

## **The complaint**

Miss O is unhappy that Red Sands Insurance Company (Europe) Limited ("RSI") declined her flood damage claim under her buildings insurance.

## **What happened**

The background to this complaint is extensive but well-known to both parties. So, I've set out a summary of what I think are the key events.

In October 2023, flood water blocked the drains around Miss O's home and pooled in her kitchen. She was away at the time. The council cleared the drains and Miss O installed a soakaway, gutters to divert water from the road away from her home, and a driveway lip. Miss O said the water had drained away and there was no obvious significant damage, so she waited for her kitchen to dry out.

It became apparent that the kitchen wasn't drying, so Miss O had inspections carried out. As she had one area stripped for repair, other damage was revealed. This continued until she'd stripped out her kitchen. The extent of the damage became clear, so Miss O claimed under her policy.

RSI surveyed the damage and responded to Miss O's claim. It said:

- Photos of the floor showed long-standing damage not caused by a one-off flood event.
- Miss O had prejudiced the claim by starting repairs because it couldn't establish what damage had been caused by the flood.
- There was no way of knowing if the water came through the doors or the floors and walls.

For these reasons, RSI declined the claim.

Miss O complained to RSI but it issued a final response the following day maintaining its position. So Miss O brought her complaint to us.

RSI arranged another survey, reaching the same conclusion as before and relying on the fact that Miss O hadn't reported her claim within 28 days. The surveyor submitted a schedule for the damage based on what was likely to be necessary following this type of incident.

One of our investigators looked into the complaint but he didn't think RSI had treated Miss O fairly. He said RSI unfairly relied on the 28 days condition because Miss O contacted RSI as soon as she realised the extent of damage. Our investigator thought RSI had unfairly concluded that Miss O prejudiced her claim. He said its experts would be able to make an educated guess regarding the cost of likely work needed, and the surveyor's schedule confirmed that. In respect of the flood source, our investigator pointed out that a flood was not defined in the policy, so its source didn't matter here. He recommended that RSI reconsider the claim and, if it paid the repair costs, to add 8% interest. In addition, he thought compensation of £150 was appropriate for the distress caused by rejecting the claim.

outright.

RSI disagreed and provided further comment on its reasons for declining the claim. Our investigator issued a second opinion, broadly in line with his first, and responded to further contact from RSI. As RSI continued to disagree, the complaint was 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've decided to uphold Miss O's complaint for the same reasons set out by our investigator.

There seems to be little dispute about the overall circumstances of the claim, so I see no benefit in repeating details already known to Miss O and RSI. Instead, I'll focus on why RSI declined the claim and explain the reasons for my decision.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably.

#### *Long-standing damage*

RSI declined the claim in part because it thought the damage had happened gradually. The policy states:

##### *Exclusions in this policy*

- *It is also only valid if You ensure the building is properly maintained. This means the roof should be watertight, gutters clear, watertight and free flowing and the walls straight with any brick or blockwork fully pointed. This also means You will need to pay for any wear and tear and specifically anything that causes damage over a period greater than 7 days.*
- *You should take all reasonable precautions to prevent or minimise any loss, damage or injury.*

It's not clear over what period the damage occurred. But the issue here is that it was below floor level and Miss O reported being unaware of the damage. She described the measures she took to prevent further flooding, and I haven't seen evidence to suggest that she failed to maintain her home. Our stance in these situations is that it's unreasonable to decline a claim for damage that the policyholder would not reasonably have been aware of. I'm satisfied that's the situation Miss O reported.

RSI hasn't provided evidence to persuade me that Miss O ought to have been aware any sooner. Therefore, I find that RSI unfairly declined the claim by relying on the policy exclusion for wear and tear.

### *Delayed and prejudiced claim*

The policy sets out the detail of the contract between Miss O and RSI. Having looked at the policy wording, I agree that the following condition is stated:

#### *Claims Handling and Settlement*

*In the unfortunate event that You need to make a claim...This needs to be done as soon as reasonably possible of You becoming aware of the loss. Anything submitted more than 28 days after You became aware of the loss will not be considered.*

However, Miss O reported that she was unaware of the extent of damage, such that she hadn't intended to make a claim. When she became aware of the damage, she claimed within 28 days. I realise that RSI should not be liable for continued damage once Miss O became aware of the problem. But it's unreasonable to rely on this condition to decline the claim in full. That's especially true where, as is the case here, a schedule of works has already been estimated.

Miss O has evidence of the work she's already had done, so I think it's reasonable that RSI's experts could use that to assess what, if anything should be covered under the policy.

### *Flood definition and source*

The policy doesn't define a flood, and there's no dispute about that. Nevertheless, RSI said it's clear what is meant by a flood and refers to a single, sudden event. The policy simply refers to sudden and unforeseen damage caused by flood. Unfortunately, in the absence of a definition, I can't agree that it's clear what is meant by flood.

In reaching my decision, amongst other things I must take into consideration best practice and the law. As the courts accept that a flood is water building up regardless of where it came from, and it need not be the result of a sudden or violent event. I see no reason to depart from that definition.

Therefore, I can't agree that RSI declined the claim fairly by relying on an undefined meaning of flood.

### *Conclusion*

While I understand that RSI has concerns that the claim has been prejudiced, I don't think it was fair to decline the claim in full for the reasons it gave. To put matters right, RSI should reconsider Miss O's claim under the remaining terms of the policy. Our investigator proposed £150 compensation for the distress its outright rejection caused, and I'm satisfied that's in line with this service's view on compensation.

## **My final decision**

For the reasons I've given, my final decision is that I uphold Miss O's complaint and Red Sands Insurance Company (Europe) Limited must:

- Reconsider Miss O's claim under the remaining terms of the policy. If the claim is accepted, RSI should settle the claim based on its surveyor's schedule of work and any evidence of costs incurred for work done that Miss O provides.
- In the event that RSI pays a settlement to Miss O, it should add 8% simple interest\* from the date she incurred the cost until the date it makes payment.
- Pay £150 compensation for the distress and inconvenience caused to Miss O when it rejected her complaint without fairly considering the overall circumstances.

\*If Red Sands Insurance Company (Europe) Limited considers that tax should be deducted from the interest element of my award, it should provide Miss O with a certificate showing how much it has taken off so she can reclaim that amount, if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 15 November 2024.

Debra Vaughan  
**Ombudsman**