually, someone did an inspection and said it was a damp problem they thought they could resolve, but they said they wouldn't be able to start the work until February 2022. Miss O decided that she'd be prepared to wait as there was no underlying cause identified at that stage.

However, in October 2021, the local water board said the amount of water being used in the vicinity was much greater than it should have been. They felt there was a leak somewhere but couldn't immediately identify where. They said they could do further investigation but that it would be a while until that could happen. So, Miss O arranged for another company to investigate. They found the leak was coming from a pipe underneath a path at the rear of Miss O's property, and they repaired it.

Miss O claimed on her property insurance policy for the damage that had been caused by the leak. But AA said it wasn't covered. They said Miss O should've contacted them as soon as she'd noticed the damp and that her failure to do so has led to a rise in claims costs. AA said Miss O's failure to act sooner was a breach of the policy terms and conditions.

An investigator here looked into the matter. They said that regardless of Miss O's delay in reporting things to AA, an insured peril had occurred and so it was only fair that AA made a contribution toward the repair costs. The investigator acknowledged that the costs had likely risen due to the time that had elapsed so said she felt a 50% contribution would be fair.

AA rejected this suggestion, saying that the 50% was arbitrary.

Agreement couldn't be reached, so the case has been passed to me to decide.

I issued a provisional decision last month, in which I explained why I felt AA had been unfair in their rejection of the claim and why it ought to now be dealt with. I said:

"I've provisionally decided to uphold this case, and to a greater extent than the investigator did, I'll explain why.

AA have relied upon Miss O's delay in reporting the claim to them, saying she failed to mitigate the losses. They say that if Miss O had notified them of the damp in the first instance they'd have located and fixed the leak, and that the repair costs to the damaged property would have been lower.

But I don't agree with AA on this point. I've thought carefully about both whether Miss O acted reasonably, as well as what would have happened if she'd done what AA says she should have done.

Firstly, I think Miss O did act reasonably. She identified a damp problem in her home and contacted damp specialists who seem to have identified no underlying escape of water. I think that's entirely reasonable and I wouldn't necessarily expect a consumer in the same circumstances to contact their insurer.

Typically, damp alone is not covered by property insurance policies. So, there wouldn't really have been any reason to inform the insurer – rather it would be for the consumer to deal with privately – which is what Miss O was trying to do.

It was only later that an escape of water was discovered and that was the point Miss O took further action in promptly arranging for the leak to be fixed, before then claiming for the damage it had caused. Because, if damage – including damp – is caused by an insured peril such as an escape of water, which the consumer couldn't reasonably have been aware of, the repairs required to put things right generally are covered. Bearing in mind the escape was underground, and neither the water board nor damp specialist had previously identified the leak, I think it would be fair to say Miss O also couldn't reasonably have known about it.

So, overall, I think it's fair to say that Miss O acted in the way most people would and – without any knowledge of the leak – couldn't have done much more to mitigate the loss.

Turning to AA's point about the costs having increased, as a result of their view that Miss O failed to mitigate or report the matter sooner. My view is that if Miss O had contacted AA to report a damp problem, one of three things would've happened.

The first is that AA would've simply said there was no cover for damp. The second is that they'd have sent someone to look for an escape of water, in case that was the cause. I think the former is more likely, because insurers will say that it's for the consumer to show an insured peril is the cause.

But there appear to have been no obvious signs of an escape of water until the water board investigated, so Miss O didn't even suspect that might be the cause – I note the pipe was underground and she was unaware that there might be a hidden leak. Furthermore, the damp specialist who investigated appears not to have had any concerns there may be such a cause either.

I've considered though that it's possible AA would have sent someone to investigate. But, given it took some time for the water board to identify the issue and that it wasn't seemingly of concern to the damp specialist, I think it's more likely than not that the AA wouldn't have found the leak either and so nothing more would have been done, and the damage would've continued just as it did anyway.

The third scenario would be AA finding and repairing the leak but bearing in mind what I've said above I think that's unlikely.

So, I think it follows that things would have panned out in the same way regardless of what Miss O did. I think she acted reasonably, and even if she'd acted in the way AA think she should have done, the result would have been the same. So, AA haven't lost out because of what happened and were therefore unreasonable to reject the claim on the basis they did.

That means I think AA ought to deal with the claim in line with the remaining policy terms, for all damage found to have resulted from the escape of water. I note that some drying was attempted at Miss O's expense, so if drying is covered the related costs ought to be refunded, plus interest at the rate of 8% interest per annum simple from the date of payment to the date of settlement. Options for dealing with any outstanding work covered can be agreed between the parties, subject to the policy terms.

I think AA ought to have considered the claim in this way when it was first presented, in October 2021. Since then, Miss O has been living in a damp property and says she didn't have the means to carry out the repairs herself. I've not seen anything at this stage to make me think that repairs are unlikely to be covered, so I think Miss O has worried and suffered unnecessarily as a result of the way the claim was handled.

I think it would be fair at this stage to say AA ought to pay £200 compensation for that.

I would like to make the point that it remains at least a possibility that AA will still consider the repairs to be otherwise excluded from cover – even though that appears unlikely at this stage. Of course, if that happens they should outline why in their response to my provisional decision so any reasons for that can be considered under this case. If AA can't determine that without further investigation, such as a survey being required first, they should advise accordingly.

My provisional decision

It is my provisional decision that AA Underwriting Insurance Company Limited should deal with Miss O's claim in line with the remaining policy terms, and not reject it on the basis that the damp wasn't reported to them straight away.

In dealing with the claim, it would be reasonable to say AA should instruct a further surveyor, due to the time which has passed since the previous one. And because Miss O is concerned the leak may have caused structural damage.

AA should also pay Miss O £200 compensation for distress and inconvenience caused."

Miss O replied to my provisional decision to say that she had nothing further to add. AA also replied, because they disagreed with me. They said that there was no section of the policy which provided the cover I was asking them to provide.

I asked AA to clarify their position because all along they had said they'd have covered the loss – *but for* the late reporting of the damage. So, it seemed odd to me that they'd now say there's no cover at all for this loss. I also said there's cover for escape of water to domestic pipes and that as the water board had said the pipes were private and were Miss O's responsibility to fix then they could reasonably be considered as domestic – even if they were also underground. I don't consider the two to be mutually exclusive.

AA said an escape of water claim requires the escape to have been from an internal pipe within the home. AA also explained that damage to underground pipes needs to have been accidental for a claim to be successful. AA said accidental damage hadn't been established so it's not covered under that section either.

Agreement couldn't be reached so I am required to reconsider the case, including the further arguments made by the parties.

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 still believe a fair outcome to this matter is for the claim to be dealt with in line with the remaining policy terms. That's because, as explained in my provisional decision, I don't think the late reporting has prejudiced AA's position.

I've thought about AA's eleventh-hour argument that there isn't any cover in place. But they said all along that they'd have covered the loss if it had been reported earlier.

In any event, I've revisited the policy terms and conditions. I note that they say:

"We will pay for loss or damage to the **building** caused by the following:

3. Water or oil as a result of a burst, leaking or overflowing domestic water or heating installation, appliance or piping. This includes damage to any water installation caused by freezing or bursting. We will also pay up to £5,000 in total for the costs we have agreed in advance for locating the source of the damage including the reinstatement of any wall, flooring or ceiling removed or damaged during the search."

There has been damage to the building, and that damage has been caused by leaking domestic water from piping. So, I consider the damage to be covered. Building is defined as your home which is defined as the address on the statement of fact. I do appreciate the leak wasn't within the so called four walls of the house, but it was within the property boundaries.

AA has suggested the term is meant to be read as escape of water from a pipe *within the property*, i.e. house. But that isn't what the policy says, and it doesn't define what is meant by a domestic water pipe. So, I think it's reasonable to say a pipe for which the water board says is Miss O's responsibility can be considered domestic.

While I've considered AA's arguments I still believe my provisional decision to have been fair.

Putting things right

AA Underwriting Insurance Company Limited must deal with Miss O's claim in line with the remaining policy terms, and not reject it on the basis that the damp wasn't reported to them straight away.

In dealing with the claim, AA must instruct a further surveyor, due to the time which has passed since the previous one. And because Miss O is concerned the leak may have caused structural damage beneath the property.

AA must also pay Miss O £200 compensation for distress and inconvenience caused.

My final decision

It is my final decision that I uphold this complaint. I require AA Underwriting Insurance Company Limited to put things right as set out above.

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

Will Weston
Ombudsman