

## The complaint

Mr O has complained about how Inter Partner Assistance SA (IPA) dealt with a claim under his home emergency policy.

## What happened

Mr O contacted IPA to send an engineer when he found a leak in his bathroom. The next day an engineer visited. He told Mr O what he thought needed to be done to find the leak and it was agreed an engineer would visit the following week to carry out the work because of the disruption it would cause.

When the next engineer visited, he found the leak but didn't have a part with him to reconnect two pipes and left the property. Mr O then spoke to IPA because he had been left without bathing facilities. After some discussion, IPA sent an engineer to reconnect the pipe. When the engineer visited, Mr O's father in law was there. The engineer fitted the pipe but didn't refit items such as the taps and the shower screen. Mr O's father in law asked the engineer to do this and after some discussion, the engineer fitted the bath tap, but not the shower tap or other items.

When Mr O complained to IPA, he said he wanted the engineer to refit the shower and deal with the damage caused to his home. When IPA replied, it said it had acted in line with the terms of the policy, which said it would leave the home habitable but wouldn't be responsible for reinstating it to its original condition. It said Mr O had also signed a disclaimer agreeing that IPA wasn't responsible for any damage. However, it partially agreed that it was poor customer service that the repair wasn't completed when one of the engineers visited. It offered £300 as an apology.

So, Mr O complained to this service. Our investigator didn't uphold the complaint. She said IPA had dealt with the complaint fairly and didn't need to do anything further.

As Mr O didn't agree, the complaint was referred to me.

I issued my provisional decision on 2 December 2022. In my provisional decision, I explained the reasons why I was planning to uphold the complaint. I said:

*When Mr O contacted IPA, he needed trace and access to find the source of a leak. Looking at the terms and conditions of the policy, these said:*

*"Trace and access to locate the source of the emergency is not covered."*

*So, this meant IPA shouldn't have sent an engineer to find the leak, as Mr O didn't have that cover. I raised this with IPA. It reviewed the policy and agreed there wasn't cover.*

*For complaints about trace and access, I would normally look at the terms and conditions to see what the policy said this work covered, including whether it would fix any damage made by its engineers as part of gaining access. As the policy doesn't cover trace and access that isn't possible for this complaint. However, even in the circumstances of this complaint, IPA*

*should still have been clear with Mr O about the level of damage likely to be caused and whether it would fix it.*

*IPA has pointed to a General Condition of the policy that said:*

*“When we make a repair we will leave your home safe and habitable but we will not be responsible for reinstating it to its original condition”*

*The General Condition needs to be read in the context of what the policy provided cover for, which was a range of emergencies such as issues with plumbing, electrics and leaks. So, in that context, I think it’s reasonable to take it to mean that, for example, where a leak has damaged the floor, IPA won’t fix the floor. Given the policy didn’t cover trace and access, I don’t think this condition can simply be applied to that work. Trace and access is also different, as it often results in the engineer having to cause further damage in order to find the source of the leak.*

*IPA has also said Mr O signed a disclaimer to say he accepted IPA wasn’t responsible for any damage. I’ve looked at the job sheets. This had a section that was titled “Agreed work required to reinstate damage caused through gaining access”. This didn’t list any work. However, an engineer had written on one of the forms “Not responsible for further damage”. I’m aware Mr O has said the engineer added this wording to the form after it had been signed.*

*This wording was on the form filled out at the final visit. The instructions to the engineer said “Bath and shower previously isolated. Customer wants it reinstating as per [IPA]. Customer liable for any property damage caused as the leak will [recur]. Get disclaimer signed from customer stating [the contractor] are not liable for any damage caused.”*

*So, my understanding is that the wording the engineer added to the form was because there was a concern the repair would fail. It wasn’t about damage caused by trace and access. Based on what I’ve seen, I haven’t seen anything that currently persuades me it was made clear to Mr O that IPA wouldn’t deal with the damage caused by the trace and access work.*

*Where a term is ambiguous, I would often interpret this in favour of the consumer. In this instance, there aren’t terms and conditions to rely on. I can understand that in the absence of IPA providing him with information to the contrary, Mr O expected IPA to fix any damage it caused.*

*I’m also aware damage was caused to the living room wall when two engineers assessed it to be a stud wall rather than a solid brick wall and mistakenly thought they could access the leak through it. It isn’t clear to me why they incorrectly assessed the wall. It also isn’t clear to me why an engineer removed the shower screen. I asked IPA, but it was unable to explain this. I haven’t seen anything that shows me this work was necessary and I think this inconvenienced Mr O.*

*I’m aware IPA has said Mr O received a “benefit” by it carrying out the trace and access work when it wasn’t available under the policy. I can see that if IPA had correctly read the policy, it wouldn’t have done this work and it’s likely Mr O would have had to pay someone else to do it or had the inconvenience of trying to find the leak himself. However, IPA carried out the work and the mistake in sending an engineer was IPA’s and not down to the actions of Mr O. IPA still needed to make it clear to Mr O what work it would or wouldn’t carry out. Mr O could then have made an informed decision, including about whether he thought it was reasonable to agree to an engineer cutting through his living room wall or to remove the shower screen.*

*So, having thought carefully about the circumstances of this complaint, I currently think IPA needs to repair the trace and access damage. This is the damage to the living room wall, the tiles removed in the bathroom, the shower being disconnected, the broken bath panel and the shower screen being removed.*

*I've also thought about compensation. A key issue in this complaint is that IPA misread the terms and conditions. Even when it dealt with the complaint, IPA seemed not to notice this. This seems to be some of the reason there is a difference in view between IPA and Mr O about how the claim should have been dealt with. Both parties thought trace and access was covered, neither party was correct. But it was for IPA to provide the right advice about cover under the policy and correctly instruct its contractors. It didn't do that and, in my view, this has led to confusion, including Mr O thinking his claim and complaint hasn't been fairly dealt with.*

*IPA already offered Mr O £300 compensation to recognise the inconvenience caused to him. Looking at everything that happened, I currently intend to say IPA should pay a total of £400 compensation, which includes the £300 already offered, as I think this more fairly reflects the inconvenience caused to Mr O.*

I asked both parties to send me any more information or evidence they wanted me to look at by 30 December 2022. Both parties replied before that date.

Mr O agreed with the decision.

IPA didn't agree with the decision. It said it felt Mr O had benefitted from assistance he wasn't entitled to and the disclaimer was signed to avoid such situations and liability. It said the home insurance was in place for reinstatement work and IPA wouldn't cover both repair damages and those from the peril itself, otherwise the home insurance policy would be null and void.

### **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've decided to uphold this complaint and for the reasons given in my provisional decision. As part of that, I've considered the comments from IPA.

In my provisional decision, I commented both on Mr O "*benefitting*" from trace and access being provided when it wasn't covered by the policy and on the disclaimer that was signed. Although IPA has said it wouldn't cover "*repair damages*", which I take to mean damage caused by trace and access, in the absence of terms and conditions for it to rely on, I had to decide what was reasonable based on the circumstances of this case. I have also specified what damage IPA needs to deal with. This doesn't include any wider damage caused by the leak itself. IPA hasn't provided information or evidence that persuades me I should change my view on how this complaint should be resolved.

### **Putting things right**

IPA should repair the trace and access damage, which is the living room wall, the tiles removed in the bathroom, the shower being disconnected, the broken bath panel and the shower screen being removed. It should also pay a total of £400 compensation, which includes the £300 it previously offered.

### **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that this complaint is upheld. I require Inter Partner Assistance SA to:

- Repair the trace and access damage to Mr O's home, as described in "*Putting things right*" above.
- Pay Mr O a total of £400 compensation, which includes the £300 it previously offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 9 January 2023.

Louise O'Sullivan  
**Ombudsman**