

The complaint

Mr and Mrs C complain that Admiral Insurance (Gibraltar) Limited (Admiral) unfairly declined a claim for damaged drains, under Mr C's buildings insurance policy.

I will refer to Mr C in my decision for ease.

What happened

Mr C says he was carrying out work in his garden using a digger to remove supporting posts for a section of decking. He says the posts were concreted a couple of metres into the ground. After levelling off the garden Mr C noticed his ensuite bathroom toilet, sink and shower were backing up. He says a family friend advised him he may have caused damage when using the digger. So, he contacted Admiral to make a claim.

Mr C says Admiral sent an assessor who concluded the drainage pipes hadn't been installed correctly when the house was built. However, Mr C says he'd had no issues prior to the work he'd carried out. He arranged for another inspection of the drainage pipes, which he paid for himself. Mr C says this shows it was his actions with the digger that accidentally caused damage to the sewage pipes.

In its final complaint response Admiral says its assessor found the cause of the damage was due to faulty design. It says this cause is excluded from Mr C's policy cover.

Mr C didn't think he'd been treated fairly and referred the matter to our service. Our investigator upheld his complaint. She says the report Mr C obtained was more persuasive than Admiral's report. She also noted there were no known issues with the drains before Mr C commenced work. She thought the evidence showed it was the removal of the decking support posts with a digger, that had most likely damaged the drains.

Our investigator says Admiral should reconsider Mr C's claim based on the remaining policy terms and conditions, without reliance on the faulty design exclusion. It should also reimburse the cost of the report Mr C paid for.

Admiral disputed this outcome. It said the depth of the support posts would likely be too shallow to have resulted in damage to the drains when they were removed. It asked for measurement information and confirmation of the weight of the digger Mr C used. Our investigator asked Mr C to clarify these points, which he did. He provided photos, a diagram showing the position of the drains, further comments from his representative on the extent of works he'd carried out, and confirmation of what the digger weighed.

Our investigator considered this information and provided Admiral with a copy. She maintained her view that it was most likely Mr C's actions with the digger that caused the damage.

Admiral didn't agree and asked for an ombudsman to consider the complaint.

It has been passed to me to decide.

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'm upholding this complaint. Let me explain.

The policy covers accidental damage to underground drains and pipes, where 'accidental damage' has a specific definition, and subject to a number of terms and conditions. One of which says the policy won't cover 'any loss or damage caused by faulty design, faulty materials or poor workmanship'. Admiral has relied on this policy term alone to decline the claim, so that's what I'll focus on.

The onus is on Admiral to show it would be fair to rely on this term in order to decline the claim. Usually when an insurer relies on a policy term like this, I'd expect it to show what it thinks the fault or poor workmanship is and how it thinks the structure should have been built, with reference to the relevant regulations, standards or guidance from the time the structure was built.

I've read the report Admiral obtained. In summary it says the drains were surveyed. The damage had been caused by poor installation where connecting pipes have been pushed together. And pipes had "*bellied*" due to a lack of support.

The report Mr C obtained from a drainage specialist says they also found bellies in the pipework, but they thought this had been caused by the surrounding ground crushing down on the pipes. This was thought to have caused the pipework to separate at the fittings and become misshapen. In addition, the specialist says the removal of the ground posts had resulted in the pipework collapsing.

The report provided by Mr C's drain specialist is considerably more detailed than Admiral's expert. It includes measurements to show where each issue was identified in the drain run and commentary around each of these points. Mr C's drain specialist is clear that the removal of ground posts, by levering, is most likely to be the cause of the damage to the drains. He comments specifically on the shallow depth of the drain close to the rear of the house. And that Mr C used a digger to remove the posts in this location.

In its response to our investigator's view Admiral says it doesn't think the posts were installed deep enough to contact and damage the drainage pipes. It says typically a post would be installed no more than 300mm. Admiral asked for confirmation of the depth of the pipe at the point it was damaged. It says the weight of the digger could've caused damage via compression of the ground. But it says as the pipes were at a depth of 1.2 metres this wasn't likely. As discussed Admiral also asked how much the digger weighed.

The response from Mr C's representative says Admiral's comments show it isn't aware of the extent of landscaping works Mr C had carried out. He provided photos of the garden prior to and after completion of the works. Together with a diagram showing ground levels before and after the work was completed. This also shows the position of the drains.

From this evidence it's clear Mr C carried out significant works in his garden. Prior to this there was a large area of decking, which had been elevated up from the ground level. Mr C removed the decking and infilled with material to raise the ground level, with a retaining wall installed some way into the garden. The support posts for the decking were levered out using a three-ton digger.

Mr C appointed a loss assessor to represent him in his claim. His representative highlights

the drain level close to the rear of Mr C's home was at 330mm prior to the work he carried out. The drain specialist's report says his investigation showed a decking post had been in the ground outside the kitchen window. This was removed with the use of the digger. The specialist comments that the drain run close to the property is very shallow. And that the use of the digger levering posts out the ground is most likely the cause of the damage to the drain runs.

From the photos provided the original decking frame extended some way out into Mr C's garden. I understand he used the digger throughout this area to remove the decking and its supporting framework.

I note Mr C's comments that he's lived at the property for over two years. He says there were no issues with the drains prior to the excavation work he carried out with the digger. I have no reason to doubt what he says.

Having considered all of this I find the report provided by the drain specialist Mr C instructed to be persuasive. This gives a detailed account of the position of the drains and the damage identified. As well as a credible account that removal of the decking posts using a heavy digger was the likely cause of the damage.

I acknowledge Admiral's comments about the depth of the drains. But I think the information the drain specialist and Mr C's representative provided show that it's more likely than not that the use of a digger to lever out decking posts, caused the damage. Because of this I agree with our investigator that Admiral didn't treat Mr C fairly when declining cover for his claim for the reason it gave. It should accept his claim without reliance on this exclusion and pay the cost of the drain specialist report.

My final decision

My final decision is that I uphold this complaint. Admiral Insurance Company Limited should:

- accept Mr C's claim under its remaining policy terms without reliance on the faulty design exclusion; and
- reimburse Mr C for the cost of the drainage specialist report.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 10 May 2024.

Mike Waldron
Ombudsman