

The complaint

Mrs R and Mr R complain about how AA Underwriting Insurance Company Limited (AA) dealt with a claim under their home insurance policy for damage to their property caused by a leak from a shower.

AA use agents to administer the policy and to assess claims. References to AA include these agents.

This decision covers AA as the insurer of Mrs R and Mr R's home insurance policy at the time of the first repair to their shower in May 2021 (Mrs R and Mr R were insured by the AA under a policy from July 2020 to July 2021). It doesn't cover the handling of their claim in February 2023 to the insurer of their policy at that time, a different business to AA.

What happened

In May 2021 Mrs R and Mr R had a leaking shower repaired by a contractor (S) appointed by AA under a claim on their home insurance policy. In February 2023 water came through a ceiling from the shower. Mrs R and Mr R contacted AA to tell them about the leak. As the leak came from the shower repaired previously, Mrs R and Mr R contacted S, to be told the repair was only guaranteed for a year, so they couldn't be held responsible for the new leak.

In May 2023, Mrs R and Mr R engaged a plumber to fix the leak. The plumber said the leak was caused by overtightening of the drain cover screws, causing cracks in the drain cover that led to the leak. The leak had taken time to soak the ceiling and walls underneath the shower, so wasn't visible.

Given what they were told by the plumber and what S said about the repair they'd carried out, Mrs R and Mr R complained to this Service. They'd been affected financially by having to pay the policy excess to their current insurer and been without a working shower from February to May 2023. They wanted AA to reimburse the excess they'd paid to their current insurer and compensate them for the loss of use of their shower and the time, stress and anxiety from what had happened.

As Mrs R and Mr R complained to this Service before complaining to AA, our investigator asked AA to consider the issues raised.

AA sent their regional surveyor to inspect the damage from the leak. They concluded there was shower waste beneath the floor, showing no visible signs of damage. And running the shower during the visit indicated no water escaping from the shower waste. Inspecting the bathroom where the shower was located, the surveyor noted an apparent defect with the tiling below the shower mixer, with a tile not flush to the wall behind and cracked grouting. The surveyor thought this could be causing water ingress to the hallway below, as the staining to the latter was directly below the loose tile.

The surveyor concluded that while it was plausible the shower waste was cracked because of overtightening, he was unable to conclude the leak was the result of poor workmanship by S. And as the shower waste had been replaced before the visit, he couldn't confirm the

condition of the shower waste installed by S. And had the shower waste been cracked by overtightening at the point it was installed, the surveyor thought any leak would have presented itself sooner than it did. And as there had been a second leak after the replacement of the shower waste, this could indicate another ongoing issue.

Based on the surveyor's findings, AA didn't think they (or S) were responsible for the leak. So, they didn't uphold the complaint. In their final response, they referred to the surveyor's findings and conclusions, saying there was no evidence the damage from the leak was caused by poor workmanship (by S).

Our investigator then considered the complaint, but didn't uphold it, concluding AA didn't need to take any action. While he acknowledged Mrs R and Mr R's plumber said the leak was caused by overtightening of the shower waste drain cover screws, there wasn't a report to confirm this. And while Mrs R and Mr R had provided a photograph of the damaged shower waste, it was taken after removal and not supported by contemporaneous evidence. He also noted the findings and conclusions of AA's surveyor, finding them persuasive.

Mrs R and Mr R disagreed with the investigator's conclusions and asked an ombudsman review the complaint. Given the grouting referred to by AA's surveyor had been put in by S, they thought this showed poor workmanship caused the leak. They also noted their plumber had (after the surveyor's visit) tested the shower and the tile and grouting referred to by the surveyor and had concluded it was the source of the leak (but overtightened screws on the shower waste drain cover would also have allowed water to leak out).

And silicone had been used in fixing the tiles when grout should have been used. Mrs R and Mr R had the affected tiles and grouting replaced, and they provided an opinion from the tiler who carried out the work, which raised concerns about the tiling originally installed.

In my findings, I noted AA responded to the findings of Mrs R and Mr R's tiler by offering to replace three square metres of tiling. I thought this suggested a tacit acceptance of the need for the tiling to be re-done. Which would be unnecessary if it was in good condition and/or wasn't (possibly) the cause of the 2023 leak.

Taken together all these factors point, on the balance of probabilities, to the conclusion the most likely cause of the leak and the damage was the tiling referred to, both by AA's surveyor and Mrs R and Mr R's tiler.

That being the case, I thought AA's offer was reasonable. However, my understanding was that Mrs R and Mr R's tiler had already replaced the affected tiling. If so, then I didn't think there was a need for it to be replaced, as AA have offered, for a second time. But on the assumption Mrs R and Mr R paid the tiler to inspect the tiles and then replace them, I thought it would be reasonable to ask AA to reimburse them for the cost, on production of an appropriate invoice.

I also thought it reasonable for AA to add interest to the cost of any such invoice, at a rate of 8% simple, from the date Mrs R and Mr R paid the invoice to the date AA reimburses them (assuming my final decision remained unchanged, and Mrs R and Mr R accepted it). On the issue of whether AA should reimburse the excess Mrs R and Mr R said they incurred when making a claim under their current policy (with a different insurer) I wasn't persuaded this would be fair and reasonable. I said this because I hadn't seen the terms of the new policy and this decision only covered Mrs R and Mr R's complaint about AA and whether AA acted fairly and reasonably towards them. It isn't about any claim Mrs R and Mr R have made under their new policy, nor the outcome of any such claim.

If they've made a claim, it's likely any policy excess would apply in any event. And it would be for their insurer to determine whether they would be able to seek recovery from AA of any costs they've incurred in settling a claim for the damage.

Because I reached a different conclusion to that of the investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

What I've provisionally decided – and why

I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

My role here is to decide whether AA has acted fairly towards Mrs R and Mr R.

The main element of Mrs R and Mr R's complaint is that the leak and consequent damage were the result of poor workmanship by S when they replaced the shower tray in 2021. Initially they thought, based on their plumber's opinion, the issue was overtightening of the shower waste drain cover. However, subsequent work to replace tiles indicated (based on their tiler's opinion) the issue was poor workmanship by S on the tiles and grouting replaced as part of the shower tray replacement. AA say, based on their surveyor's inspection and report, there isn't any evidence to indicate poor workmanship with the waste drain cover. Rather the issue is with tiling and grouting becoming cracked under the shower mixer.

In considering the issue, I've looked at the evidence and information available. Key to this are the opinions of Mrs R and Mr R's plumber and (subsequently) their tiler and the inspection and report from AA's surveyor. I've considered the reports and opinion of the surveyor and the tiler. I haven't seen anything formally from Mrs R and Mr R's plumber, but I've taken what Mrs R and Mr R have said about the plumber's view the shower waste drain cover was affected by overtightened screws into account.

Given the sequence of events, I've first considered the report from AA's surveyor following their inspection (July 2023). The key elements are as follows, firstly on the damage to the hallway:

"The existing shower tray is a slim line low laying tray, where the shower waste is located below the floorboards. It was noted that there is a shower waste in situ, which shows no visible damage. During my inspection, I requested that Mr R turns on the shower, whilst the shower was running, I observed no water escaping from the shower waste."

And secondly on the damage in the bathroom:

"Upon inspection of the shower enclosure...it appeared that there is a defect with the tiling located below the shower mixer. On review, one of the bottom course wall tiles is not flush to the wall, the grout in this area is cracked and the tile is loose. I suspect this could be causing water ingress to the hallway, my reasoning for this is that directly below this tiled wall is where there is water staining to the hallway ceiling. In addition to the issue of the tile, it is noted that the grout in this area has numerous cracks, which when the shower is operating will allow water to pass behind."

The overall conclusion from the surveyor was:

"While it is plausible that the shower waste was cracked because of overtightening the fixings during installation, resulting in an escape of water, at present I am unable

to conclude that the issue...was a result of poor workmanship by S...However, when considering the timeline of events, during the installation of the shower tray waste in May 2021, should the waste have been cracked at this point, the issue would have presented itself within a shorter period, rather than 22 months after installation.

Mr R advised that the same issue arose once his own plumber had replaced the shower waste, I flood tested the shower waste and noted no issues with waste. This could be indicative of another issue operating at the property.

In conclusion, upon reviewing all information provided, I acknowledge that there was an issue with the shower waste. However, I cannot attribute this to poor workmanship; this would be considered as a separate issue due to the timeline of the events.

In addition to the issue with the waste, I also conclude that there is an ongoing issue with failed grouting, which over a period has deteriorated to a point where one of the bottom course tiles in the shower enclosure has managed to become loose and de-bonded. This is consistent with the area of staining located in the hallway."

I've also considered the additional evidence provided by Mr R from the tiler that replaced the affected tiling (September 2023). They state:

"When I removed the tiles I found a number of issues with the tiling, firstly that some of the tiles had been stuck on with silicone, something that a decent tiler would never do. Also the other tiles had been stuck on with a water based adhesive and thirdly that the joint between the back of the tiles...and the shower tray had not been sealed.

I was told by Mr R that the tiles I removed had been fitted by...S...when they replaced the shower tray. It is my opinion that the faulty workmanship in replacing these tiles was the direct result of the water escape and had the tiles been fitted correctly, without the use of silicone and with the correct fixing agent this issue would never have occurred."

Our investigator asked AA to respond to the findings of Mrs R and Mr R's tiler. They responded to offer to replace three square metres of tiling to be removed and replaced.

I've thought about this response in the context of what's happened. In offering to replace three square metres of tiling, AA haven't said why they have made this offer. So, they aren't accepting the tiling was the subject of poor workmanship by S. However, in my view it suggests a tacit acceptance of the need for the tiling to be re-done. Which would be unnecessary if it was in good condition and/or wasn't (possibly) the cause of the 2023 leak.

Taken together all these factors point, on the balance of probabilities, to the conclusion the most likely cause of the leak and the damage was the tiling referred to, both by AA 's surveyor and Mrs R and Mr R's tiler. Consequently, it suggests the original cause of the damage (from Mrs R and Mr R's plumber) being overtightening of the screws to the shower waste drain cover, causing it to crack, isn't likely to be the cause.

That being the case, I think AA's offer would be reasonable. However, my understanding from what I've seen is that Mrs R and Mr R's tiler has already replaced the affected tiling. If so, then I don't think there is a need for it to be replaced, as AA have offered, for a second time. But on the assumption Mrs R and Mr R paid the tiler to inspect the tiles and then replace them, I think it would be reasonable to ask AA to reimburse them for the cost, on production of an appropriate invoice.

I also think it reasonable for AA to add interest to the cost of any such invoice, at a rate of 8% simple, from the date Mrs R and Mr R paid the invoice to the date AA reimburses them (assuming my final decision remains unchanged, and Mrs R and Mr R accept it).

On the issue of whether AA should reimburse the excess Mrs R and Mr R say they've incurred when making a claim under their current policy (with a different insurer) I'm not persuaded this would be fair and reasonable. I say this because I've not seen the terms of the new policy and this decision only covers Mrs R and Mr R's complaint about AA and whether AA have acted fairly and reasonably towards them. It isn't about any claim Mrs R and Mr R have made under their new policy, nor the outcome of any such claim.

If they've made a claim, it's likely any policy excess would apply in any event. And it would be for their insurer to determine whether they would be able to seek recovery from AA of any costs they've incurred in settling a claim for the damage.

My provisional decision

For the reasons set out above, it's my provisional decision to uphold Mrs R and Mr R's complaint in part. I intend to require AA Underwriting Insurance Company Limited to:

- *Reimburse Mrs R and Mr R for the cost of their tiler repairing their tiling, on production of an appropriate invoice.*

AA Underwriting Insurance Company Limited should also add interest to the cost of any such invoice, at a rate of 8% simple, from the date AA reimburses them (assuming my final decision remains unchanged, and Mrs R and Mr R accept it).

Mrs R and Mr R responded to make a number of points. First, they set out how they had been financially impacted by what had happened. This included the policy excess on their policy with their new insurer, a total of £500 (£250 excess for escape of water and £250 voluntary excess). They had also incurred invoiced costs of £75 for the original plumber attendance to replace the shower waste; £200 for the tiling work; and £18 for tiles.

They also said the time they had spent pursuing their concerns with AA had totalled at least eight hours since February 2023. At Mr S's hourly charge rate of £230 this meant an opportunity cost in lost time for client work of £1,840. Mr S also spent 2.5 hours responding to the provisional decision, time also being unavailable for client work and therefore a loss of revenue.

Secondly, they had been without shower facilities between February and October 2023. And they'd suffered stress from what had happened, including loss of sleep and worry. They thought they should be compensated for both.

They thought these points be considered as part of a fair and reasonable outcome to put them in the position they would have been had AA carried out the repair works properly. AA didn't respond to the provisional decision by the date requested.

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.

My role here is to decide whether AA have acted fairly towards Mrs R and Mr R.

I've considered the points raised by Mrs R and Mr R in turn.

On the first point, I've considered carefully the further points raised by Mrs R and Mr R in response to my provisional decision, particularly with respect to the point about the first problem that arose with the shower waste. I've looked again at the reports and opinions from the differing parties, including Mrs R and Mr R's plumber and AA's surveyor.

The latter says *"it is plausible that the shower waste was cracked because of overtightening the fixings during installation, resulting in an escape of water, at present I am unable to conclude that the issue...was a result of poor workmanship by S" ...However, when considering the timeline of events, during the installation of the shower tray waste in May 2021, should the waste have been cracked at this point, the issue would have presented itself within a shorter period, rather than 22 months after installation."*

They go on to say that, while noting an issue with the tiling, *"In conclusion, upon reviewing all information provided, I acknowledge that there was an issue with the shower waste. However, I cannot attribute this to poor workmanship; this would be considered as a separate issue due to the timeline of the events."*

While the length of time between the original replacement of the waste and the leak becoming apparent could indicate a separate issue, AA's surveyor acknowledges there was an issue. And as I've not seen any evidence of any subsequent work on the waste, I think on the balance of probabilities the issue is more likely to have arisen with the original installation, even if the leak took time to become apparent.

So, I've changed my mind on this point, concluding it fair and reasonable that there was an issue with the original waste repair. And even though the impact (the leak) didn't become apparent until after the 12 month guarantee period expired, it is fair and reasonable to ask AA to cover the £75 cost of repair of the waste. In coming to this conclusion, I've also taken account of AA offering to replace the tiling, given the issues identified, which I understand the work on which was originally carried out at the same time as the waste repair.

Having come to this revised conclusion, I've then considered the points about other costs, specifically the excess payable by Mrs R and Mr R under any claim on their new policy. In my provisional decision I said it would be a matter for their new insurer, to determine whether to seek recovery from AA of any costs they've incurred in settling a claim. While I can understand why Mrs R and Mr R would want AA to reimburse them the cost of the excess they may have paid, I haven't changed my view that this is properly a matter between Mrs R and Mr R, their new insurer and AA to consider.

I've then considered Mrs R and Mr R's points about the time spent pursuing their concerns with AA (and bringing their complaint to this Service, including responding to my provisional decision) as well as the impact of not having a shower and the stress they've suffered.

I appreciate that pursuing his concerns with AA will have involved time spent by Mrs R and Mr R, and they've estimated a figure based on Mr R's charge rate. However, I'm not persuaded this would be a reasonable basis to ask AA to pay compensation, as it is Mrs R and Mr R's choice of how to balance their time, including that for clients. And, as Mrs R and Mr R say, it is an opportunity cost, rather than one where there is a clear, financial loss. On the second aspect, as a Service, we provide an informal dispute resolution to consumer complaints. It's the choice of a consumer to use our service, free of charge, if they're unhappy with a business's response to a complaint. So, it wouldn't be appropriate to award compensation for the time consumers take in bringing their complaint to this Service.

But we do consider compensation for distress and inconvenience for consumers where we uphold a complaint and conclude a business hasn't acted fairly and reasonably. We do this

in accordance with guidelines published on our website, depending on the circumstances of an individual case and the impact on the consumer.

I've thought about the circumstances of the case and the impact as described by Mrs R and Mr R. Together with my revised conclusions, I now think it would be fair and reasonable to make an award for the distress and inconvenience from what's happened. Having regard to our published guidelines, together with the circumstances of the case, I think £300 would be fair and reasonable compensation.

Having reached these revised conclusions, I shared them with Mrs R and Mr R and AA, asking whether they would be prepared to accept them to resolve the complaint.

AA responded to accept the proposed resolution.

Mrs R and Mr R responded to say they accepted the proposed £300 compensation for distress and inconvenience and £75 for the waste repair. They reiterated their view the £500 excess deducted from their claim by their new insurer should be reimbursed to them by AA.

They also referred to a published separate decision by this Service in which an award of £600 was made in a case involving AA for loss of use (of a vehicle) in addition to £300 compensation for distress and inconvenience. Mrs R and Mr R thought they should receive £600 for loss of use of their shower, in addition to £300 for distress and inconvenience.

They also thought simple interest, at 8%, should be added to the amounts they'd paid for the tiling work, waste repair and half the excess deducted by their new insurer.

I've considered the further points made by Mrs R and Mr R. On the point about the excess they've had deducted from their claim under their new policy, I haven't changed my view on this issue. As I've said, this decision covers their complaint about AA. If they've made a claim under their new policy then that's a matter between them and their new insurer – and potentially AA if the new insurer considers it may be able to recover the costs of the claim from AA.

I've also looked at the published decision referred to by Mrs R and Mr R. The case involves, amongst other things, loss of use of a vehicle following an accident. As a Service, we consider complaints in the specific circumstances of each case and make decisions based on what we consider to be fair and reasonable in the circumstances of each case. It doesn't mean that award for loss of use is made in each and every case, nor at a single, uniform amount. It doesn't follow the same award, for the same amount should be made in this case.

When thinking about this case, specifically the responses to my provisional decision, I concluded Mrs R and Mr R had suffered distress and inconvenience from what had happened - including the inconvenience of not having access to their shower. Having looked at the circumstances, I concluded £300 compensation would be fair and reasonable. I haven't changed my mind on this conclusion.

My final decision

For the reasons set out above, it's my final decision to uphold Mrs R and Mr R's complaint in part. I require AA Underwriting Insurance Company Limited to:

- Reimburse Mrs R and Mr R for the invoiced cost of their tiler repairing their tiling (£200) and repair of the shower waste (£75).

- AA Underwriting Insurance Company Limited should also add interest to the invoiced costs, at a rate of 8% simple, from the date Mrs R and Mr R paid the invoices to the date AA reimburses them (assuming Mrs R and Mr R accept my final decision).*
- Pay Mrs R and Mr R £300 in compensation for distress and inconvenience.

AA Underwriting Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Mrs R and Mr R accept my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

*If AA Underwriting Insurance Company Limited consider they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs R and Mr R how much they've taken off. They should also give Mrs R and Mr R a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.
Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 13 March 2024.

Paul King
Ombudsman