

The complaint

Mr P and Mrs P complain that AWP P&C SA (AWP) has unfairly declined a claim they made against their Home Emergency policy.

What happened

Mr P and Mrs P had a home emergency policy underwritten by AWP. In August 2022 Mr P and Mrs P said their only toilet was blocked. Mr P and Mrs P said as they'd a young baby and elderly parents living at their home it was critical that the blockage was removed. They said they called numerous plumbers and eventually it was arranged for the work to be done the next day. The plumber found the blockage wasn't within the toilet but an external pipe. Mr P and Mrs P were invoiced £450 for the repair work. They said they tried to make a claim for the costs against their home insurance policy the next day but were told that drainage wasn't covered. And they found they needed to make the claim instead against their home emergency policy cover. But when they did the claim was declined by AWP as they hadn't reported the emergency within 48 hours, and the costs for rectification hadn't been authorised by AWP. Mr P and Mrs P complained to AWP.

AWP said they'd declined the claim fairly within the terms and conditions of the policy. Mr P and Mrs P weren't happy with AWP's response and referred their complaint to us.

Our investigator said AWP had acted within the terms and conditions of the home emergency policy.

Mr P and Mrs P didn't agree they said it wasn't fair to decline the claim for failing to read the small print of the policy at the time of a critical emergency. And they'd struggled to navigate the claims process. They asked for an ombudsman to decide.

A provisional decision was issued in May 2023 that said:

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'm currently minded to uphold this complaint. I'll explain why.

Home emergency insurance is a type of insurance designed to provide an emergency response to specific sudden and unforeseen emergency situations that may arise in the home. For example, as in Mr P and Mrs P's case when a toilet is blocked and there isn't another one in the household.

I can understand Mr P and Mrs P's frustration as they found themselves in a situation, they needed put right quickly. I've considered the policy terms for Mr P and Mrs P's home emergency cover.

On page three of the policy it prominently says:

"24hr home emergency (Always call within 48 hours of discovering the emergency)"

Under the section "General Conditions"

1. We will only pay the benefits under this policy if you contact us first within 48 hours of discovering the emergency

Under the section "General Exclusions"

2. "Costs we have not authorised. Always phone us first."

Mr P and Mrs P said the toilet became blocked on 9 August 2022 and they made their claim to their insurer the next day, which would be within 48 hours of discovering the emergency. But from Mr P and Mrs P's testimony this was under a different insurance policy and they were told to claim under their home emergency cover. From AWP's notes Mr P and Mrs P didn't get in touch under their home emergency policy until 30 August 2022. And the contact made by Mr P and Mrs P wasn't to report discovery of the emergency but to claim for the outlay of costs they'd incurred in getting the emergency resolved. AWP has applied the General Conditions and General Exclusion terms in declining Mr P and Mrs P's claim.

I can understand Mr P and Mrs P instructing their own plumber as they needed the toilet to be useable given it was the only toilet they had. But the fact is there has been a breach of the terms and conditions here as they didn't contact AWP first.

I'm satisfied it's clear within the policy that Mr P and Mrs P needed to contact AWP first, before incurring any costs. This is so that AWP can check the policy covers the situation being claimed for and manage the costs for anything covered by the policy – and AWP weren't given an opportunity to do this first. While I'm satisfied AWP acted in line with the terms and conditions of the policy when declining the claim, I've considered the Insurance Conduct of Business Sourcebook (ICOBS) here. ICOBS: 8.1.1 R says an insurer must "not unreasonably reject a claim"

ICOBS: 8.1.2A G sets out the circumstances where it would be unreasonable for an insurer to reject a claim. This section refers to the Insurance Act 2015. The relevant provision which applies here is S.11 of the Insurance Act 2015 which refers to terms which aren't relevant to the actual loss. This goes further to say:

"11. (1) This section applies to a term (express or implied) of a contract of insurance, other than a term defining the risk as a whole, if compliance with it would tend to reduce the risk of one or more of the following—

(a) loss of a particular kind,

(b) loss at a particular location,

(c) loss at a particular time.

(2) If a loss occurs, and the term has not been complied with, the insurer may not rely on the non-compliance to exclude, limit or discharge its liability under the contract for the loss if the insured satisfies subsection (3).

(3) The insured satisfies this subsection if it shows that the non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred."

I'm required to take account of the law, and regulatory rules, when reaching fair and reasonable decisions and so it's right that I take account of both ICOBS and the Insurance Act 2015 when reaching my decision. And, in summary, this says, if there has been non-compliance by a customer of a term within the policy, a claim rejection by an insurer would be unreasonable unless the circumstances of the claim were connected to the non-compliance of the term.

When applying ICOBS: 8.1.2A G and S.11 of the Insurance Act 2015, it's clear a loss has occurred and the term requiring Mr P and Mrs P to report it to AWP first hasn't been complied with. But I think AWP can only rely on Mr P and Mrs P's breach of the terms to justify their decision to decline the claim if their non-compliance has increased the risk of the loss which occurred. I don't think that's the case here.

The invoice from Mr P and Mrs P's plumber shows the work to clear the blockage was done on 10 August 2022, the day after Mr P and Mrs P discovered their toilet was blocked – so, within 48 hours. While I agree they didn't report it to AWP first, I can't say this non-compliance with the term of the policy is connected to the circumstances of the claim.

And the invoice confirms the blockage was cleared and the flow improved so the costs were mitigated. So, I can't say that, Mr P and Mrs P in failing to report the emergency to AWP first, increased the risk of the loss occurring in the circumstances of this case.

So, AWP should now reconsider Mr P and Mrs P's claim further, in line with the remaining terms and conditions of the policy. While AWP can make any further enquiries, they feel are necessary in considering Mr P and Mrs P's claim, I don't think it's reasonable for them to use the terms they'd applied to decline the claim.

Responses to my provisional decision

Neither party has asked for any further representations to be considered.

My final decision

I uphold this complaint. And ask AWP P&C SA to reconsider Mr P and Mrs P's claim in line with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask X and Mrs P to accept or reject my decision before 6 July 2023.

Anne Scarr
Ombudsman