

## The complaint

Mrs S and Mr S are unhappy with the decision by Hiscox Insurance Company Limited (Hiscox) following a claim on their home insurance policy.

Mrs S and Mr S are both parties to this complaint. Mrs S and Mr S' broker has also been involved with contacting Hiscox during the claim. Mrs S has primarily dealt with this service. For ease of reference I have referred to Mrs S throughout this final decision.

Hiscox Insurance Company Limited are the underwriters of this policy. Part of this complaint concerns the actions of the agent, company S. As Hiscox Insurance Company Limited have accepted they are accountable for the actions of company S, in my decision, any reference to Hiscox Insurance Company Limited includes the actions of company S.

## What happened

Mrs S held a home insurance policy with Hiscox. The exclusions part of Mrs S' policy explained the policy would not cover '*inherent defect*'.

In August 2020 Mrs S' home was affected by flooding which resulted in the basement being flooded to a height of one metre. Following notification of the claim, Hiscox arranged for a third party (company S) to assess the damage and arrange for repair work to be completed.

In September the basement area was cleaned and decontaminated, and drying works completed to the concrete. Mrs S provided company S with a list of beyond economic repairs (BER) items. Mrs S also complained about occasions where she'd tried to call company S and had been on hold for 20 minutes before hanging up.

On 29 October company S arranged for company AT to complete the outstanding repairs required to Mrs S' basement. On 30 November Mrs S contacted company S as she hadn't heard anything from company AT.

Between November 2020 and February 2021 further calls between Mrs S and company S took place regarding the outstanding repairs needed to Mrs S' basement and, in particular, issues with the tanking system

On 5 January 2021 company S paid Mrs S £3,629.95 for her BER contents claim.

On 10 February company S informed Mrs S:

*'I have reviewed the adjuster's scope of works which does not include any tanking works only the resultant flood damage. I am not sure who agreed to 'inspect' the tanking, but this nor any repairs would be covered under your policy. If you still wish to have the tanking inspected, I must advise that after contacting our contractors, unfortunately we are unable to source any one that deals with tanking. Therefore you would need to obtain your own contractors to carry out the inspection.*

*With regards to the repair work, not including the Tanking System, they offered a cash settlement of £2,101.88, based on a quote received from [company AT]. The alternative option given to the Insured, instead of a cash settlement, was for [other contractors] to carry out the repairs.*

On 12 February it was agreed with company S that Mrs S would find an independent expert to determine whether the tanking system had been damaged by the flooding incident, and provide an estimate for the costs of repairs.

On 27 April Mrs S informed company S that the independent expert she'd spoken to had advised that the repair work to the tanking system could be carried out at a cost of £15,950. Mrs S was informed this information would need to be provided on headed paper, along with the cause of damage. Company S made several attempts to chase this information.

On 25 May Mrs S advised that the independent expert would no longer be able to provide the required information on headed paper.

On 26 June Mrs S' home was again flooded. The basement was flooded to a height of half a metre. The basement was cleaned and decontaminated, and drying works completed to the concrete. Mrs S confirmed she'd spoken to another company (company D) to get a report for the tanking system.

On 1 September company D inspected Mrs S' basement. On 9 November a report was provided to company S. This report concluded *'There are numerous issues, faults, and deficiencies in the existing waterproofing system within this basement. It is therefore our recommendation that the existing Tanking system is removed and replaced in its entirety.'*

On 7 December company S instructed company SP (independent engineers), and company WS (specialist waterproofing company) to attend to Mrs S' basement to investigate the cause of damage to the tanking system, and repairs required.

Company SP's findings included:

*'Section 2.4 The cavity drain trays were clogged with silt and water was clearly visible to the floor and around the plastic trays at low level. There were no maintenance access points to the perimeter channel which would be expected with a fully compliant system.'*

*Section 2.7 The inlet pipe on the front section of the pump chamber showed signs of long standing water seeping out between the inlet and chamber sections, with staining evident to the internal surface.'*

*Section 3.3 In summary, there are clear inherent issues with the size of the pump and chamber and issues regarding the perimeter drainage channels and where these are positioned within the Construction makeup of the basement floor.'*

*Section 3.4 The basement waterproofing system is not fully compliant with BS 8102 2009, the British Standards which is the set of 'best practice' guidelines for all facets of structural waterproofing. The intended waterproofing system is a Type C solution, which is classed as Drained Protection, Cavity Drain Membranes and Construction Drained Cavities. This is reinforced by the fact that no historical guarantees are available for the system also.'*

Company WS' findings included:

*'Pump chamber does not appear to be fully encapsulated in concrete therefore allowing water to come up the side of the chamber.'*

*The perimeter channel is set into a cut out pocket around the perimeter of the walls leaving the earth below the slab exposed, the perimeter channel then sits in this pocket and 6mm gravel has been put into the pocket, this gravel is too small and is now within the channel which in turn can get flushed into the sump chamber and damage the pump*

*By cutting this pocket in the floor slab, this has now allowed more water to flow into the system, this however is sometimes the only solution due to limited head height of the building or it is unknown that the slab is structurally reinforced.*

*If adopting this approach it is essential that the pump chamber has adequate capacity to cope with the influx of water, if not the existing sump pump will be overwhelmed with water which has happened in this case and this is why the basement has flooded.'*

Hiscox maintained their decision to decline Mrs S' claim for the tanking system. Hiscox paid Mrs S £5,165 to complete the outstanding repair work required to her basement (not including the tanking system), and also to compensate for the damage caused to the basement flooring during the investigation process carried out by company SP. Hiscox transferred £5,165 to Mrs S' account in settlement of her claim.

Mrs S complained to company S about this decision, and also the way in which her claim had been handled. Hiscox responded to Mrs S' complaint on 15 July 2022 acknowledging that the service provided wasn't in line with their usual service standards and offered £200 in recognition of the impact on Mrs S. Hiscox didn't offer anything in settlement of Mrs S' claim for repairing the tanking system.

Mrs S was unhappy with Hiscox's decision, and so brought her complaint to the Financial Ombudsman Service for investigation. The investigator found that Hiscox had acted fairly in reaching their decision on Mrs S claim for the tanking system, but found that the service provided was poor because of delays and unanswered calls. The investigator found that £400 would be a more reasonable amount to pay Mrs S in recognition of the impact on her.

Hiscox disagreed with the investigator's findings saying that there was a delay in the time taken for Mrs S to *'appoint [her] own contractor, [company D], to assess and submit a report. However I do not agree [we] are responsible for the delays or stress caused.'*

Mrs S also didn't agree with the investigator's findings saying that *'I feel that the flood and damage that has been left in my cellar and the stress and anxiety I've been left with really are quite serious and I wouldn't be happy with £200... I am currently speaking with another insurance risk assessment and they are doing me a report...'*

As the complaint couldn't be resolved it has been passed to me for 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.

I'd like to reassure the parties that although I've only summarised the background to this complaint, so not everything that's happened or been argued is set out above, I've read and considered everything that's been provided.

### *Declined claim for tanking system*

Mrs S feels strongly that company S have treated her unfairly by rejecting her claim. I thank Mrs S for taking the time to explain her personal circumstances and everything that's happened since the flooding of her basement in August 2020. I understand it has been a difficult time for Mrs S.

When we investigate a complaint about an insurer's decision on a claim, our role is to consider whether the insurer handled the claim in a fair and reasonable manner. So I've considered the evidence to determine whether Hiscox have acted fairly and reasonably in reaching their decision on Mrs S' claim.

Mrs S says that the damage to her tanking system has been directly caused by flooding which impacted her basement in August 2020. Mrs S says that company S should cover the cost of carrying out the necessary repair work to the tanking system. Hiscox maintain that the independent experts instructed on the claim have all provided similar findings which do not support what Mrs S has explained about the damage being consistent with flooding.

When evidence is contradictory or inconclusive (or both) I have to make a finding on the balance of probabilities. That is what I find is most likely to have happened in view of the available evidence and wider circumstances.

I've considered the reports provided by the independent experts instructed to inspect Mrs S' basement and damage to the tanking system. On balance, having considered the findings of all three independent experts, I don't think the evidence supports Mrs S' assertion that flooding is the main cause of the damage being claiming for.

Like most insurance policies, Mrs S' doesn't provide cover for exclusions listed within the policy. I've seen that Mrs S' policy does not cover '*inherent defect*'. While Mrs S feels strongly that her tanking system was damaged directly because of the flood conditions impacting the basement in August 2020, the evidence I've seen is more consistent with there being an '*inherent defect*', and not flood damage.

The report from company D refers to '*numerous issues, faults, and deficiencies in the existing waterproofing system.*' I've considered the findings of the report which state '*battery operated pump is designed to engage, however this did not occur*' and '*jetting eyes which enable the cleaning and servicing of the system, which should be incorporated at each corner and/ or every 10m linear run, have not been installed.*' I think these comments reasonable indicate '*inherent defects*' within the tanking system. These were likely made worse by the flooding incident in August 2020, but I don't think the evidence supports that the flooding incident was the cause of them.

The independent experts from company SP and company WS also found similar issues which indicate that the problems with the tanking system go deeper than what would likely be cause by an incident of flooding.

I appreciate that this will come as a great disappointment to Mrs S. But insurance policies do not cover every eventuality, and this is one of those circumstances, where the damage isn't covered by the policy. I can't say that Hiscox have acted unfairly or unreasonably in declining Mrs S' claim. Because of this, I won't be asking Hiscox to do anything in settlement of this part of Mrs S' complaint.

### *Additional repairs to basement*

Hiscox have explained that the claim was settled on 12 October 2022 with a payment of £5,165 reflecting *'the flood damage repair work needed in the basement, [and] the holes left from the investigations carried out by [company SP] when assessing the Tanking System and the cost of an electrician to carry out repair work.'*

Mrs S was unhappy with this amount and asked to instruct her own independent expert to complete a further report. Mrs S was provided with time to do this; however no additional evidence has been received from Mrs S. In the absence of any further evidence, I'm satisfied the amount already paid fairly reflects the additional work required that falls within the scope of Mrs S' claim, and the work required to put right the damage caused during the investigation by company SP. So I won't be directing any further payment is made for additional repairs to the basement.

#### *Customer service and delays on claim*

Mrs S has also complained about the level of service provided while company S were dealing with her claim. Mrs S has referred to several occasions where she tried to call company S but couldn't reach them. She's also unhappy with the long periods of delay in dealing with her claim.

Hiscox agree that the service provided wasn't in line with their usual service standards. Hiscox offered Mrs S £200 in recognition of the upset and inconvenience caused to Mrs S. The investigator increased this amount to £400 saying that this more fairly reflects the stress caused to Mrs S because of the poor handling of her claim.

Having reviewed the evidence I agree with the investigator's recommended compensation for this complaint for broadly the same reasons. I can understand this is likely to come as a disappointment to Mrs S but I hope my findings go some way in explaining why I've reached this decision.

Following instruction for Mrs S' claim company S acted reasonably in instructing a third party to attend to Mrs S' property arrange for the basement to be cleaned, decontaminated, and dried out. This was done within a reasonable timescale.

Mrs S has explained how she had to call company S several times regarding the outstanding repairs, and often without success. Company S have confirmed that they arranged for company AT to complete the outstanding repairs required to Mrs S' basement. But several weeks after instruction, Mrs S still hadn't heard anything from company AT.

I think company S could've done more to chase company AT and ensure that the agreed repairs would be going ahead. Once it was confirmed that company AT couldn't carry out the required work, this should've been communicated to Mrs S in good time. As this didn't happen, Mrs S was left chasing company S for updates. I have taken this into consideration when determining fair compensation.

There was a delay between February 2021 and November 2021 when Mrs S had trouble sourcing her own contractor, and company S being sent the report they needed to determine Mrs S' claim for the tanking system.

Company S say that the delays on the claim are largely due to the time taken for Mrs S to instruct an independent contractor. So they don't think they should pay compensation for delays that were out of their control.

It's not disputed that company S had to wait for Mrs S to give them what they needed to further determine the case of damage to the tanking system. Mrs S was told in the email of 10 February 2021 that company S were '*unable to source [a contractor] that deals with tanking.*' But I've seen that company S did instruct independent experts in December 2021 to '*provide a Report commenting on the reason the Tanking System failed and whether it was necessary for the entire system to be stripped out and replaced as new.*'

It's evident that Mrs S was unhappy with the decision not to pay for the repairs needed for her tanking system in February 2021. Company S could reasonably have found a suitable contractor in February 2021 (as they did in December 2021) to further investigate the reason for the tanking systems failure. In comparison to Mrs S, who was having difficulty sourcing a contractor, company S were in a better position to find a suitable expert for the job given their role as claim handlers in the process.

Although the findings of the report would've left Mrs S in exactly the same position regarding the outcome of her claim, it would've avoided unnecessary delays, and also inconvenience caused to Mrs S in having to source her own contractor. I think it's fair that Hiscox pay compensation in recognition of the stress and inconvenience caused to Mrs S in having to source her own contractor, and delay on the claim that might've reasonably been avoided.

Company S should've had better oversight over the claim and the actions of any third parties instructed. They could've also acted more promptly in instructing experts to determine the cause of damage with the tanking system. Because this didn't happen, Mrs S was left chasing company S for updates, and the issue with the tanking system went on for longer than it should've.

When thinking about the impact on Mrs S, I think the £400 recommended by the investigator is fair and in line with what we'd recommend in the circumstances. This amount is in recognition of the inconvenience caused to Mrs S by delays on her claim which could've been avoided, and the upset caused by parts of the claim that were poorly handled, including the lack of meaningful updates and unanswered calls.

Mrs S says the compensation awarded doesn't reflect the stress caused to her. I think Mrs S is ultimately unhappy with the outcome of her claim in respect of the tanking system. As this isn't covered by the policy I can't hold company S responsible for the upset caused to Mrs S by their decision not to pay for this part of Mrs S' claim. I think £400 fairly recognises the impact on Mrs S by what went wrong with the handling of the claim, but also that the outcome of the claim remains unchanged.

### **Putting things right**

Hiscox Insurance Company Limited must pay £400 to Mrs S and Mr S.

### **My final decision**

For the reasons provided I uphold this complaint.

Hiscox Insurance Company Limited must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 10 April 2023.

Neeta Karelia  
**Ombudsman**

