

## The complaint

Mr T complains that Admiral Insurance (Gibraltar) Limited (Admiral) unfairly declined his claim for damage caused by a water leak, under his home buildings insurance policy.

## What happened

In June 2023 Mr T contacted Admiral to make a claim for damage caused by a leak that originated from an upstairs shower. He says that 18 months prior to this he'd noticed some water leaking below the shower area. He arranged for a builder to inspect the issue. The builder found the silicone sealant needed renewing. Mr T paid for this work to be done. He says it wasn't until June 2023 that he suddenly noticed the ceiling and wall in the hallway and downstairs toilet showed signs of water damage.

Mr T arranged for a contractor to investigate. He found the original ceiling was concealed by a false ceiling. This had become sodden with a leak from the upstairs shower. It had eventually collapsed onto the false ceiling, which is when the signs of water damage became apparent. Mr T says the leak initially stained the walls and ceiling. But by the time Admiral sent a surveyor the staining had darkened, and the paint had blistered. Mr T says there was no mould as indicated by the surveyor, only discolouration.

Admiral declined Mr T's claim. He says it told him the leak had been ongoing for some time and he hadn't taken steps to mitigate the problem. Mr T maintained he knew nothing of the leak until this became apparent in June 2023.

In its final complaint response Admiral refers to its policy terms that require Mr T to take action to prevent further loss or damage. Also, that loss due to failed grout or sealant is excluded from cover.

Mr T didn't think he'd been treated fairly, and he referred the matter to our service. Our investigator didn't uphold his complaint. He was more persuaded by Admiral's view that the damage was caused gradually over time, due to failed grout and sealant. He acknowledged Mr T's contractor had referred to a leaking waste pipe. But he says the evidence doesn't support this, and the damage was more likely the result of the failed grout and sealant. Mr T didn't accept our investigator's findings and asked for an ombudsman to consider the matter.

I issued a provisional decision in June 2024 explaining that I was intending to uphold Mr T's complaint. Here's what I said:

provisional decision

*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 my intention is to uphold Mr T's complaint. Let me explain.*

*It's for the policyholder to show that they have suffered an insured loss. If they can do so,*

*then, generally speaking, the insurer must pay the claim. This is unless it can reasonably rely on a policy exclusion not to.*

*Mr T's policy provides cover in the event of an escape of water. I've considered whether this insured cause applies here.*

*The surveyor who inspected the damage on 27 June 2023 found high levels of moisture, "around the last tile course tracking into the floor". I've seen photos of the meter readings he took in and around the shower, which support this point. The conclusion being that water had penetrated behind the tiles in the shower cubicle, either from faulty sealant, or grouting, or both. The surveyor comments that the issues seems to be ongoing as Mr T had mentioned a leak from the same area that he believed had been resolved a few years ago. He refers to a potential for failed sealant or grout from the shower enclosure.*

*Mr T's policy terms say:*

*"What is not covered - Loss or damage caused by: faulty, failed or inadequate grout or sealant."*

*If the cause of the damage was failed grout/sealant no cover was in place for the loss Mr T claimed. However, he explains that repairs to the sealant and grout were undertaken around 18 months prior to his claim.*

*The contractor Mr T employed to investigate the damage on 3 July 2023 found there had been a leak ongoing for some time. He says this had been absorbed by the original ceiling materials. The contractor says Mr T couldn't have identified the leak until the original ceiling collapsed. He confirms he'd, "secured and disconnected the water flow to [Mr T's] shower so that the chance of further leaks are negated". The contractor also says the silicone, tiling and shower tray are in good condition. And that the leak appears to originate from the shower trap/drainage system.*

*I've thought about Mr T's comments that the leak originated from a faulty waste trap/pipe. He's provided an invoice he received from the plumber he employed. This is dated 21 June 2023 and says, "Leak from waste and pipe is now repaired".*

*We asked Admiral for its comments on this point. It responded to say the photos Mr T supplied showed black mould and extensive staining. It says this indicates the leak had been apparent for some significant length of time. It also says the actions of Mr T's contractor to disconnect the water to the shower, indicates this is the first occasion where a supplier has stated the pipework has now been fixed.*

*I've thought carefully about what this evidence shows. I think the plumber's invoice from 21 June 2023 is clear. It says there was a leak from the waste pipe, which had been repaired. The plumber and contractor are separate businesses. It's not clear whether Mr T's contractor was aware a plumber had repaired the leaking "waste and pipe". So, I don't agree with Admiral's point that this shows repairs weren't carried out in this area. Mr T wasn't going to use the shower until the area had been made safe and repaired. So, isolating the water supply seems a reasonable thing to do. But again, I don't think this shows the waste pipe wasn't the source of the leak.*

*I think the photos taken by Admiral's surveyor support Mr T's contractor's comments that the sealant, tiling, and shower enclosure were in good condition. The surveyor says there is a potential for failed sealant or grout. But doesn't provide detailed comments on its condition.*

*I acknowledge Admiral's point that there is significant staining and some mould on the photos provided by Mr T. As well as those included in the surveyor's report. But these photos were taken several weeks after the damage was first noticed. I think the staining and mould could reasonably have worsened and developed during this period. I don't think this shows Mr T failed to notice and take reasonable action to mitigate the damage.*

*Admiral's surveyor found some elevated moisture readings around the last tile course in the shower. But given the ongoing leak in this area, indicated to be from the waste trap/pipe, I don't think this is sufficient reason to decline Mr T's claim.*

*Having considered all of this I don't think Admiral treated Mr T fairly when declining his claim for the reasons it gave. I think it's more likely than not that the waste trap/pipe was the source of the leak. The original ceiling material absorbed the water for a period of time. The issue only became apparent when it eventually collapsed, and the sodden material came into contact with the false ceiling. I note the contractor's comments that the shower is part of the en-suite bathroom for Mr T's guest bedroom, so it receives sporadic use.*

*Based on all the evidence and circumstances I think Admiral should pay Mr T's claim. His contractor has now completed the repairs. From the quote supplied the work was to reinstate the damaged areas and reuse the parts of the bathroom that could be saved. Admiral should pay Mr T this amount plus 8% simple interest from the date he paid the invoice.*

*I said I was intending to uphold this complaint and Admiral should:*

- pay Mr T for the cost of the repairs plus 8% simple interest from the date he paid the invoice until payment is made.*

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Admiral responded to say that it felt a compromise could be reached to cover part of the damage claimed. It says the damage to the downstairs toilet ceiling is most significant towards the external wall and this lessens further into the house.

Admiral refers to Mr T's contractor's comments. This says, "*the spread of the damage is consistent with water running down and dripping from the bottom of the trap/drainage mechanism, and also running along the bottom of the cambered shower tray*". It refers to additional UPVC beading that had been added to the shower enclosure to aid wastewater to drain and not sit on the ledge of the tray. It says this indicates a previous repair/preventative measure to stop water passing between the shower tray and the wall tiles, due to worn or failed sealant.

In its submissions Admiral says that if the shower trap was leaking, as it is set below the bathroom floor, the water wouldn't contact the shower tray and wouldn't therefore run along the camber of the tray. It says that the damage to the floorboards and joists is worse closest to the external wall, which doesn't support the shower trap was leaking as this is positioned away from the external wall.

Admiral says the location of the damaged floorboards and joists suggests the cause was due to a leak from the shower enclosure. It again refers to signs of remedial measures to the sealant, and comments that the damage looks to have been ongoing for some time.

Admiral says it's not possible to access the shower trap from the works carried out by Mr T's contractor. It was only possible to gain access to around 40/50cm of the waste pipe that is running parallel to a joist. As Mr T's contractor confirmed it had completed repairs to a leak

from the waste pipe, Admiral says it will look to cover the cost of repairs to the downstairs decorations. This includes the ceilings in the toilet and hallway along with redecoration of the hallway. It says it's reasonable to expect this damage was caused by the leaking pipe/trap.

Admiral concludes its response to say it can cover any damage likely to have been caused by a leaking waste pipe, but not damage caused by failed sealant.

We provided a copy of Admiral's comments and the annotated photos it supplied in response to my provisional decision to Mr T for his comments.

In his response Mr T says the water pipe is situated next to the external wall not away from this wall as Admiral has incorrectly stated. He says the diagram Admiral provided is inaccurate in relation to the position of the toilet, shower unit and wash basin. Mr T says this undermines what Admiral says in its response to my provisional decision.

#### *second provisional decision*

*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 changing the outcome set out in my first provisional decision. Let me explain.*

*As discussed in my provisional decision I'm satisfied there was a leak from the waste trap/pipe. This was repaired by the contractor Mr T employed. I remain satisfied that this has at least contributed to the original ceiling becoming sodden. When this collapsed it then resulted in the damage to the false ceilings and decorations to the lower floor.*

*I've considered Admiral's comments carefully and revisited the evidence, including the photos that were originally taken. There is evidence of some remedial repairs in the shower cubicle likely in response to water penetrating the sealant/grouting. The position of the worst damage corresponds closely with the outside edge of the shower cubicle. Admiral's surveyor also found high moisture readings in the lowest tile run in the shower. All this points to water escaping through the shower cubicle over time due to failed grouting/sealant. Damage caused in this way isn't covered by Mr T's policy.*

*I think the business makes a fair point that the damaged floorboards and joists are unlikely to have been damaged as a result of a leak in the shower trap/waste pipe. A leak from this area will have tracked down onto the false ceiling. That said there is still evidence that a leak occurred from the trap/waste pipe. This cannot be ruled out as the cause of the damage to the ceiling and decorations in the floor beneath.*

*Having considered all of this I'm minded to agree with Admiral that its suggestion to cover the cost of repairs relating to the leaking waste trap/pipe is fair. More specifically this should include the ceilings and damage to decorations below this level. Mr T can provide details and cost of the work carried out to Admiral for it to verify and provide a refund. Interest at 8% simple should be added from the date the invoice was paid until this is refunded in full.*

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Mr T responded with a letter from the contractor that completed the repairs to his home. The letter refers to the remedial works completed to the shower. It says it stress tested this by spraying water inside the shower tray. The contractor says no water escaped that was visible during this process. It reiterates that the remedial repairs to the shower were

completed some time before Mr T's claim.

The contractor says whilst removing the shower tray it was evident moisture and rot had tracked up from the false ceiling. It says there was a wooden wall plate on the edge of the wall beneath the tray. It says this is the likely reason for the moisture that Admiral's surveyor found in the lower tile run. It comments that the moisture didn't track further up the wall, although this was plaster coated and would've been likely to happen if the shower tray was the source of the leak. The contractor also refers to damaged plywood under tiles on the outside of the shower tray. It says the tiles were loose and moving in this area.

Mr T's contractor says that all the joists under the shower tray were rotten and sodden. It believes it's unlikely that this was caused by water leaking from the tray itself. The contractor says its belief is that the underside of the shower tray absorbed a considerable amount of water through the leaking shower trap. It says due to the warm house, and the absorbing nature of wood the damage is more indicative of moisture tracking up from the false ceiling.

In its letter the contractor says the damage would've been restricted to the areas in proximity to the sealant/grout – if Admiral's view is correct. It says the moisture readings could be caused by upward tracking of water and condensation, as opposed to "*direct absorbing*". If this was the case it says the readings would be much higher.

Mr T's contractor says the scope and cost of the repair works would not be noticeably different even if it was failed grout/sealant that was responsible for the damage. It says the repair work was done on a minimum cost basis. This meant re-using the bathroom fixtures and only tiling inside the shower enclosure, to keep costs down. It says this was done even though the new tiles didn't match the existing ones.

Admiral didn't respond with any further comments or information for me to consider.

### **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 not persuaded to change my provisional findings.

I've revisited the evidence and the arguments provided by both parties. As I described in my second provisional decision, Admiral sets out a persuasive explanation for how the damage occurred with reference to the appearance of the timbers. The photos from when the damage was first revealed show that the damp and rot in the joists and timbers is worse closer to the external wall. This is directly below where water is thought to have penetrated through defective sealant/grouting in the shower cubicle.

Repairs had previously been completed in this area of the shower. I note Mr T's contractor's comments that water was sprayed to test for leaks in this area, but none were apparent. I acknowledge the contractor's view. But I think the pattern of the damp and the rot in the timbers indicates that the moisture originated through the shower tray above – spreading through the timbers overtime.

I've thought carefully about the contractor's view that moisture is likely to have tracked upwards from the leaking trap. But I think Admiral's view that the moisture from the leaking trap tracked downwards, is more persuasive. From what I've seen I think the false ceiling became sodden due to the leaking shower trap. It eventually collapsed onto the one below resulting in the damage to the ceiling and the decorations beneath. So, I think Admiral's account of what most likely happened here is reasonable. And that its description of the joists and timbers becoming damaged over time by water penetrating through defective sealant and grouting is persuasive.

I note what Mr T's contractor says about the cause of the damage not impacting significantly on the repairs that were needed. But Admiral is required to indemnify Mr T for damage resulting from an insured cause only. It remains that he isn't covered for damage caused by defective sealant and/or grouting. This means Admiral should cover the cost of repairs to the ceiling and downstairs decorations. It should also pay 8% simple interest on this delayed payment. But it needn't pay for the repairs to the joists or the shower room.

Having considered all of this I'm satisfied my provisional decision is fair. This will now become my final decision.

### **My final decision**

My final decision is that I uphold this complaint in part. Admiral Insurance (Gibraltar) Limited should:

- refund Mr T with what he paid to repair his ceilings and ground floor decorations due to the leak from the waste trap/pipe. Mr T should provide Admiral with information from his contractor to show what this work entailed and cost. Admiral should pay 8% simple interest\* on the refunded amount from the date Mr T paid the invoice until this is refunded.

\*If Admiral considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 8 October 2024.

Mike Waldron  
**Ombudsman**