

The complaint

Mrs M and Mr M complain about Haven Insurance Company Limited's ("Haven") decision to decline their claim under her buildings insurance policy.

Mrs M has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any actions taken, or comments made, by either Mrs M or Mr M as "Mrs M" throughout the decision.

What happened

Mrs M says she noticed water coming through the ceiling and down along her living room wall. Mrs M says she called a plumber who identified the source of the leak being water pipes located in the bathroom wall. She says the plumber worked on the pipe and capped this off to prevent any further damage. Mrs M made a claim to Haven but this was declined on the basis it was a gradually operating cause together with poor workmanship. Mrs M complained and Haven responded and explained Mrs M's plumber had provided a report which said the leak was as a result of a pipe not being fitted correctly initially and then the water accumulating for a period of time, rather than a spontaneous burst. Haven said Mrs M's policy contains an exclusion for damage caused by poor workmanship or anything happening gradually. Haven explained, as the plumber determined the leaking pipe had been in poor condition for over 20 years, the exclusion applied and so the decision to decline the claim was correct.

Our investigator looked into things for Mrs M and Mr M. She thought Haven's decision to decline the claim was unreasonable and recommended they reassess the claim. Mrs M and Mr M agreed but Haven disagreed so the matter has come to me for a 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 so, I've decided to uphold the complaint. And, I think the investigator's recommendation is a fair way to resolve matters.

My starting point is Mrs M's home insurance policy booklet. This sets out the terms and conditions and, under a section headed 'Policy Exclusions' it says Haven won't pay for loss or damage arising out of poor workmanship or anything happening gradually.

I can see Haven have declined Mrs M's claim on the basis the damage was caused by faulty workmanship and gradually operating cause. Mrs M doesn't feel this is fair as the leaking pipe was contained within a wall, and there was no sign of water damage prior to the date of the incident, so she wouldn't have been aware of any leaking. Mrs M says she bought her home two years ago, so this was long after the point the plumber believes the pipe might've been capped off incorrectly. Mrs M also believes it's unreasonable for Haven to rely on poor workmanship when the pipe hasn't leaked for 20 years after it was capped off. So I've looked

to see whether, in the circumstances of this case, Haven's decision to decline the claim on these terms is fair and reasonable.

I can see the plumber who attended Mrs M's home prepared a report which was sent to Haven. This says he attended Mrs M's home and noticed the leak was coming from "...*an old hot water pipe which had been incorrectly capped off. In my opinion, this has been this way for more than twenty years or so.*" The plumber goes further to say, "*The leak would have been a slow drip to begin with, which has soaked into the wooden floor, as this has acted like a sponge and absorbed the water over the course of a few months. The water has then got into the floorboards and the ply wood flooring in the bathroom and eventually when the floor can't hold any more water it's then gravitated and got into the joists and then into the living room ceiling. Before eventually leaking through the roof.*"

Given the plumber's findings, which go into detail about how the water will have been absorbed by the wooden floor over a few months, I believe it's more likely than not the escape of water is down to a gradually operating cause. So, with strict application of the policy terms, Haven can decline the claim. But, our approach to such complaints involves considering a second step – and that's whether a customer should've, or ought reasonably to have, been aware of the damage occurring. Mrs M explains this leaking pipe was boxed within a wall in the corner of the bathroom and wasn't visible. This is supported by the photos Mrs M has provided. There's also photos of the living room which show some staining around the area where the water has come through the ceiling. But, given the staining is located right next to the area where the water has come through, I'm persuaded the staining occurred at the same time the water came through. I think it's also important to add, Haven haven't provided any evidence which would suggest Mrs M was, or ought to have been, aware of an issue developing. So, taking this into account, I think Mrs M reported the damage to Haven as soon as she became aware, and couldn't have been aware sooner. So, I don't think it's fair for Haven to rely on the gradually operating cause exclusion to decline the claim.

Haven have also relied on the poor workmanship exclusion in support of their decision to decline the claim. The plumber refers to the water pipe being incorrectly capped off 20 years ago. I'm not an expert in plumbing so I've taken into account the opinion of the expert here, and then decided the complaint on what I think is more likely than not. The plumber does refer to the pipe being incorrectly capped, but he also refers to this having occurred 20 years ago. I can't say with any certainty when precisely the water started leaking from the incorrectly capped pipe, but I think if the work had been carried out so poorly, any leak or water damage would've been exposed much sooner than 20 years later. In any event, even if there had been poor workmanship, I don't believe it's fair and reasonable in the circumstances for Haven to rely on this exclusion on the basis Mrs M wouldn't have known about it and the length of time since the work was done. So, on this basis, and in the circumstances of this case, I don't think it's fair and reasonable for Haven to rely on the poor workmanship exclusion to decline the claim.

Taking this all into account, I don't think it's reasonable in the circumstances for Haven to use the policy exclusions they have to decline the claim.

Putting things right

I've taken the view that Haven have acted unfairly in declining Mrs M and Mr M's claim based on the specific policy exclusions they're using. So, Haven should reconsider Mrs M and Mr M's claim further, in line with the remaining terms and conditions of the policy. It is of course open to them to make any other further enquiries they feel are necessary, but I don't think it's reasonable for them to use the specific policy terms they have to justify their decision to decline the claim.

My final decision

My final decision is that I uphold the complaint. Haven Insurance Company Limited must reconsider Mrs M and Mr M's claim in light of the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 20 October 2023.

Paviter Dhaddy
Ombudsman