

The complaint

Mrs A has complained that Tesco Underwriting Limited (Tesco) unfairly declined a claim under her home insurance policy.

What happened

Mrs A contacted Tesco to make a claim for a water leak. She noticed damage to her kitchen floor and when this was investigated, the water cylinder was found to be leaking. Tesco sent a surveyor to assess the damage and then declined the claim. It said the damage was from before the policy inception and suggested to Mrs A that she contact her previous insurer.

When Mrs A complained, Tesco sent another surveyor, who also declined the claim. It maintained that the damage was from before the policy started and that Mrs A would have been aware of it. So, it said the claim wasn't for it to deal with.

So, Mrs A complained to this service. Our investigator didn't uphold the complaint. She said it was reasonable for Tesco to decide that the damage was from before Tesco was Mrs A's insurer and that she was also likely to have been aware of the damage.

As Mrs A didn't agree, the complaint was referred to me.

I issued my provisional decision on 23 February 2023. In my provisional decision, I explained the reasons why I was planning to uphold the complaint. I said:

When Mrs A contacted Tesco to make a claim, she had only recently changed insurers. So, she had been insured by Tesco for about seven weeks. Tesco has said the damage happened before it was her insurer and that she should approach her previous insurer.

I'm aware Mrs A then contacted her previous insurer. It said the date of the leak was unknown but that the period Mrs A had been insured by Tesco was enough time for the damage identified to have happened. It said it wouldn't consider the claim unless it could be provided with evidence the leak happened while it was the insurer. I should note that my decision isn't about the actions or decision of the previous insurer. However, I asked Tesco to consider what the previous insurer had said and to consider whether it should contact the previous insurer. When Tesco replied, it said it had referred the decision back to the second surveyor who had assessed the damage and it was satisfied its decision to decline the claim was correct.

It doesn't seem to be in dispute that there was an escape of water, which was something the policy provided cover for. So, I've looked at the damage to see whether it was reasonable to decide it happened before Tesco was the insurer. When Tesco replied to my request, it put particular emphasis on where its surveyor had said:

"It is evident that the leakage from the hot water cylinder has run down the cylinder, and the subsequent saturation has caused bowing of the supporting carcass. The level of water damage required to cause the deflection of the carcass would take some time to develop,

and the damage would have been evident given the location of the leak and the resultant de-bonding of ceramic floor tiles. The kickboard had also completely disintegrated.

Such a break down would be considered noticeable as the leak was above the unit, and distortion of the unit in a prominent location such as the kitchen would have been evident.”

So, the surveyor said the water damage would have taken “some time” to develop. However, the surveyor doesn’t seem to have quantified that time period and whether it was more likely weeks or months and why that was the case. I can see there were signs of mould growth and water damage, including damage to the cupboard carcass. There were also water stains on the outside of the hot water cylinder, although it’s my understanding this had a jacket on it. But I don’t think it has been explained why if the damage started shortly after Tesco became the insurer, this wasn’t enough time for the damage to have occurred. So, I’m not currently persuaded that Tesco has sufficient evidence to show the damage happened before it was the insurer.

Insurance policies cover one-off insured events. The damage seemed to happen over a period of time. Gradual damage was an exclusion under the policy. So, I’ve thought about this as well. Our normal approach is that where there is cover under the policy, but a policyholder couldn’t reasonably have been expected to be aware of the gradual damage, we’ll often say it is fair for the insurer to deal with the claim.

Tesco has said it thinks Mrs A would have been aware of the damage some time prior to notification of the claim. This is because of the bowing of the cupboard carcass, the de-bonding of the ceramic tiles and the kickboard having disintegrated. The surveyor seemed to assess that the water would have leaked through and around the base of the cupboard and then got under the ceramic tiles. Mrs A said she became aware of the damage when the tiles cracked and, after some investigation, a leak from the cylinder was found.

The cylinder was located in a kitchen cupboard and it was the only item in it. I’m not currently persuaded Mrs A would have had any specific reason to open it during the time she was insured by Tesco or that she would therefore have seen the damage within it. Tesco has said water had been escaping from the front of the unit. I haven’t seen evidence to show there would have been water visible when the cupboard door was closed. Tesco appears to be suggesting that water would have been visible on the kickboard or on the floor, but I haven’t seen evidence to show this was the case.

I’ve seen evidence of the mould on the front of the base of the cupboard, but this was covered by a door and the surveyor’s report described the door as undamaged. Although the kickboard seemed to be rotten, I’m not clear why this wasn’t more likely from the water leaking through the bottom and the sides of the cupboard or why any rot in the kickboard would have been visible before someone searched for the source of the leak. I also don’t think the report is clear why the ceramic tiles didn’t crack or de-bond around the time Mrs A reported the damage, which was what seemed to be prompt her to make a claim. Based on what I’ve currently seen, I’m not persuaded Mrs A was, or should have been, aware of the damage before the time period in which she made the claim.

So, thinking about all of the above, I currently think Tesco hasn’t shown it was more likely than not that the damage happened before it was the insurer or that Mrs A was likely to be aware of the damage for some time before she contacted Tesco to make a claim. As a result, I currently intend to say Tesco should settle the claim for the water leak as though it happened while it was the insurer and that it can’t apply the exclusion for gradual damage. If Tesco pays a cash settlement for any part of the claim, it must pay interest on that amount, as Mrs A lost use of the money.

I've also thought about compensation. Although I think Tesco sending a second surveyor was fair in principle, I think the overall consideration of the claim was poor and I'm not currently persuaded that it fairly and clearly explained why the claim wasn't covered. I think Tesco should pay Mrs A £200 compensation because of the distress and inconvenience it caused her.

I asked both parties to send me any more information or evidence they wanted me to look at by 23 March 2023.

Mrs A replied and agreed with my decision. As she thought Tesco had put emphasis on the condition of the kickboard when it declined the claim, she explained again that she wasn't aware that the kickboard had disintegrated until after Tesco had been notified of the claim.

Tesco replied and confirmed it had nothing further to add.

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. I haven't identified any reason to change my view on how this complaint should be resolved.

Putting things right

Tesco should settle the claim on the basis that it was the insurer at the time of the damage and without applying an exclusion for gradual damage. If it pays a cash settlement, it should pay interest on that amount. It should also pay £200 compensation.

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 Tesco Underwriting Limited to:

- Settle the claim for the escape of water on the basis that it was the insurer at the time and without applying the exclusion for gradual damage.
- If it pays a cash settlement, pay 8% simple interest on it from the date on which the claim was first made to the date on which it makes the payment.
- If Tesco Underwriting Limited considers that it's required by HM Revenue & Customs to deduct income tax from the interest, it should tell Mrs A how much it's taken off. It should also give Mrs A a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.
- Pay £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 24 April 2023.

Louise O'Sullivan
Ombudsman