

The complaint

Mr T and Mrs T are unhappy with Casualty & General Insurance Company (Europe) Ltd's (CGICE) decision to decline a claim made for water ingress.

What happened

Mr T and Mrs T own a new build property which is covered by a new build latent defects policy. In 2020, Mr T and Mrs T noticed water entering their home. They say it entered through a ceiling below a covered balcony and contacted the developer, but they couldn't be sure of the cause. The water continued to occasionally enter Mr T and Mrs T's home, and they continued to contact the developer, who was unable to find the cause.

Mr T and Mrs T contacted the company who supplied the bi-fold doors. They attended the property on two occasions and resealed the doors on the second visit. Unfortunately, the water ingress continued, and after further investigations, it was determined the water was entering the property through the bi-fold doors because the track fitted was not suitable for external use.

By now, the supplier of the bi-fold doors had gone out of business. Mr T and Mrs T made a claim under their latent defects policy. However, this claim was declined by CGICE, saying supplier of the bi-fold doors had been trading when the water ingress began, so they could have made a claim directly under the three-year warranty which came into effect when the doors were fitted in 2018.

Unhappy with CGICE's response, Mr T and Mrs T referred their concerns to us. CGICE said the water ingress was caused by an installation error and Mr T and Mrs T hadn't complained to them when the problem occurred. By the time they did, the supplier had ceased trading, meaning CGICE considered their position had been prejudiced because they would be unable to recoup any costs.

One of our investigators considered the complaint and said even if Mr T and Mrs T had notified CGICE they might have grounds for a claim when they first noticed the damage, it was more likely than not CGICE would have asked Mr T and Mrs T to take the same action they did to try and identify the cause of the damage. Essentially, she didn't agree Mr T and Mrs T's actions had prejudiced CGICE's position. On this basis, she considered the claim should be covered.

Mr T and Mrs T accepted these conclusions, but CGICE didn't, so this case has been referred to me.

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.

As a starting point, I think it's helpful to clarify Mr T and Mrs T have a claim under Section C of the policy. The key issue for me to decide is whether CGICE has acted fairly in declining

the claim on the basis of Mr T and Mrs T not notifying them of the potential claim as soon as it became apparent. The exclusion CGICE is looking to rely on is here:

“You must tell the **scheme administrator** of a claim or any incident that may lead to a claim as soon as reasonably possible after the date on which **you** first knew about the incident.”

Our general position is that an insurer may be able to decline a claim due to a late notification. However, we’d only consider it reasonable to do so if an insurer can show the late notification prejudiced their position. If the insurer is unable to demonstrate this, we’d expect the claim to be progressed in line with the remaining policy terms.

A key part of CGICE’s reason for declining the claim is they consider they would have established the reason for the water ingress was because the wrong track was fitted more quickly. I think that’s easy to say with hindsight, but I don’t consider CGICE have provided any evidence to support how they would have identified this so quickly. I’ll set out why.

I’ve considered the steps Mr T and Mrs T took, given they said part of the challenge they faced in determining the source of the water ingress was that it happened infrequently. They’ve also said that the Covid-19 pandemic made getting the damage inspected quite challenging. I think these issues both pose challenges in determining the cause of the water ingress. The steps taken by the developer and supplier of the bi-fold doors included clearing a drain above the balcony, checking the balcony floor for leaks, and having the bi-fold doors themselves checked and resealed before a hole was cut in the ceiling to determine the issue was with the doors. Even then, it doesn’t appear clear the incorrectly installed track was identified as the issue.

I’m satisfied these are all reasonable steps to determine the cause of the water ingress. And I don’t consider CGICE has shown how it would have identified the problem lay with the track more quickly, given the wider circumstances around both the Covid-19 pandemic and the fact the water ingress occurred infrequently. So, whilst I acknowledge the claim was made late, I’m not persuaded by CGICE’s argument they would have been able to identify the cause of the water ingress more quickly or they would have definitely been able to recover any costs before the supplier ceased trading if the claim been made when the damage was first noticed.

I don’t agree CGICE has shown its position has been prejudiced by the late notification of the claim. So, it follows, I’ll be requiring it to settle Mr T and Mrs T’s claim for the water ingress, subject to the remaining terms.

My final decision

I uphold this complaint. To put things right I require Casualty & General Insurance Company (Europe) Ltd to:

- Settle Mr T and Mrs T claim for the water ingress caused by the incorrect track, subject to the remaining policy terms.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T and Mrs T to accept or reject my decision before 13 March 2024.

Emma Hawkins
Ombudsman