

The complaint

Mr and Mrs D are unhappy that AA Underwriting Insurance Company Limited (“AA”) declined their claim for a replacement boiler and carpet under their household insurance.

What happened

Mr and Mrs D’s boiler burst on the 12 March 2021. Water escaping from it spilled on to the hearth and carpet in front of it.

AA declined Mr and Mrs D’s claim for the damage to both the boiler and the carpet. The surveyor’s report said that the escape of water from the boiler had most likely been caused by wear and tear and there was no water damage or marks to the carpet. AA said that because the damage had occurred gradually it was excluded from cover. Mr and Mrs D complained. AA’s final response letter to Mr and Mrs D’s complaint said it was satisfied that the exclusion for gradual damage was applicable to their claim.

Mr and Mrs D told AA that the surveyor hadn’t carried out a thorough enough examination of their stove and questioned whether the surveyor was qualified enough to carry out an assessment of a boiler like theirs. They said it was unreasonable for AA to say that the cause of damage was wear and tear because the surveyor’s report also said that the exact cause of the damage couldn’t be determined and also that the stove had been well-maintained.

Mr and Mrs D also told AA they’d cleaned the carpet twice on the day following the escape of water, which explained why the carpet looked as it did when its surveyor attended. They said they’d had to eventually replace it because a white coating became visible once it began to dry and it began to smell. They said the plumber who installed the new stove said the carpet would’ve been irreparably damaged by the chemicals in the water from the boiler.

Mr and Mrs D replaced the boiler and the carpet and brought their complaint to us. Our investigator didn’t uphold the complaint because damage caused gradually was excluded from cover by Mr and Mrs D’s policy’s terms. Mr and Mrs D were unhappy with this outcome and asked for an ombudsman’s decision.

After I’d considered all the available evidence to decide what’s fair and reasonable in the circumstances of this complaint, I reached a different outcome to our investigator. Because the outcome was different, I issued a provisional decision giving both parties a further chance to comment on my findings ahead of issuing my final decision.

My provisional decision

I explained my provisional findings to both parties as follows:

The boiler

Mr and Mrs D's contents policy terms exclude loss or damage arising from gradually operating causes including wear and tear. AA have said that a boiler can be well-maintained and still suffer wear and tear. Mr and Mrs D say that AA's surveyor's assessment was flawed. But for me to be able to consider whether the conclusions of AA's surveyor were wrong, Mr and Mrs D would need to provide an expert's opinion saying that the damage wasn't caused by wear and tear. I asked Mr and Mrs D if they had any expert evidence about the state of the damaged stove. But Mr and Mrs D didn't provide any such evidence in response. So even though AA's surveyor said that the exact cause of the damage can't be determined but that wear and tear is the most likely cause – and because I've not seen any expert evidence demonstrating that this conclusion is wrong - it wouldn't be fair or reasonable for me to require AA to cover the cost of Mr and Mrs D's replacement stove when damage caused by wear and tear is excluded from their cover.

The carpet

Mr and Mrs D's policy includes cover for accidental damage to their home contents. Accidental damage is defined in their policy terms as "unexpected and unintended damage caused by sudden and external means".

The carpet was damaged by water from the boiler which burst suddenly and unexpectedly. Both the boiler and the water from it are external to the carpet. I can't say that the damage to the carpet was intended. So I think it's reasonable to say that the damage to the carpet meets the definition of "accidental damage" as set out in Mr and Mrs D's policy wording.

But AA says the damage to the carpet was gradual and so is excluded from cover. When an insurer says damage is excluded from cover, we think it's reasonable for an insurer to prove that the exclusion applies. AA has provided an expert's opinion saying that the damage to Mr and Mrs D's boiler occurred gradually. But it hasn't demonstrated that the water damaged the carpet gradually. So I don't think AA has proved that the gradual damage exclusion can be applied to the damage to Mr and Mrs D's carpet.

AA also told us that the carpet wouldn't be covered because damage as a result of mechanical or electrical breakdowns or failure are not covered. But the carpet was damaged by water spilling on to it, which is neither mechanical nor electrical, so I can't say it's fair or reasonable for AA to decline Mr and Mrs D's claim on these grounds.

So I think it's fair and reasonable that AA cover the cost of Mrs and Mr D's replacement carpet. I'm minded to require AA to reimburse Mr and Mrs D for the £3,500 – less any relevant excesses - they paid to replace their carpet as set out in their receipt for the carpet, plus 8% simple interest from the date they paid for it.

Fixing the leak

Mr and Mrs D say that AA should pay what it cost them to fix the leak to their boiler. Mr and Mrs D's policy terms don't provide cover for the fixing of leaks. Mr and Mrs D didn't have home emergency cover, which may have offered some help towards fixing the leak. So it wouldn't be fair or reasonable for me to require AA to reimburse Mr and Mrs D what they said they spent on the emergency repair of the leak to the stove.

Distress and inconvenience

Mr D told this service that AA said it would cover the damage to the carpet. I've listened to the call Mr D made to AA to notify it of the leak. I can hear the call handler say to Mr D that

he has accidental damage cover and what the excesses were, but not that the claim would be covered.

Mr and Mrs D also told this service AA's surveyor had told them when he left that they had a genuine claim. But there is no evidence of this conversation.

So I can't say that the call – or any other evidence I've reviewed – demonstrates that Mr and Mrs D were given assurances by AA that their claim for their boiler or their carpet would be covered. So it wouldn't be fair for me to require AA to pay Mr and Mrs D compensation for misleading them.

But I intend to require AA to pay Mr and Mrs D £200 for the distress and inconvenience it caused them by initially rejecting their claim for their carpet, which I think should've been settled by AA rather than declined.

Responses to my provisional decision

Both parties responded to my provisional decision.

Mr and Mrs D said they would've got an expert's report into the boiler had it not been scrapped and said they felt it was unfair they'd been asked to provide proof of why the boiler burst when they'd taken out insurance in good faith. They felt it should be AA's responsibility to provide proof to support its refusal of their claim.

AA pointed out in its response that:

- its supplier advised that there was no damage to the carpet and had said that the carpet appeared to be in good condition with no marks present.
- Mr and Mrs D had replaced the carpet without obtaining its permission to do so when their policy's terms said that they must not "*dispose of any damaged items until we've had the chance to inspect them*". It said it would've sent a carpet restoration specialist to inspect the carpet and neutralize the odour had Mr and Mrs D not disposed of it before receiving a final decision on their complaint.
- Mr and Mrs D hadn't provided any evidence that the carpet was damaged.
- It was Mr and Mrs D's plumber who'd said the carpet was irreparably damaged, not a carpet specialist.

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've also considered the responses of both parties to my provisional decision.

The boiler

Mr and Mrs D said it was unfair that they'd been asked to provide proof of why their boiler had burst. But AA's inspection of their boiler was carried out by a boiler specialist who said the most likely cause of the damage was wear and tear. As I said in my provisional decision,

for me to be able to consider whether the conclusions of AA's expert were wrong, Mr and Mrs D would need to provide an expert's opinion saying that the damage wasn't caused by wear and tear. And because I've not seen any such evidence, I can't say AA's expert's conclusions are wrong. So Mr and Mrs D's response doesn't persuade me to depart from my provisional finding that it wouldn't be fair or reasonable for me to require AA to cover the cost of Mr and Mrs D's replacement stove.

The carpet

Mr and Mrs D provided this service with photographs taken on the day they notified AA of the incident. The photos show them vacuuming the carpet, which appears to be wet, with specialised equipment. Mr D told AA when he made the claim that his carpet made a splashing sound when he walked on it. So I'm satisfied that water from the boiler came into contact with Mr and Mrs D's carpet.

AA's inspection of the carpet was carried out by a boiler specialist – not a carpet specialist. It's reasonable then to think that a boiler specialist most likely wouldn't be able to appreciate the full extent of the water damage to the carpet, especially when Mr and Mrs D had attempted to dry its surface before the visit. Mr and Mrs D said that the carpet's underlay had remained wet and the carpet began to smell. So, I'm not persuaded on balance that Mr and Mrs D's carpet wasn't at all damaged because AA's boiler specialist said that it wasn't.

Mr and Mrs D didn't replace the carpet until the end of July 2021. Around six weeks earlier - on 6 June 2021 – they told AA that although the carpet had now dried, there was a chemical smell coming from it and a white powder had formed on top of it. Given that AA's earlier inspection had been carried out by a boiler specialist and the smell developed after it, I think it would've been reasonable for AA to have arranged a second inspection. AA had a reasonable amount of time to arrange an inspection between Mr and Mrs D telling it about the smell and them disposing of the carpet. But no inspection was arranged. So I don't think it's fair or reasonable to say that Mr and Mrs D disposed of the carpet before giving AA the chance to inspect it.

AA also had six weeks from when Mr and Mrs D reported the carpet's smell to ask them for any evidence of the damage it felt was necessary. But AA didn't ask for any evidence. So I don't think it's fair or reasonable to say now that Mr and Mrs D's claim should be declined because they didn't provide evidence of the damage.

So – for the reasons I've outlined above - I see no reason to depart from my provisional finding that AA should reimburse Mr and Mrs D for their damaged carpet, but not their boiler.

My final decision

I uphold Mr and Mrs D's complaint. I instruct AA Underwriting Insurance Company Limited to pay Mr and Mrs D the £3,500 (less any relevant excesses) they paid to replace their carpet, plus 8% simple interest from the date they paid for it.

If AA Underwriting Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs D how much it's taken off. It should also give Mr and Mrs D a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

I also require AA to pay Mr and Mrs D £200 for the distress and inconvenience it caused them by initially rejecting their claim for their carpet. AA Underwriting Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Mr and Mrs

D accept my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 20 October 2022.

Ruth Peek
Ombudsman