

The complaint

M has complained that UK Insurance Limited ('UKI') declined her claim under her property owner's insurance policy following a leak at the relevant property.

What happened

In October 2020, M reported a leak to her third-party emergency insurers as water had been leaking from the bathroom at her property. Her tenant had noticed a large pool of water, along with staining and damp in the garage, after showering in the bathroom directly above. This had caused damage to a garage ceiling which contained asbestos, as well as to a beam and flooring. The third-party insurers required M to arrange for removal of asbestos before they would proceed, so they could access the waste pipe from the shower and repair it. M thought that her policy covered the work which would be required.

M arranged for asbestos removal to be carried out by her own contractor. The leak repair was carried out by the third-party insurers in November 2021. UKI declined M's claim stating that the damage was caused by wear and tear. M complained to UKI, but it maintained its stance which was upheld by this service following a previous referral by M. M then obtained evidence which she said would show that the relevant damage wasn't caused by wear and tear. M complained to UKI as she wanted it to cover asbestos removal and the necessary repairs after the leak was fixed. She was also seeking compensation for distress and inconvenience caused to both herself and her tenant. UKI maintained its stance.

M then referred her complaint to this service. The relevant investigator upheld M's complaint. He noted that UKI had provided a report from an expert in their field. However, he was persuaded by evidence since provided by M which questioned the accuracy of the expert report. He was of the view that UKI should now either reconsider the claim or appoint an independent engineer to inspect the affected area to confirm the cause. He also recommended the addition of interest due to the delay.

UKI disagreed with the investigator's view. It felt that there was little point in engaging another engineer as repairs had been completed a long time ago. It requested that M provide photographs of the grouting in a specific area around the shower tray, to decide if it agreed with the investigator's view. M supplied photographs however not of the specific area. The matter has now been referred to me for determination in my role as Ombudsman. In October 2023, I issued a provisional decision for this complaint and explained why I was minded to partly uphold M's complaint as follows; -

'The key issue for me to determine is whether UKI fairly and reasonably applied the wording of the relevant insurance policy in declining M's claim. On a provisional basis, I consider that it did so. However, I don't consider that it provided a fair and reasonable service in all respects, and I'll explain why. In reaching this provisional decision, I've also considered the submissions of the parties as summarised below.'

M said that she'd contacted UKI in November 2020 as she'd been informed by her third-party emergency insurers that asbestos would need to be dealt with, to enable them to fix the problem. They suspected that the leak was coming from the shower trap and required

access to the shower trap via the garage ceiling. As this was an escape of water claim, M said she was specifically informed by UKI in December 2020 that it would cover the costs of the asbestos removal so that the repair could be carried out and the ceiling replaced, as it was also water damaged. She'd therefore sent in quotes to UKI for the asbestos removal. M was then informed by UKI that it wouldn't cover these costs until further investigations were carried out as to where the leak was located. M said that following input from its expert, UKI then concluded that the leak was from sealant around the shower.

M disagreed with the UKI's expert report as she said that the sealant and grouting around the shower had been replaced prior to this incident. She questioned the independence of the UKI contractor who carried out the dye tests. She said as he was pouring water down, he asked M to confirm if there was a leak, and she confirmed there was. She said that her disabled and vulnerable tenant was unable to use the shower due to the leak and this caused great inconvenience. M said she hadn't been able to afford to pay for immediate asbestos removal due to the costs involved, but she'd saved enough to have it removed in October 2021.

The third-party emergency insurers then carried out the leak repair work and confirmed that the shower trap was causing the leak and they duly replaced this. M produced a copy of this insurers' letter dated April 2023 which stated that its contractor had attended the property in November 21 'and confirmed the leak was coming from the shower trap, this was replaced on the same day.' Given the type of shower tray within the unit, the contractor had accessed this from the ceiling in garage, so that there had been no need to move the shower tray or touch the grouting. M stated that since the repair, the tenant had been using the shower, with no leak into the garage. She said that this proved that the grout and the sealant weren't to blame for the leak. M conceded that the sealant was now looking mouldy in some parts, but that it wasn't at the relevant time.

M said that the episode had caused her stress and anxiety and had also caused great inconvenience to the tenant, as the alternative shower wasn't usable with a wheelchair. She was looking to receive a refund for what she'd paid for the asbestos removal. She also wanted UKI to replace the ceiling in the garage and cover the costs of replacing the flooring which had to be thrown away. Furthermore, she said that a wooden beam had been damaged, and appeared to have rotted due to the leak near shower trap. She said that this either need to be replaced or treated to prevent further rot or damage.

I now turn to UKI's submissions regarding this matter. UKI accepted that M had the benefit of accidental damage cover on her policy, however it pointed out that there was an exclusion in the policy which referenced gradual deterioration and wear and tear. It noted that M's further evidence regarding the cause of damage consisted of a letter from the third-party emergency insurers. It said that the findings in this letter were in contrast with the report of UKI's leak detection experts which stated: 'Dye testing was firstly carried out to waste pipe only from shower and no dye was found dripping from garage ceiling.' This also confirmed that whilst it was difficult to precisely direct the shower flow, it was aimed at sealant and grout 'and after some time water began to drip from garage ceiling. Testing was repeated with same result.'

The expert report's conclusion was that sealant and grouting to the shower had failed as water only leaked through the garage ceiling when water was sprayed over the sealant and grouting, not down the waste pipe. The report included photographs of the missing grouting. UKI therefore remained of the view that the failed grouting had perished over time and that it needed to be replaced to prevent any future issues. It noted that the work of the third-party emergency insurers was carried out in November 2021, however it didn't know when or whether the perished grouting had been replaced. It also felt that its expert report was more detailed than that of the third-party insurers which didn't advise that any tests were carried out to determine the cause of damage. It said that it didn't provide new information or

evidence to support the cause of damage being the shower trap.

UKI stated that it approved the quote for asbestos removal on a without prejudice basis, as it first needed confirmation that the shower trap was the cause of the leak. It conceded that the leak detection agent only carried out a visual inspection of the garage ceiling, along with moisture readings and dye-testing. However, it was clear that the sealant and grouting to the shower above garage had failed and that water didn't leak through the garage ceiling when water was put directly down the waste pipe. It therefore considered that it was fair and reasonable to decline the claim under the accidental damage section of the policy.

UKI considered that the repair invoice, many months after the leak detection testing was not in itself evidence of the cause of the leak and damage. It noted the previous view of this service that the letter wasn't sufficiently detailed to make it more persuasive than UKI's report. It added 'The letter provided by [the third-party insurer] simply alludes to the repair, already reviewed as part of the FOS complaint and response.' It considered that the comments didn't represent new information or evidence as to the cause.

I've also reviewed UKI's case notes in this matter. I note that in December 2020, UKI was awaiting receipt of the leak repair invoice to confirm that the cause was the waste pipe beneath the shower 'as expected'... given the volume of water involved and given the description given by the third-party contractors. M was therefore concerned that the claim was initially accepted, and then declined at the last minute.

I now provide my reasons for my provisional decision to partially uphold M's complaint. I note that there are two conflicting expert reports in this case. One states that the shower sealant or grouting was the cause of the leak and the other states that it was the shower trap. I agree with the investigator that the UKI leak detection expert's report was a comprehensive report which included photographic evidence, and which was compiled following a dye-testing exercise. The report is very clear that the leak appeared when the water flow was directed at the sealant and grouting, but not when it was directed down the waste pipe. I find it to be a persuasive report.

It's not clear whether the third-party insurers' contractors had access to this report when they carried out the shower trap repair. Their letter dated 18 months after the work merely asserts the cause of the leak, without further analysis. It doesn't describe or provide photographic evidence of damage to the shower trap and pipes or any dye testing that may have been carried out. It makes it clear that the work was carried out from the ceiling below, in order to avoid damage to the shower tray and grouting.

M has made it clear that new sealant and grouting had been applied 'before the incident'. However, it isn't known how long before the incident this work was carried out. I consider one photograph produced by UKI's leak detection agent, in the 2020 report to be significant. That photograph shows that at the relevant time, the sealant and grouting in one corner of the shower were in poor condition. This therefore supports the expert opinion that the sealant and grouting was the cause, or at least the main cause of the problem. I've seen no clear recent photographic or other evidence to show that the relevant area of the shower remains the same as it did in the 2020 photograph.

On the balance of probabilities therefore, despite the fact that both M and UKI appeared to agree initially that the likely cause of damage was a faulty shower trap, I provisionally conclude that, on the balance of probabilities, the actual cause of the leak was gradual deterioration of the sealant and grouting which wasn't covered by the UKI policy. I therefore can't say that UKI acted in an unfair or unreasonable manner in declining the claim.

Nevertheless, I must also consider whether M has been treated fairly and reasonably by UKI

in a more general sense. Having reviewed the relevant case notes from December 2020, I consider that UKI's actions would have led M to believe, or raised expectations, that UKI would cover the cost of asbestos removal in any event. It appeared to accept at this stage that the shower trap was likely to be the cause of the leak. However, the investigation and report of UKI's leak detection agent then showed that the initial expectations of both parties were incorrect.

I appreciate that the whole episode will have caused anxiety for M. However, my provisional conclusion is that it wouldn't be reasonable to expect UKI to reimburse costs in relation to damage caused by gradual deterioration or wear and tear. This is because such damage is specifically excluded under the terms of the policy. I do consider on the balance of probabilities however that UKI should compensate M in the sum of £500 for the distress and inconvenience caused in the early weeks of her claim, as it raised M's expectations that cover was in place.'

In my provisional decision, I asked both UKI and M if they had any further comments or evidence they would like me to consider before I made a 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.

Both parties disagreed with the provisional decision and made the following submissions.

M was disappointed with the provisional outcome. She re-iterated that it took almost a year to save up to have the asbestos removed and then almost a further 9 months to get a report from the third-party insurers' contractors. The contractors had then taken a long time to deal with the matter as they'd changed systems. I'm satisfied that all of these delays were outside M's control and will no doubt have added to her frustration. Unfortunately for M however, this delay increases the likelihood that UKI's specialist report, compiled soon after the leak event, was the most persuasive report as to the cause.

In relation to sending the further requested photographic evidence to support M's complaint, M said that she'd been unable to do this, as the bathroom was being adapted for wheelchair access, and this is noted. In the circumstances however, I must rely on the available photographic evidence. I remain satisfied that this photographic evidence supports the view that the leak was due to deteriorating sealant or grouting. M has helpfully supplied the invoice for when the sealant and grout were replaced in August 2019, *'just over a year before the leak.'* Despite the relatively recent sealing works however, the photographic evidence following the leak event clearly shows a defect in the sealant or grouting.

I appreciate that M stated that the property is maintained regularly through her third-party emergency cover. However, this doesn't change the position with regard to the clear evidence of defective sealant, and the evidence in the leak specialist report, despite the third-party contractors being adamant that it was the shower trap and not the sealant or the grouting which was the cause.

I appreciate that M has reiterated that there have been no issues since the shower trap was replaced. She states that if the problem had been the sealant or the grout then there would have still been a leak, and this would have been reported. However, as further refurbishment work has occurred in the bathroom, it's no longer possible to retrospectively test the position.

Finally, M said that the report carried out by UKI wasn't independent and *'the man that carried out the leak report for them was working on his own.'* As such, he'd asked M to check if there was a leak in the garage whilst he was pouring water down. M said there was a leak

and she'd said that this was coming from the centre of the garage and not down the sides. There's however no evidence to suggest that the relevant specialist hadn't provided his own professional opinion after conducting these tests. I consider it likely that he'd asked M to inform him whether there was a leak when he directed water down the plug, and then separately when he directed water onto the sealant. This would have informed him of the likely source of the problem. In the circumstances, I'm satisfied that my provisional conclusion stands in relation to the substantive issue and that deteriorating sealant or grouting was likely to have been the cause of the leak.

I turn now to UKI's further comments and evidence. It disagreed that it should pay £500 compensation for distress and inconvenience caused to M. It didn't consider that it had led M to believe that it would cover asbestos removal in any event. It provided site notes dated December 2020 to support its position. It also provided a copy of an e-mail sent to M in January 2021 by its agents, and said it advised that *'cover for trace & access costs (removal of the asbestos ceiling) does not extend to damage caused by wear & tear.'* It said that whilst it had sympathy with M's situation, it didn't believe that it had advised or led her to believe that the asbestos removal would be covered regardless of the cause of damage.

Having carefully considered the e-mail sent to M in January 2021 by its agents I note that it stated, *'I appreciate the confusion however the trace and access does not extend to damage caused by anything'*. I've assumed that 'anything' here means 'everything'. In other words, UKI was stating that the insurance policy wouldn't cover all eventualities. The letter also made it clear that until it was established what caused the damage, it *'cannot yet confirm whether insurers will pay for this cost'*, the cost being that of asbestos removal.

I'm therefore now satisfied that by early January 2021, UKI had made it very clear that it wouldn't cover asbestos removal in any event. I remain of the view that up to this point, M had been led to believe by her third-party insurers that the leak was due to a waste pipe leak. However, the January 2021 letter from UKI's agents acknowledges that there had been confusion, and I remain of the view that up to this point, UKI had also led M to believe that she was likely to be covered for asbestos removal and other consequential damage under her home insurance policy. I remain of the view that this would have caused avoidable distress and confusion.

I reach this conclusion also on the basis of the site notes of UKI's agents dated December 2020. At this point, it was clear that the agents had expected the leak to have been due to a waste pipe leak and for liability to have engaged. I consider that this view will have been shared with M. The notes recorded *'we have agreed the ceiling should be removed by the licensed asbestos removal company on a without prejudice basis pending receipt of this leak repair invoice.'* Whilst the January 2021 letter does refer to prior confusion, and the likelihood is that this was caused by UKI's position on ceiling removal. I don't consider it unreasonable that this without prejudice position could have led M to believe that UKI was agreeing for work to proceed and that it would pay for ceiling removal in any event.

In all the circumstances, I've concluded that the without prejudice agreement and lack of clarity surrounding it would have created an expectation that UKI would be covering at least part of her claim. Whilst I appreciate that the agreement was no doubt made by UKI to enable M to progress to resolution of the practical issues, the confusion caused would have led to unnecessary distress and inconvenience. In the circumstances, I'm satisfied that the provisional decision provides a fair and reasonable outcome to the matter.

My final decision

For the reasons given above, I partly uphold M's complaint and I require UK Insurance Limited to pay compensation to her in the sum of £500 for the distress and inconvenience

initially caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 3 December 2023.

Claire Jones
Ombudsman