

## **The complaint**

Mr A and Miss N complain about how Lloyds Bank General Insurance Limited (Lloyds) handled a claim under their home insurance policy for damage to their property, which they say was due to previous repairs not being carried out properly.

Lloyds use agents to administer the policy and to assess claims. Reference to Lloyds includes these agents.

## **What happened**

In July 2022, Mr A and Miss N noticed a damp, musty smell at their property, which they thought was from a ground floor bathroom. The bathroom previously suffered damage from a pipe leak in 2016, when it was repaired by a contractor appointed by Lloyds.

Mr A and Miss N contacted Lloyds in October 2022 to tell them about the issue and lodge a claim. Lloyds asked them to provide a 'Cause of Damage' report, which they did the following month from a contractor (PWT) they engaged to assess the damage and provide a quote for repairing the damage. The report concluded quite a lot of the [water] damage arose from the original leak in 2016, which hadn't been dealt with properly when repaired. The report also noted water damage in the kitchen.

Lloyds didn't think the report showed the issues were due to poor workmanship and asked for a further, more detailed report on the damage and its cause. A second report was received from a builder (L) in February 2023. The report concluded the damage was due to poor workmanship in the previous repairs, detailing a number of issues. These included the shower tray being unstable, unsuitable materials being used for a wet room, no tanking on the walls around the shower area and the shower tray being left unsealed against the adjoining wall. L concluded this meant water had got behind and under the shower tray area over a number of years, causing the damage (including to the floor, kitchen wall, skirting boards and airing cupboard).

Lloyds considered the report and subsequently assessed the claim but declined it. They said the damage from the leak was due to failed sealant and grouting around the shower tray, a specific exclusion under the policy. They also said the previous repairs were guaranteed for twelve months, so no longer covered. If there were issues with the sealant and grout (and the previous repairs) they would have become apparent sooner – not many years later. They also said Mr A and Miss N carried out repairs without obtaining prior approval from them, which invalidated any potential claim.

Mr A and Miss N challenged Lloyds' decline of the claim, which Lloyds considered as a complaint. Mr A and Miss N said L clearly referred to issues with the previous repair work. They also disputed the damage was due to failed sealant or grout and thought it irrelevant for Lloyds to say the previous repairs were out of guarantee as the work hadn't been carried out properly. Nor had they carried out any repairs to the bathroom, other than some stripping back to investigate the source of the smell of damp (the same approach they adopted at the time of the previous leak). A second, similar bathroom in their property hadn't had any issues – so the difference was the repairs to the first bathroom.

Lloyds issued an initial final response at the beginning of March 2023, apologising for not providing better service and awarding £150 compensation. They agreed further investigation of the claim and the decision to decline it was needed and a Personal Claims Consultant (PCC) would review it. Lloyds restated Mr A and Miss N completed repairs on the bathroom before they could inspect the damage, which could affect any settlement of the claim that might be offered. They referred to the policy terms and conditions.

Following the first final response, the PCC visited the property to inspect the bathroom. In their report, they concluded Mr A and Miss N had stripped out the bathroom, prejudicing Lloyds' position on the claim. They also said Mr A and Miss N's builder inspected the bathroom five months after the damage was first notified and the bathroom stripped out, making it difficult to rule out the damage being due to failure of sealant and grout. The report also challenged the points made by Mr A and Miss N (in L's report).

Following the PCC report, Lloyds issued a further final response in March 2023. It didn't uphold the complaint, confirming the decision to decline the claim. They said Mr A and Miss N hadn't followed correct procedure, by stripping out the bathroom before Lloyds could inspect the damage. So, the policy terms and conditions weren't complied with. But the evidence pointed to the damage being caused by failed grout and sealant, an exclusion under the policy. The previous repair work in 2016 was also out of guarantee and no evidence the leak was due to poor workmanship. The report from L was after stripping out of the bathroom and based on photographs from Mr A and Miss N – so L hadn't seen the damage before the bathroom was stripped out.

Mr A and Miss N then complained to this Service. They said the original repair work was inadequate as the wrong materials were used, the shower tray wasn't supported correctly, the walls weren't tanked, and the inner shower tray area wasn't sealed correctly. This had led to the problems they were now experiencing. They hadn't had use of the bathroom since the incident, and this caused them and their family significant upset and inconvenience. They'd spent a lot of time telling Lloyds they'd not carried out any repairs and trying to progress their claim. They wanted the bathroom to be fully repaired.

Our investigator didn't uphold the complaint, concluding Lloyds acted reasonably in declining the claim. Sealant issues appeared the primary cause of the leak and damage, so the issue was whether this was a result of poor workmanship in the previous repairs. He wasn't persuaded the evidence indicated it was. He also thought Mr A and Miss N stripping out the bathroom made it difficult to assess the damage and conclude on its cause. And the damage would have been likely to become apparent sooner than it did.

Mr A and Miss N disagreed with the investigator's view and requested an ombudsman review the complaint. They said the issue was about the sealant between the shower tray and the wall, not the sealant around the shower tray and the tiles. They also provided a detailed exposition of why they believed the damage was due to the poor workmanship in the previous repairs, including videos and photographs of the bathroom.

### **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 Lloyds have acted fairly towards Mr A and Miss N.

Looking at the complaint and what happened, the key issue is whether the issues with the bathroom that became apparent in July 2022 were due, as Mr A and Miss contend, to poor workmanship in the repairs carried out previously in 2016. They also say the nature of the

leak was such that any damage would only have occurred gradually, over many years, before becoming apparent. They cite the Cause of Damage (and quotes) from PWT and L in support of their view.

Lloyds say the issues were due to failed sealant and grout, an exclusion under the policy, so they acted fairly to decline the claim. Lloyds also say Mr A and Miss N stripped the bathroom before they (Lloyds) had chance to inspect the damage, so prejudicing their assessment of the claim. They also say Mr A and Miss N carried out repairs to the bathroom and the previous repair work was only guaranteed for a year. Lloyds also point to the PCC report in support of their case.

In considering the issue and the respective views of Mr A and Miss N and Lloyds, I've looked carefully at all the information and evidence they've provided. This includes the detailed representations, photographs and videos of the bathroom and more generally, in particular those provided by Mr A and Miss N. As there is a clear disagreement over the cause of the damage, including in the reports from the respective contractors and the PCC, I've had to decide, on the balance of probabilities, which is the more persuasive in the circumstances of the case and, consequently, conclude whether Lloyds have acted fairly and reasonably towards Mr A and Miss N.

In doing so, I've first considered the other points raised by Lloyds about the stripping out of the bathroom, Mr A and Miss N carrying out repairs to the bathroom and the previous repair work only being guaranteed for a year.

From what I've seen, while Mr A and Miss N first noticed a damp, musty smell in July 2022, they didn't contact Lloyds until October 2022. They've said they carried out some stripping of the bathroom to try and identify the cause of the problem and any potential leak. And then engaged PWT in response to Lloyds asking for a Cause of Damage report. That report was produced in December 2022 (and L's report subsequently in February 2023). From the photographs I've seen, it is clear some stripping out of the bathroom had taken place, consistent with trying to identify the source of the problem (the leak). But the photographs don't show substantive repair work to reinstate the bathroom. So, I've concluded it wasn't the case – as Lloyds contend – Mr A and Miss N carried out repairs.

However, the stripping out work that did take place would, I think, have made it more difficult for Lloyds to assess the damage and its likely cause, even had they visited the property when the issue was first notified by Mr A and Miss N. This was some three months after they say they noticed the damp, musty smell (the PCC visited the property in March 2023, after the second Cause of Damage report). To that extent, I think it compromised Lloyds' ability to assess the claim. For the same reason, I also think it would have affected, at least to some degree, assessment of the damage by PWT and subsequently L.

Mr A and Miss N say they followed the same approach as they did at the time of the previous leak, when Lloyds accepted the claim, and their contractor repaired the damage. However, I don't think this changes my conclusions that some stripping out affected the ability of Lloyds (and PWT and L) to assess the claim. In their final response, Lloyds say Mr A and Miss N didn't comply with the policy terms and conditions as the bathroom had been stripped out before they could inspect. They refer to page 7 of the policy booklet. The final response doesn't quote a specific reference, but the page is headed *How to make a claim* and includes the following statement:

*"You should tell us about your claim as soon as you can. We might not be able to pay some or all of your claim if you don't. We won't pay any more for a claim than we would have if you'd have told us straight away. For example, if the damage has got worse because you hadn't told us."*

As noted above, while Mr A and Miss N first noticed the damp, musty smell in July 2022 they didn't notify Lloyds until October 2022, after they'd stripped out some of the bathroom. Looking at the wording above, this indicates they didn't tell Lloyds about their claim (the damage) straight away.

And a further statement:

*"1. Before you contact us*

*If you need to claim, there are some things you might have to do before getting in touch with us.*

- *Please don't make repairs for any reason other than urgent repairs to stop the problem getting worse..."*

*If you need to make urgent repairs, take a photo before and after. Don't throw away any damaged items until we say so..."*

There's also a further statement, under the heading *We'll pay claims where your buildings or your contents are damaged by and 8. Leaking oil or water & freezing water and Tracing and accessing a leak::*

*"If you or your plumber need to damage your buildings, we'll need to agree the work before it takes place. So please call us first."*

As I concluded above, I don't think Mr A and Miss N carried out any substantive work to reinstate (repair) the bathroom after the stripping out they performed. But they didn't contact Lloyds until they'd carried out the stripping out.

The wording above doesn't define what 'repair' means, although it could be said that repair work could reasonably include stripping out the damage as a necessary first step in making any repairs, and repair quotes often include an element for stripping out. I've also seen photographs of the bathroom after the stripping out, but none before it that was carried out, which makes it more difficult to assess the cause of damage (including by Lloyds and the respective contractors engaged by Mr A and Miss N).

Taking these points together, I've concluded Mr A and Miss N didn't comply with the policy conditions set out above.

The other point raised by Lloyds is that the repair work carried out by their contractor in 2016 was only guaranteed for a year. So, any issues that arose after the guarantee had expired wouldn't be covered under the guarantee. I've thought about this, but I don't think it's reasonable to say this if – as Mr A and Miss N contend – the issue found in 2022 was a result of the previous repairs not being carried out properly.

Having considered these points, I've then considered the main issue of the complaint, whether the damage was the result of poor workmanship when the previous leak was repaired in 2016.

I've first considered the Cause of Damage reports from PWT and L. The first report, from PWT in November 2022, states the following:

*"In my professional opinion, the bathroom needs fully redoing properly. It is clear from the water damage that quite a lot of it is from the original leak. Clearly hadn't been dealt with properly when it was supposedly rectified."*

The second report, from L in February 2023, states (key passages):

*"I have looked at the damage to the bathroom...and can report, in my opinion, that the cause of the damage shown now is due to the poor workmanship of the remedial works carried out during 2016.*

*I believe this because of the following points:-*

- 1. The shower tray...The underside of the shower tray shows insufficient support to prevent movement through use...*
- 2. The use of chipboard underneath the tray...This is not the correct material to use under a shower tray as it is not waterproof and the slightest bit of dampness will cause the chipboard to expand and become unstable...*
- 3. There is no tanking evidence on the plaster walls of the shower area, which would mean there was no water protection to the plaster and plasterboard and wooden structures behind..*
- 4. In my experience the shower tray was insufficiently sealed before the tiles were replaced. Good practice is to seal the shower tray along the edges to prevent any water ingress before tiling. Multiple tubes of silicone would normally be used to fill the gap between the wall and shower tray before the tiles were fitted. There is no evidence of this...*

*In my opinion...with the movement of the shower tray, insufficient sealant, water has been getting down behind and under the shower tray area over a number of years and has caused all of the damage...."*

I've then considered the report from the PCC that visited the property in March 2023, which addresses these points. The key extracts are as follows:

*"Wrong materials – not correct – chipboard whilst not as resistant to water as ply is perfectly acceptable and not a cause of any failure. This much water would have rotted ply so can't be a reason for the failure and is a symptom to a cause...*

*Tanking – tanking paste is a 'option' but no evidence to support this was originally present, so we have put back as existing in 2016 as per our liability...Might be more common practice now but by no means why this install has failed...this is a red herring as the failure is at the tray level where the damage is worst and paste protects the plasterboard walls...*

*Supporting the tray – the pictures show the tray is correctly supported and surely within 6 years use this would have been immediately apparent if it was moving. He [L] is going off pictures and this is speculation that the photos and evidence simply don't support...*

*Fill gaps between wall and tray -...from the attached pictures the tray is butted up to the walls and tiles would have been resting on top of the tray so we can dismiss this. You can also see evidence of the silicone that would have been in place showing tiles would be sat on the tray so there were no gaps."*

The report concludes the claim was correctly declined, on the grounds that:

- the correct claims procedure hadn't been followed.
- the physical evidence points to failed sealant and grout (damage worst at low level) which is a policy exclusion.
- repairs completed in 2016 are well out of any warranty.

- the builder's [L's] report is post strip out and at best speculative based on [Mr A and Miss N's] own pictures.

The report summary is that the evidence supports a case of a shower room being subject to the normal wear and tear of usage and over the six years the grout and/or sealant has worn and allowed seepage each time it is used.

Looking at all three reports, it's clear there is disagreement on the likely cause(s) of the damage. But what seems to be a common theme is that water has got behind and/or under the shower tray and gradually caused damage. But it's the reason(s) for this that are disputed. Based on L's report, two factors are particularly relevant.

First the shower tray being insufficiently supported to prevent movement through use. The implication being this has created a gap through which water has got through to cause damage. The PCC says if the shower tray hadn't been supported, it would have been obvious when in use. I've not seen anything to indicate this is the case – had it been I would have expected Mr A and Miss N to have noticed it, certainly over time if not immediately. And it would be reasonable to expect this to create gap(s) in the sealant around the tray. Which I think would reasonably have been expected to be apparent if they were significant enough to allow water through. I'm not persuaded that if the movement wasn't apparent (or imperceptible) it would have created sufficient gap(s) to allow water to pass through.

The other point is about the shower tray being insufficiently sealed before the tiles were replaced. Having thought about this, I'm not persuaded, given my previous conclusions about the shower tray being supported. Mr A and Miss N say that if the shower tray was sealed in the way L describes, any leak from around the shower tray would then have been prevented from causing damage by that sealing. However, this means the sealant (and/or grouting) around the shower tray would already have failed. I'll come back to this point.

On the other two points in L's report, on the use of chipboard, I'm more persuaded by the PPC conclusion that damage would have been a symptom of the leak (and damage) over time – it wasn't a cause of the leak or the damage.

And on the issue of tanking, again this may have mitigated the damage, but it wasn't the cause of the leak itself which then caused the damage.

I've also considered the point about the damage only becoming apparent some six years after the previous repairs were carried out. While leaks can be gradual in their occurrence and consequently the damage that results, particularly if it is hidden and not immediately obvious it is happening, I'm not persuaded the damage would have taken some six years for it to become apparent, if the leak was significant. The elapse of time would also make it very difficult to know, with any certainty, when the leak first occurred, in relation to when the repair work was carried out.

In their final response, Lloyds say that failure of sealant or grout is an exclusion under the policy. The policy booklet includes the following statement under the same section *We'll pay claims where your buildings or your contents are damaged by and 8. Leaking oil or water & freezing water:*

- × *We won't pay claims for damage caused by:*
  - *The failure or lack of sealant or grout. For example, we won't pay a claim if the sealant around your shower wears away and causes water damage."*

Given my conclusions above about the damage being likely to be caused by a leak from around the shower tray (allowing water to get behind and under) then I think it's reasonable,

on the balance of probabilities, to conclude the leak and the consequent damage were the result of the failure or lack of sealant or grout. Which is an exclusion in the policy (and in most home insurance policies).

Taking all these points together, then I've concluded Lloyds acted fairly and reasonably in declining Mr A and Miss N's claim.

### **My final decision**

For the reasons set out above, it's my final decision not to uphold Mr A and Miss N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Miss N to accept or reject my decision before 12 March 2024.

Paul King  
**Ombudsman**