

The complaint

Mr and Mrs P have complained that Accredited Insurance (Europe) Limited ('Accredited') declined their claim for accidental damage under their home insurance policy.

What happened

Mr and Mrs P noticed damage to a section of their kitchen worktop in June 2023. This comprised of two four-inch cracks and some smaller, finer cracks in between. Mr and Mrs P reported the damage to Accredited who were their home insurers at the relevant time. Accredited's surveyor inspected and reported on the damage in July 2023.

In his report, Accredited's surveyor initially gave Mr and Mrs P the benefit of the doubt that the damage had been caused by accidental damage and was covered by the relevant policy. On review however, Accredited declined the claim as it considered that there was insufficient evidence of accidental damage. Mr and Mrs P complained to Accredited, however it maintained its stance and they then lodged a complaint with this service.

The relevant investigator upheld Mr and Mrs P's complaint. He wasn't satisfied that Accredited had fairly and reasonably in declining the claim. He recommended that Accredited should deal with the claim in line with the relevant accidental damage provision in the policy and pay 50% towards the undamaged part of the kitchen worktop, plus interest.

Accredited didn't agree with the investigator's view. In the circumstances, the matter has been referred to me to make a final decision in my role as Ombudsman.

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.

The key issue for me to determine is whether Accredited applied the terms and conditions of the policy, and generally acted, in a fair and reasonable manner in declining Mr and Mrs P's claim. I don't consider that it did, and I'll explain why.

In determining this matter, I've also considered the submissions of both parties, summarised as follows. I turn firstly to Mr and Mrs P's submissions. Following Accredited's decision to decline their claim, Mr and Mrs P then had their own independent kitchen specialist come to assess the damage. His report recorded that; *'the damage caused to the worktop is Thermal Fracture (When a hot pan has been placed on the worktop causing it to crack).'*

Mr and Mrs P said that not only did they have to replace the damaged worktop, *'but also the other matching worktop in the kitchen, due to this being discontinued.'* They said that their kitchen expert said that a repair wouldn't be possible, and that the original worktop was no longer available. The total cost of replacement was £3,600. Mr and Mrs P considered the damage to be accidental damage and paid their insurance premiums to: *'cover for situations such as this, and therefore would expect the Insurance company to uphold their part.'*

I now turn to Accredited's submissions regarding this matter. It referred to the relevant terms and conditions in the policy booklet, including the general exclusion clauses in the policy. It also referred to the report of its surveyor. Following an in-house review however, it had concluded that there was no evidence of accidental damage caused at a specific time. It also said that there was no evidence from the photographs of accidental damage caused by something external and identifiable. Accredited acknowledged that its appointed surveyor had stated that he couldn't: *'evidence that wear and tear is the cause, or poor fitting so benefit of the doubt has to be given and claim considered as AD.'* It said that it didn't agree with this statement and said that for a valid claim, accidental damage must be identified as the cause of damage. It therefore declined the claim.

Accredited also relied on the exclusion clause relating to gradual or maintenance-related loss or damage. It said that since making the claim, Mr and Mrs P had appointed their own expert and that it was: *'reliably informed that the damage was caused by heat.'* In response to this, it said that it didn't dispute that the damage had been caused by heat, however it said that there was no evidence to suggest that this damage was caused by an accidental event or that there has been a one-off heat incident that had caused the worktop to crack.

It said that given the location of the worktop and its intended purpose, it also thought that cracking caused by heat could be because of a latent defect in the product. It said it *'would naturally be expected to be heat resistant. If there was enough heat in a single event, we would have expected the policy holder to have been aware of this.'* It said it would expect to see some sort of scalding to the worktop, for example a pan ring, and a burning of the resin used to bond the material of the worktop which would leave dark marks or yellow stains.

Accredited also said that Mr and Mrs P had said he noticed the crack getting progressively bigger and this didn't suggest a one-off event of accidental damage. Accredited therefore considered that the exclusion clause applied as it considered that cracking due to heat; *'would be as a result of exposure to sunlight or atmospheric conditions and is consistent with the cracks appearing and gradually worsening as you have explained to us...'*

Accredited noted that Mr and Mrs P had told it that they didn't know the cause of the damage, and hadn't identified; *'a single incident of putting a pan onto the worktop causing the crack, as such I do not agree that the definition of accidental damage has been met...'* It said that it appeared that the cracking had occurred due to use of the worktop over time, and possibly putting hot pans on top the worktop multiple times. It considered that all worktops would have a limited tolerance to heat over time which could limit the lifetime of the worktop.

The starting point in cases of this nature will be the terms and conditions of the relevant policy. In this case, *'accidental damage'* is covered in principle by the relevant policy. It is defined as being, *'sudden, unexpected and physical damage which: i. happens at a specific time; and ii. was not deliberate; and iii. was caused by something external and identifiable.'* As to general exclusions within the policy, under the heading; *'Any gradual or maintenance-related loss or damage'*, it states the following; *'Loss or damage as a result of gradual causes including...wear and tear; gradual deterioration (whether you were aware of it or not);...exposure to sunlight or atmospheric conditions;...warping or shrinkage..'*

Mr and Mrs P were candid in stating that they didn't know the cause of damage. I also note that they said to Accredited when reporting the matter that the crack had been getting progressively bigger. Their expert provided a clear opinion that the damage was due to thermal fracture. Accredited's expert didn't offer an opinion on the cause of damage, however, he said that there was no evidence that that wear and tear or poor fitting was the cause. He'd also explained to Mr and Mrs P that undamaged worktops and tiles wouldn't be replaced, and discussed the potential for surface repair, and Mr and Mrs P had fairly and reasonably stated that they were happy with this method.

Accredited suggested a variety of reasons why the damage might have occurred. It accepted the opinion of Mr and Mrs P's expert that the cracking was caused by heat. Its own expert had been clear that the damage wasn't due to wear and tear or poor fitting. Accredited's review suggested there may have been a latent defect, although this wasn't mentioned by its expert. It thought that the fracture was consistent with being exposed to sunlight or atmospheric conditions. It thought that all worktops had a limited tolerance to heat, and the cracking had occurred due to use of the worktop over time, possibly by putting hot pans on the worktop multiple times.

I agree with Accredited that for a claim to be valid, accidental damage as defined in the policy must be identified as the cause of damage. The onus is upon the policyholder to provide evidence to this effect. I consider that Mr and Mrs P provided such persuasive evidence in the form of their kitchen expert's report. This short report was categorical that the cause of damage was thermal fracture and it further explained this as being; *'When a hot pan has been placed on the worktop causing it to crack'*. Unfortunately, Accredited's own surveyor's report doesn't provide an alternative opinion as to the cause of damage.

I have some sympathy with Accredited's argument that if the cracking had been caused by a single incident caused by placing a hot pan on the surface, it might have been expected that there would have been some evidence of burn marks on the surface, however this may depend on the surface's material. As the parties agree that the damage had been caused by heat however, I consider that damage from a single incident with a hot pan is far more likely than multiple such incidents leading to this. I also consider it far more likely than damage being caused by being exposed by sunlight or atmospheric conditions.

This is supported by the photographic evidence which indicates that the worktops appear to be relatively new and not showing signs of general fatigue or atmospheric damage. The cracks appear to be clean, and relatively fresh. Whilst these may well have got bigger over a period of time, on the balance of probabilities, I consider that these first appeared unexpectedly and rapidly. This is supported in the report of Accredited's surveyor who recorded Mr and Mrs P's comments that they noticed the damage suddenly.

In summary and turning to the definition of *'accidental damage'* in the policy documents, I consider that on the balance of probabilities, as above, the damage was sudden, unexpected and physical damage. I also consider that the initial cracking, before it had become wider, had occurred on a specific occasion. I'm satisfied that the damage wasn't deliberate, and Mr and Mrs P had demonstrated their readiness to accept a repair rather than new worktops when this was offered as an initial solution. Finally, I also consider that the damage was caused by something external. Mr and Mrs P's expert considered that this was due to a hot pan being placed on the surface. The evidence of experts would normally be considered persuasive in the absence of clear evidence to the contrary, as in this case.

As for the general exclusion upon which Accredited relied, I'm satisfied that the damage here wasn't caused by gradual causes or gradual deterioration through any of the factors identified in the relevant exclusion. This is supported by the report of Accredited's surveyor.

In the circumstances, I conclude that the damage was accidental and that none of the general exclusions apply. It follows that I consider that Accredited didn't apply the terms and conditions of the policy in a fair and reasonable manner when it declined Mr and Mrs P's claim. I've noted that the policy makes it clear that Accredited; *'will not pay the cost of replacing or repairing any undamaged parts of the building which form part of a...set, suite or part of a common design.'* I note Mr and Mrs P's evidence that the original worktop is no longer available. It's understandable that they would wish to change all worktops to ensure that they matched. I also agree that the worktops form a prominent and integral part of the

kitchen and therefore concur with the investigator that a fair and reasonable outcome here would be for Accredited to make a 50% contribution towards the undamaged countertops.

In conclusion, Accredited is required to settle Mr and Mrs P's claim in full for the damaged worktop and to pay 50% of the cost of replacement of the undamaged kitchen worktop together with interest. I note that Accredited's surveyor had calculated that the damaged worktop was the same length as the remaining undamaged sections. Whilst this can't be an exact apportionment, I consider that Accredited should pay £1,800 for the replacement of the damaged worktop together with a further 50% of the replacement cost for the undamaged sections, resulting in a further cash settlement of £900. Accredited should therefore make a cash settlement of £2,700 in total, subject to Mr and Mrs P supplying a receipted invoice for the total amount. I also agree that Accredited should pay interest from the date Mr and Mrs P paid their kitchen fitter, to the date of settlement of this complaint.

My final decision

For the reasons given above, I uphold Mr and Mrs P's complaint and require Accredited Insurance (Europe) Limited to do the following in response to their complaint: -

- Reimburse Mr and Mrs P's the sum of £2,700, less any applicable excess, within 28 days of acceptance of this final decision, and subject to production by Mr and Mrs P of evidence of payment for the relevant work to replace their kitchen worktops.
- To pay interest on the above sum calculated from the date when Mr and Mrs P paid the sum of £3,600 up to the date of settlement, at 8% a year simple interest.

*If Accredited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs P how much it's taken off. It should also give Mr and Mrs P a certificate showing this if they ask for one, so that they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 8 May 2024.

Claire Jones
Ombudsman