

The complaint

Mrs and Mr S complain about how Liverpool Victoria Insurance Company Limited handled and settled a claim they made under their home insurance policy for damage caused by an escape of water.

What happened

Mrs and Mr S held a home insurance policy with Liverpool Victoria Insurance Company Limited (LV). On 7 October 2023, they discovered an escape of water that appeared to be coming from the shower within their en-suite bathroom. They observed a large wet patch under a floor tile next to the shower and said this area was so wet it had caused significant damage to the floor boards.

On 9 October 2023, Mrs and Mr S contacted LV and informed it they wanted to report a claim under their policy for water damage to their property. As the damage was significant, and Mrs and Mr S were concerned it would worsen if not remedied, they asked LV if they could appoint an independent contractor to trace and access the escape of water and undertake any required repairs subject to updates on the progress and cost of work being provided. LV agreed.

Mrs and Mr S appointed a contractor, which I'll refer to as "D" here. D attended their property to undertake trace and access work and removed the shower screen and tray to locate the source of the leak. It also removed, floor tiles and plywood overboard within Mrs and Mr S' en-suite bathroom.

On 11 October, D reported that it had ascertained that water was escaping from a seal between the tray and the waste, which had been happening for some time. D informed Mrs and Mr S that this had caused the original chipboard floor sheets to slowly absorb the water to the extent that a large area of flooring had completely disintegrated. It also provided a quotation for reinstatement works.

LV appointed a contractor and asked it to attend Mrs and Mr S' property to inspect the damage and assist in overseeing the claim. This contractor visited Mrs and Mr S' home on 24 October, which was after the shower screen and tray had been removed by D. LV's contractor was able to take photographs of the bathroom, but a thorough inspection wasn't possible due to the work that had been undertaken by D.

Following this visit, LV's contractor reported to it that it believed the escape of water had been caused by a lack of sealant and grout. It also explained that the tiles in the shower hadn't been installed properly as the adhesive had been applied in a way that had allowed water to penetrate. It stated the damage to the bathroom floor had only occurred where the shower tray had sat, which it said supported its opinion that a lack of sealant and grout was the cause of the escape of water.

Based on LV's contractor's opinion, it informed Mrs and Mr S it was declining their claim. It said the water escaping from the shower hadn't come directly from a water pipe. It stated the cause of the escape of water was wear and tear and this was something the policy excluded.

Being dissatisfied with how LV had dealt with and progressed their claim Mrs and Mr S complained. They disagreed that the damage had been caused by a lack of sealant and grout. Instead, they asserted they'd proven the damage had occurred because of a seal that had failed and that this was something they couldn't have anticipated or maintained. So, they said it was unfair to decline the claim.

On 26 October 2023, LV issued its final response to Mrs and Mr S' complaint. It explained that the cause of damage had been appropriately identified and had led to a correct decision to decline the claim due to the policy exclusions. So, it wasn't intending to take any further action.

Being dissatisfied with LV's response to their complaint, Mrs and Mr S asked our service to investigate what had happened. Our investigator assessed this complaint but initially didn't recommend upholding it. At this stage, they thought D a failed seal wasn't covered by the policy terms. So, they thought LV had acted reasonably and in line with the policy terms.

After Mrs and Mr S received our investigator's initial view of their complaint, they provided clarification evidence from D, which confirmed that the seal that had caused the leak was *"a failed rubber seal supplied with waste assembly and not a silicone-based sealant applied at tile – tray or screen – tray"* when installing the shower. This evidence persuaded our investigator to uphold this complaint. They recommended that LV settle Mrs and Mr S' claim in line with their policy, award 8% interest on the amount refunded from the date reinstatement costs were paid to the date of the refund and pay them £150 compensation for the distress and inconvenience they'd experienced as a result of their claim being incorrectly declined.

Mrs and Mr S agreed with our investigator's second view of their complaint. But LV rejected it. So, I've been asked to decide the fairest way to resolve this complaint.

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.

I'm sorry to learn of the difficulties Mrs and Mr S experienced after they notified LV that they wanted to make a claim under their policy. I'm sure they thought, at the start, their claim was going to be resolved with minimal fuss. But that didn't happen and it's clear Mrs and Mr S are unhappy with the way in which LV dealt with their claim.

This service is an informal dispute resolution service. When considering what's fair and reasonable, I'm required to take into account a number of matters, which include relevant law and regulations, regulators' rules, guidance and standards, codes of practice, the terms and conditions of any insurance policy and, where appropriate, what I consider to have been good industry practice at the relevant time. I'm not limited to the position a court might reach.

The crux of this complaint is whether LV treated Mrs and Mr S fairly, in how it dealt with their claim. And I'll explain why I don't think it did.

There are several parts to Mrs and Mr S' complaint and I think it will make things clearer if I deal with each issue separately.

The cause of the escape of water

I've indicated in the background to this complaint that Mrs and Mr S dispute that the cause of the escape of water was due to a lack of sealant and grout, which is LV's contention of what happened here.

I'm mindful that when LV's contractor attending Mrs and Mr S' property it was around 2 weeks after the claim was reported. By this time the trace and access work had already been undertaken and the shower screen and tray had already been removed. The bottom row of tiles within the shower cubicle had also been removed as had the sealant; this was required during the process of dismantling the shower. I understand that the rubber connection also was unavailable to inspect.

In view of the above, LV's appointed contractor wasn't able to undertake the assessment of the escape of water that D was able to. Due to the stage at which D provided input, it was able to investigate the source of the escape of water and it documented clearly what had caused the damage Mrs and Mr S reported.

Mrs and Mr S have shared evidence provided by D. I've carefully considered the content of D's reports. The reports state that water was escaping from a seal between the tray and waste, which had been happening for some time. This had caused the original chipboard floor sheets to slowly absorb the water to the extent that a large area of flooring had completely disintegrated. So, a large hole had been created. D clarified that the seal it was referring to was not a silicone sealant that had been used when the shower was installed rather it was a part supplied with the waste assembly by the manufacturer.

Based on the evidence, I'm satisfied the rubber seal provided a connection between the waste outlet pipe and the shower tray. It was a component part and would have been applied underneath the flooring, out of sight, when the shower was installed. So, it is entirely different to sealant.

Unlike sealant around the shower unit, the rubber seal wouldn't have been visible to Mrs and Mr S. They therefore wouldn't have been able to discern whether the seal had come away or become damaged to the point that it was causing an escape of water until there was evidence of a leak above the flooring.

LV has argued that issues with the shower waste seal can't be responsible for the escape of water because of the location of the moisture and damage. It says there's only moisture and damage around where the shower tray would have sat, which means the leak must be due to lack of sealant and grout. But I'll explain why I'm not persuaded by this argument.

The photographs I've seen of Mrs and Mr S' bathroom show it was in good condition and had been well maintained, which was in keeping with their property in general. And D explained in its supplemental report that the failed rubber seal *"was allowing a relatively small amount of waste water to escape, which was tracking on the underside of the tray and transferring to the chipboard based flooring, which, over time, caused the damage"*.

Based on D's opinion, it's plausible that when the seal that connected the waste outlet pipe to the shower tray failed this could have caused water damage in the area that was observed. And, having weighed up all the evidence, I'm satisfied D's conclusions on the cause of damage are comprehensible and robust. So, I'm persuaded the cause of the escape of water was a component part that failed.

The way in which the bathroom tiles were installed

LV has argued that the bathroom tiles were installed incorrectly. I've seen photographs that show the tile adhesive was applied in a dotted approach instead of being spread across both

the tile and the bathroom wall surface. LV contends this approach led to water penetration.

I understand the point LV is making here but I've already explained why I'm satisfied the damage was caused as a result of a rubber seal beneath the flooring failing. So, arguments that the tiles weren't properly attached to the bathroom wall aren't of relevance here. I'm satisfied that the way in which the bathroom tiles were applied haven't had a bearing on the damage that was caused by the failed part beneath the floor.

Is the cause of damage covered under the policy?

The terms of Mr A's insurance policy with LV outline the limitations of cover very comprehensively. It's clear from the policy terms that *"loss or damage caused...by the inadequacy or absence of appropriate sealant or grout"* is excluded under the policy.

If I'd been persuaded that the damage Mrs and Mr S reported had been caused by a lack of sealant or grout, I'd agree with LV that above policy exclusions should apply. And on that basis, I'd have upheld LV's decision to decline this claim. However, as I'm satisfied that sealant and grout didn't cause the water damage it would be unfair for LV to rely on the above exclusion to decline the claim.

For the reasons outlined previously, I'm satisfied the damage Mrs and Mr S reported was caused by a failed rubber connection between the waste outlet pipe and shower tray. Their policy covers any loss or damage caused by *"water escaping from or freezing in any fixed domestic water or heating installation, drainage installation...."*. So, water escaping from the shower because of a failed connection appears to be covered by Mrs and Mr S' policy.

LV has argued that the damage occurred gradually and seeks to rely on a general exclusion that avoids it covering *"loss or damage caused by wear and tear, wet or dry rot or anything which happens gradually"*.

I can see our investigator has already informed LV that our approach here would be to determine whether the policyholder ought to have been aware of the damage happening gradually and took reasonable action once they became aware.

It's clear from the evidence that water was escaping from a slow leak. And, while it would have been occurring over a period of time, I'm not persuaded it would have been evident until the water had been absorbed by the flooring and been seen above it. This is because the damaged rubber seal was located under the bathroom flooring. So, it was concealed from view. This would make it difficult to see the damage until escaping water became evident above the flooring, which explains why Mrs and Mr S only became aware of the escape of water when they observed a large wet patch under a floor tile next to the shower.

Bearing in mind the damaged part was concealed by flooring, I'm not persuaded it's reasonable that Mrs and Mr S ought to have noticed the damage before they reported it to LV. I'm satisfied they had no opportunity to observe the damage before the point they did. And it isn't reasonable to suggest they should have maintained that part before it failed and caused damage. Overall, I think the account they've given about the circumstances in which they came to notice the damage is credible.

The action Mrs and Mr S took after discovering the damage is consistent with someone who was acting promptly. They didn't ignore the damage to their property. Their focus was to act swiftly to prevent further damage. They instructed a contractor promptly after noticing the damage. I think this demonstrates Mrs and Mr S were keen to resolve the issue quickly. They also shared updates and D's report swiftly with LV.

For the reasons outlined, I'm satisfied Mrs and Mr S didn't know about the damage before they reported it and couldn't have taken any steps to prevent the damage becoming worse until they became aware of it. I'm persuaded they took proactive steps and appropriate action to report and remedy the damage once they became aware. It follows that it wouldn't be fair for LV to rely on a gradual cause exclusion here.

Putting things right

I appreciate this has been a stressful situation for Mrs and Mr S. Their claim was declined when it shouldn't have been and this caused unnecessary trouble and upset. They also paid themselves to put matters right and remedy the damage caused by the escape of water. I've seen evidence that demonstrates they incurred a significant cost in reinstating their bathroom to its pre-loss condition.

I agree with our investigator that LV should settle Mrs and Mr S' claim in line with their policy terms and conditions. In order to reflect the trouble and upset the repudiation decision caused, I'm directing also LV to pay 8% interest on the amount refunded from the date the reinstatement costs were paid by Mrs and Mr S to the date the refund is paid to them.

Mrs and Mr S should be aware that to enable LV to fulfil my direction that it settle this claim, they'll need to provide it with evidence of any costs incurred in reinstating the bathroom. This will need to show how and where work was required, the cost of it and proof of payment.

Our investigator recommended that LV resolve this complaint by paying £150 compensation to Mrs and Mr S for the distress and inconvenience they'd experienced as a result of their claim being incorrectly declined. I agree that compensation should be paid to Mrs and Mr S on this basis.

I've carefully thought about whether the compensation recommended is fair and reasonable. When deciding what potential compensation to award I must take two things into account: financial loss as a result of any business error and non-financial loss, including inconvenience and upset.

Mrs and Mr S have incurred a financial loss because of what happened. They've financed the cost of reinstatement works themselves as their claim was declined. I've already explained, as part of this decision, I'm directing LV to settle Mrs and Mr S' claim in line with their policy terms. So, I'm satisfied properly incurred reinstatement costs will be reimbursed in accordance with what the policy would have paid had the claim been approved.

When considering awards for non-financial loss there isn't a set formula that we use to calculate awards for particular errors. It's my role to consider what impact the business' actions have had on the consumer and to decide, within guidelines set by our service, whether compensation would be appropriate in the circumstances.

It's clear that Mrs and Mr S were caused trouble and upset as a result of the outcome of their claim. They were inconvenienced by what happened. Their claim was declined when it shouldn't have been and I don't doubt they would've been frustrated by this. They were also left without a working en-suite shower and a large hole in the floor. With a family living within the home, I can understand why this caused concern, safety issues and additional upset.

I'm satisfied that an award of compensation is appropriate to reflect the inconvenience Mrs and Mr S experienced. And having taken into account the trouble and upset they are bound to have experienced here I'm satisfied that amount already recommended by our investigator is in line with our approach in similar scenarios. I haven't seen enough evidence

to persuade me that a higher award is warranted here. So, I'm not going to increase the compensation our investigator recommended LV to pay Mrs and Mr S to resolve his complaint.

My final decision

My final decision is that I uphold this complaint. I require Liverpool Victoria Insurance Company Limited to:

- Settle Mrs and Mr S' claim for damage to their en-suite bathroom by reimbursing them for the costs they've already incurred in reinstating their bathroom provided it's in line with the policy terms;
- pay simple interest at a rate of 8% per annum on the on the amount to be refunded from the date of payment to the date of settlement*;
- pay Mrs and Mr S £150 compensation.

*HM Revenue & Customs requires Liverpool Victoria Insurance Company Limited to take off tax from this interest. Liverpool Victoria Insurance Company Limited must give Mrs and Mr S a certificate showing how much tax it's taken off it they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 11 May 2024.

Julie Mitchell
Ombudsman