

The complaint

Ms A and Mr R have complained about how Advantage Insurance Company Limited (Advantage) dealt with a claim under their home insurance policy.

As Ms A mainly seemed to deal with the claim and complaint, for ease, I will normally only refer to her.

What happened

Ms A contacted Advantage to make a claim when grey water was found under the flooring in her home. She complained about various aspects of the claim and Ms A later referred her complaint to this service. An Investigator issued a view on that complaint, including recommending that Advantage pay a disturbance allowance.

The claim continued and Ms A raised a new complaint, as she was unhappy about how the cause of damage had been assessed. When Advantage replied, it didn't uphold the complaint. It said it had determined that the water entering Ms A's home was caused by ground water due to an inadequate damp proof membrane.

So, Ms A complained to this Service. Our Investigator upheld the complaint. He said the evidence showed that the damp proof membrane had failed gradually, which wasn't covered by the policy. So, he said it was reasonable that Advantage didn't repair the damage. He also said the evidence showed Advantage had acted in line with its underwriting criteria when it didn't renew Ms A's cover. There wasn't evidence to show there was black water on Ms A's mattress or personal belongings. However, Advantage had now agreed to cover the electricity costs for the drying equipment it had installed, which he said was fair. Our Investigator also said there were avoidable delays during the claim and contractors had used Ms A's wet vac to remove black water in the property. He said Advantage should pay £300 compensation for its poor service and should also provide Ms A with copies of its contractors' reports.

As Ms A didn't agree Advantage had shown the claim wasn't covered, the complaint was referred to me.

I issued my provisional decision on 4 September 2024. In my provisional decision, I explained the reasons why I was planning to uphold the complaint. I said:

I'm aware Ms A brought a previous complaint about Advantage to this Service and what that complaint involved. But my decision is only about the issues that form part of the complaint I'm considering.

I'm mindful as part of thinking about this complaint that Advantage didn't necessarily have to keep searching for the cause of the water ingress. If it could show it had carried out a reasonable investigation into the cause of damage and determined it wasn't due to an insured peril, it didn't need to keep investigating and could decline the claim. So, I've looked at what Advantage found and whether I think it was reasonable for it to decline the claim.

When Advantage responded to the complaint it told Ms A the claim wasn't covered by the policy because:

"The leak at your home was determined to be caused by ground water outside the home. As this is seasonal water fluctuation this isn't covered by your policy and therefore your claim has been declined.

The leak may be being caused, as stated by our engineers, due to inadequate or a poor damp proofing membrane."

Advantage later told this Service:

"When ground water accumulates over time this becomes stagnant and would change into grey water, eventually turning into black water overtime. This is what has happened from the ingress of ground water at Ms [A's] property.

We attended the property and identified the ingress was from outside of the property (groundwater) due to the damp proof membrane failing."

I asked Advantage what the evidence was that the damp proof membrane had failed. It replied:

"There is no evidence, but it is the most likely cause as there has not been a leak from any of the water pipes/drains/sewers. The evidence of this is sampled water did not have Chlorine in, which means it was untreated so HAD to be an external/natural water source."

I note that when Advantage declined the claim it thought the cause "may" be an issue with the damp proof membrane. However, when Advantage provided information to this Service, it said it had been "identified" that the ingress was due to the damp proof membrane failing. So, Advantage moved from speculating that the damp proof membrane was the cause to stating it as a fact. However, it has now said there is no evidence to show it failed. So, I don't currently think it's reasonable for Advantage to rely on this as a reason for declining the claim.

I also asked Advantage what the evidence was that ground water entered the property. Advantage said:

"The information was provided by [a contractor] who were told the test results by the Insured. We would be unable to contact [the water company] direct. We would ask that the Insured contact [the water company] to provide you with the results of the water tests.

It also provided a claim note that said: "PH [policyholder] calls [Advantage's contractor] to inform [the water company] have been out and confirm the water has been tested as safe, and is ground water."

So, Advantage seems to have relied on a brief call note and, without asking for any further information, concluded from it that only ground water was entering the property. Based on what I've seen, although Advantage has said the sampled water didn't have chlorine in it, it doesn't appear to know what water was sampled or what the full tests results were. I don't think Advantage has shown it was fair to conclude that only ground water was present.

I've also seen a report from one of Advantage's contractors. This said:

"We believe the issue to be ground water coming from the road and the properties to the rear of the customers back garden, the ground water appears to be running through the

solum gathering at the front of the property. This is because the solum level is well below the level of the surrounding ground”.

I asked Advantage for the evidence that supported this finding, including the relevance of the solum being well below ground level. In response, it said:

“Soliums are the underground element of a house which allows it to ‘breathe’. So need to be below ground level, or the property would have to sit well above ground level. There is no evidence saying where the water is coming from exactly, just that it is coming from a natural/external untreated source. So run off of water from the surrounding drives and gardens is the most likely cause.”

I asked Advantage for more information on the relevance of the solum. Advantage replied and said: “We just mention the solum as this is the place where water would be expected to pool”. It also provided an email, part of which said:

“Our contractor has advised the insured has taken up most of the grass recently, which leaves little to absorb any ground water leaving it to build up.”

So, I think this information is inconclusive. Advantage seems to have relied on information its contractor expressed as a belief to decline the claim. But, part of that belief seemed to be based around there being some significance about the depth of the solum. However, when asked about this, Advantage didn’t seem to think there was an issue with the solum. So, I don’t think it’s fair for Advantage to rely on this information to support its decision to decline the claim.

The claim records also said that at a previous contractor visit “the engineers confirmed that they were unable to access the pipes to determine the cause of damage due to the amount of sewage spillage and ingress of water”. I asked Advantage about this because this appeared to indicate that sewage had entered the property, which was therefore different to ground water, and might also suggest a leak. Advantage said:

“At first the most likely source of the water would have been the drains, and the Insured had mentioned sewage. It was only when the test results were advised by [the water company], that it became apparent that there was no sewage present in the water. When labelling type of water, black water is often referring to sewage, but it can also mean stagnant water that has been present for a while. It’s a common misconception that black water means sewage.”

I note that by the time the engineers visited and said there was sewage present, Ms A had already told Advantage that the water company had said it was ground water. I’m unclear why Advantage thinks its contractor, who saw the build-up of liquid, didn’t correctly identify it as sewage. Ms A has also consistently said there was sewage present, including that she told Advantage its contractors had spilled sewage on some of her possessions. But Advantage doesn’t seem to have taken any of this into account. I don’t think that was reasonable.

Advantage also said there had been no leaks from pipes, drains or sewers. However, the claim records indicated that Ms A had told Advantage about a leak. Ms A also said she thought there might have been two sources of the water ingress, one of which was a leak. I asked Ms A for more information about the leak. She said:

“The leak was initially found by the heating engineers and they informed me that they could not do the works due to the foundation being full of black water. When I asked for clarification of what black water was they informed me that it was sewage. As Home emergency assistance was not covered by my policy I called my bank who advised that I

had Home emergency cover with them. I then called their emergency plumber who attended to confirm that it was indeed sewage in the foundation.”

Ms A provided a report from the home emergency company that said:

“On arrival was told by the heating engineer that waste pipes under shower and bath are not connected and when flushing toilet the waste is going underfloor and building up as is drainage from kitchen sink. The mess will need to be pumped out and sanitised so it can be inspected for leaks.”

Ms A also told this Service:

“The insurance company were very clear that the leaks had to be repaired BEFORE the clean up operation could begin, although they also told me that it was not safe for a plumber to enter the area to repair the leaks UNTIL it had been cleaned. They effectively rendered the situation impossible.

...

The plumber repaired the leak in the kitchen and refitted the waste pipes in the bathroom. I then phoned [Advantage’s contractor] to inform them the leaks had been repaired. They were apparently satisfied with this response as they did not ask for any report and also did not send any contractor out to check the works. They also did not ask to see any invoices as it was irrelevant to the claim as the repairs were the responsibility of the policy holder”.

I think what Ms A has said indicates that there was a leak at the property and that there was potentially also sewage present.

Based on what I’ve currently seen, I don’t think Advantage has shown it was reasonable for it to decline the claim. It said the damp proof membrane had failed and ground water had entered the property. However, it has now told this Service there was “no evidence” the damp proof membrane had failed and that it wasn’t clear where the water was coming from. I also don’t think it has properly assessed whether the leak Ms A had repaired contributed to the damage at the property. So, I currently intend to say Advantage needs to reassess the claim and either settle it or provide Ms A with clear reasons why it is reasonable to decline it.

Ms A also complained about some other issues related to the claim. So, I’ve looked at these too.

Ms A was concerned about increased electricity costs due to Advantage dealing with the claim. It’s my understanding that Advantage has now paid these costs. So, I haven’t considered this further.

Ms A has also said Advantage’s contractor didn’t protect items in her home which led to damage to a mattress, personal possessions and to flooring. It’s my understanding that flooring hatches needed to be lifted to access the area under the house where the water was collecting. Ms A has provided a photo of an open flooring hatch next to a corner of a bed with an unprotected mattress. Ms A has said black water was dropped on the mattress. I can’t see any damage to the mattress, but there is clearly work going on around it which, given there was black water that might have been sewage, I think was unhygienic and could well have led to liquid going on to the mattress. On balance, I think it’s fair for me to say that it’s likely liquid could have got onto the unprotected mattress. So, I currently intend to say that if Ms A has paid to clean the mattress or to replace it, Advantage should pay those costs, subject to Ms A providing suitable evidence of the cost.

I haven’t seen evidence that Ms A complained to Advantage about damage to the flooring or to other personal possessions. She would need to do so, as under our rules, Advantage

must be given the opportunity to investigate and respond to her on those issues. As a result, I'm unable to comment on these particular points.

Ms A also said Advantage refused to renew her policy when it came up for renewal. At that time, the claim was still ongoing. I'm aware that the broker who had arranged the policy was also unable to find an alternative policy. Ms A said she had to find a policy elsewhere and the premium increased from £120 to over £700. It can be difficult for a policyholder to find a new policy during an ongoing claim. I asked Advantage to explain why it was reasonable for it to refuse to renew cover while the claim was ongoing and to provide evidence to support this. It said "The renewal was reviewed by our administration team and declined because we were unable to continue insuring Ms [A] based on their details". I don't think this showed Advantage treated Ms A fairly. It hasn't shown that it acted in line with its underwriting guidance or that it was reasonable to refuse to renew cover while the claim remained ongoing.

I think Advantage put Ms A in a difficult position and hasn't been able to show it acted fairly by refusing to renew the policy. This seemed to have a financial impact on Ms A. So, I currently intend to say Advantage should pay Ms A the difference between the premium it would have offered to renew the policy and the amount Ms A paid for the alternative cover. If Advantage is unable to calculate the premium it would have charged at renewal, it should use the cost of the premium for the most recent period for which it offered cover as the renewal premium. For avoidance of doubt, I don't consider it relevant whether the alternative policy Ms A took out offered the same cover as the one Advantage previously offered. In my view, Ms A had limited options available to her in terms of finding another policy because Advantage refused to renew the policy during an ongoing claim.

I've also thought about compensation. I think Ms A has been caused distress and inconvenience, and over a prolonged period of time, because of how Advantage dealt with this claim. I'm also aware of the impact Ms A has described on her and her family. I don't think Advantage has shown it fairly declined the claim or that it's provided enough evidence to show its decision not to offer renewal was reasonable. Advantage's contractors also didn't seem to protect items such as a bed when they carried out work. It's my understanding that contractors used Ms A's wet vac to clear up some of the black water because they didn't have suitable equipment with them and poured the water into her garden, which I think was poor service. So, I currently intend to say that Advantage should pay Ms A £500 compensation for the impact on her of how it dealt with the issues raised as part of this complaint.

I asked both parties to send me any more information or evidence they wanted me to look at by 18 September 2024.

Advantage didn't reply.

Ms A and Mr R replied and, in summary said:

- If Advantage was alleging there was no sewage present, they questioned why it instructed two separate contractors to perform a clean and sanitisation of the foundations. Advantage couldn't agree there was sewage at one point of the claim and act on that information and then deny there was sewage when it became troublesome.
- It was untrue that by the time the engineers visited that Ms A had already told Advantage it was ground water. It was only determined to be ground water after Ms A and Mr R had extracted most of the sewage, arranged for the leaks to be repaired and the build up of water was from an unknown source.

- Advantage also had assessment reports that showed the extent of the damage, including moisture readings. The moisture was caused directly by the leak in the bathroom, as the floor bowed significantly.
- A contractor had accepted there was a leak. Ms A and Mr R provided a contractor report they said showed this.
- They had no disposable income with which to buy a new mattress. They cleaned it as best they could so they could sleep on it the day they arrived home. They were given little notice of being able to move home and no-one checked their home was actually habitable. A couple of months later, they cleaned the mattress thoroughly and could provide a receipt for the spot cleaner they used.
- They didn't say the flooring or floor hallway was damaged. The photo was to show the stream of black water left by a contractor who carried the open bucket through their bedroom and hallway. The photo was simply to show that black water had been removed in an unsafe way and over an unprotected bed and floors.
- They were at a disadvantage as most insurers refused to offer cover for a property that had been unoccupied for over eight months. They had to find specialist insurance. They also didn't know where they stood in terms of their no claims bonus as this had gone back to zero years and yet no money had technically been paid out in respect of the leaks. They also hadn't received a drying certificate, which they were told would be forwarded to them. They had been left in a precarious position when none of this was their fault.
- They accepted there would be no liability on Advantage if the membrane is found to be broken. What they contested was that two issues had been joined together and Advantage was using the broken membrane as an excuse to release them from liability for the damage caused by the sink and toilet leaks. The groundwater in no way damaged the bathroom floor. The reason they wanted the floor checked was that Advantage allowed eight months to elapse before making a decision. During that time, the house was unoccupied and standing water was allowed to remain. It was Advantage's complacency that potentially damaged the floors. If it had made a decision in good time, Ms A and Mr R could have remedied the situation on their own and the groundwater wouldn't have remained in the foundations for so long.
- They wanted any contractor appointed to be an independent contractor, as they no longer trust Advantage to be honest in their reporting. They had been subject to Advantage's lies and disinformation for 18 months and preferred to have no contact with them. The thought of even having to take a phone call from them made them increasingly anxious.

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 uphold this complaint and for the reasons given in my provisional decision. As part of that, I've thought about all of Ms A and Mr R's comments, but these don't change my view about how this complaint should be resolved. I've focussed my decision on the issues I think are key to making a fair and reasonable decision.

I'm aware Ms A and Mrs R remain concerned about whether Advantage have really understood the circumstances of the claim and that they have lost trust in it. In my provisional decision, I explained why I didn't think Advantage had shown it fairly declined the claim, including because of the reasons it relied on to do so. I didn't think it had properly considered the evidence about there being a leak at the property or about sewage being present. Despite Advantage declining the claim because it said the damp proof membrane

had failed, it also told this Service that it had “*no evidence*” to show it had failed and that it wasn’t clear where the water was coming from.

I can understand that Ms A and Mr R might not want Advantage to be involved in the claim. But, given it’s the insurer, I don’t think I can reasonably say it can’t be involved. I also haven’t told Advantage it needs to do things like appoint a contractor. I think Advantage needs to decide what to do to reassess the claim in a fair way.

In terms of issues such as the drying certificate, the no claims bonus and their concerns about the floor, Ms A and Mr R would need to raise these with Advantage, so it can consider them.

Having looked at this complaint again, I remain of the view that the outcome and what I said Advantage should do is fair in the circumstances.

My final decision

For the reasons I’ve given above and in my provisional decision, my final decision is that this complaint is upheld. I require Advantage Insurance Company Limited to:

- reassess the claim and either settle it or provide Ms A and Mr R with clear reasons why it is reasonable to decline it.
- pay Ms A and Mr R’s costs for cleaning or replacing the mattress that had black water spilled on it, subject to them providing suitable evidence of the costs.
- pay Ms A and Mr R the difference between the premium it would have offered to renew the policy and the amount Ms A and Mr R paid for the alternative cover. If it is unable to calculate the premium it would have charged at renewal, it should use the cost of the premium for the most recent period for which it offered cover as the renewal premium.
- pay £500 compensation.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms A and Mr R to accept or reject my decision before 17 October 2024.

Louise O’Sullivan
Ombudsman