

## The complaint

Mr and Mrs E have complained that West Bay Insurance Plc have declined to cover all the losses they suffered when there was an escape of water in their home.

West Bay are the underwriters of this policy ie the insurer. Part of this complaint refers to actions taken by the intermediary. Any reference to West Bay includes the actions of the intermediary.

## What happened

In summer 2022, one of the water pipes in Mr and Mrs E's home sprang leaks. The floors in their kitchen and utility room were affected. And the house became sufficiently damp for drying to be needed before repairs were made.

Mr and Mrs E submitted a claim to West Bay. They were dissatisfied with various aspects of West Bay's handling of their claim and complained. West Bay upheld complaints about the quality of the drying that had taken place and that they'd not addressed issues with mould at the property. They paid Mr and Mrs E £150 compensation for these issues.

But West Bay didn't uphold Mr and Mrs E's complaints that they'd only agreed to pay for replacement of floor tiles that had been damaged – not for those that ran throughout their open plan ground floor area – and they'd refused to provide alternative accommodation for Mr and Mrs E's chickens. So Mr and Mrs E brought those complaints to our service.

Our investigator considered these issues and concluded West Bay needed to do more to resolve the complaint. He said it was fair for West Bay not to pay boarding fees for the chickens, as they'd already paid more than they needed to for the family's alternative accommodation. And he said that Mr and Mrs E's policy didn't have cover for matching sets – so it wasn't fair to say West Bay should pay for the whole floor. But the investigator said Mr and Mrs E should be compensated for the loss of their open plan flooring by West Bay paying 50% of the cost of replacing the undamaged sections.

I didn't agree with our investigator's view. So I made a provisional decision. Having reviewed the policy terms, I concluded chickens met the definition of "pet" in the policy. So I said West Bay should pay for their alternative accommodation as the policy extends this to the policyholder(s), their family, and their pets.

In respect of the floor damage, I relied on a policy term which said:

***"We will not pay for replacing or working on any undamaged items or remaining parts just because they form part of a set, suite, group or collection of items of a similar nature, colour, pattern or design unless insured damage happens to matching items of buildings in the same room or open plan area and a replacement or reasonable match cannot be obtained...."*** [my emphasis]

to provisionally decide that West Bay should re-assess the claim for the tiled floor, to include all parts of the open plan ground floor which matched the damaged area.

In response to my provisional decision, both parties contacted me to confirm that I had been provided with the wrong policy document and that Mr and Mrs E's policy didn't include the wording I've emphasised in bold above – on which I relied to reach my provisional decision.

So I reviewed my provisional decision and let the parties know my revised view. I didn't change my provisional decision in relation to providing alternative accommodation for the chickens, as neither party provided substantive comments to persuade me I should do that.

In relation to the flooring, I explained that I could no longer rely on the policy wording I had previously, because it wasn't part of Mr and Mrs E's policy. So I couldn't say West Bay should be responsible for the cost of replacing the undamaged, matching areas.

But I explained our usual approach is to say insurers should make a contribution to replacing undamaged, matching items where an exact match can't be made, to compensate for the loss of match. I told the parties I thought this was a reasonable resolution to the complaint and invited their comments.

Comments have now been provided and the complaint returned to me to make my final 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.

Having done that, I'm upholding Mr and Mrs E's complaint as I outlined in my correspondence with the parties and summarised above. I'll explain why in more detail.

But, before I do that, I'd like to reassure Mr and Mrs E that I have considered all the evidence they – and indeed West Bay – have provided during the investigation. But I've focused on the points and evidence I consider material to my decision. So, if I don't refer to a particular point or piece of evidence, it's not because I haven't thought about it. Rather, I don't consider it changes the outcome of the complaint.

#### Providing alternative accommodation for the chickens

As I explained in my provisional decision, I considered the policy terms and concluded there was no evidence to persuade me the chickens weren't family pets. The policy provides cover for alternative accommodation for pets. As neither party has made any substantive comments on this part of my provisional decision, I'm satisfied that is also my final decision on this point.

#### Flooring

Neither party responded substantively to my provisional decision. But both have commented on the email I sent to them explaining why I couldn't endorse my provisional decision.

Mr and Mrs E have referred me to a number of decisions they say show similar circumstances and where ombudsmen have made decisions that the insurer should pay the full cost of all continuous flooring. I've read these decisions. And I understand why Mr and Mrs E have sent them to us. But our role is to consider each case on its own merits. Unlike the courts, our previous decisions don't set a precedent for what may follow. So what those ombudsmen decide doesn't dictate the decision I make in this case.

Even if that weren't the case, I have only the decisions – not the evidence that led to them being made. There may be key differences between those complaints and this one which

aren't apparent in the decisions. So I think the fairest approach is to focus my decision on the information available in relation to the policy and evidence for this case.

I've considered the policy terms again. I think my provisional decision made clear I based my conclusion on the policy wording quoted above – particularly the section in bold. I've since been made aware Mr and Mrs E's policy didn't include that wording. I think the provision immediately preceding that term is also relevant here. That says:

***“For the purpose of settling any claim, we will treat a repair or replacement which is as near as is reasonably possible as suitable even though the former appearance or condition of the property may not be precisely restored.”***

I think that term is clear. And I think West Bay's suggestion – to replace the flooring in the damaged areas and to install thresholds across the open areas – would have been in line with a strict interpretation of this term, as it would have fulfilled the policy obligation to repair or replace damaged items.

But my role's not confined just to deciding whether a business has dealt with a claim in line with its policy terms – it's to decide whether the outcome that produces is fair. I don't think it would be in this case. So I've set out below what I think should happen.

### **Putting things right**

I've thought very carefully about what's the fairest outcome to this complaint. Mr and Mrs E submit that the floor is a single item, so must be replaced in full by West Bay.

I've considered this. But I don't agree. The floor in this case is made up of tiles, which match throughout the ground floor. I'm satisfied it's reasonable to say they are a matching set, not a single continuous item. So the terms relating to matching items are relevant.

The majority of the matching tiles are undamaged. So – applying the terms I've quoted – there's no cover provided to replace these.

But, as I explained in my email to the parties, I do think Mr and Mrs E should be compensated for the loss of match of the tiles by West Bay paying them a sum equivalent to 50% of the cost of replacing the tiles in all the undamaged areas. They should pay this sum in cash so Mr and Mrs E can choose whether to keep it as a compensatory payment, or use it towards replacing the undamaged tiles so they match the repair West Bay will make.

I appreciate Mr and Mrs E's comment that they cannot afford to do that if they only receive 50% of those costs. I'm sorry that's the case. But I have to be fair to both parties. The policy provides no cover for undamaged items. I've explained why I don't think that's fair. But I also don't think it's fair to say West Bay should contribute more than this.

### **My final decision**

For the reasons I've explained, I'm upholding Mr and Mrs E's complaint and directing West Bay Insurance Plc to:

- Reimburse Mr and Mrs E the cost of alternative accommodation for their chickens (£441);
- Pay simple interest on this sum, calculated at the rate of 8% per annum from the date Mr and Mrs E paid the invoice for this until the date West Bay reimburse them;

- Compensate Mr and Mrs E for the loss of match to their ground floor open plan area by paying them an amount equivalent to 50% of the cost of replacing the undamaged tiling in the whole of this area.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mrs E to accept or reject my decision before 14 September 2023.

Helen Stacey  
**Ombudsman**