

The complaint

Mr J complains that SCOR UK Company Ltd (SCOR) unfairly declined a claim for legal expenses cover.

Where I refer to SCOR in this decision, this should be taken to include agents and representatives acting on its behalf.

What happened

Mr J held a combined insurance policy which provided cover for, among other things, his home and legal expenses. The policy cover started in 2022.

The legal expenses cover was provided by SCOR, while another insurer, who I'll refer to as A, provided the home insurance cover.

Since 2008, Mr J's property had experienced patches of damp and damage caused by leaks. The source of these leaks wasn't established until 2023 when a report concluded they were coming from a neighbouring property.

Mr J made a claim on the legal expenses cover of his insurance as he wanted to take action against the owner of the neighbouring property to resolve the leak and cover the cost of repairing his property.

SCOR declined cover for Mr J's claim. It said matters relating to the legal action occurred before the policy cover started, and that was excluded by the policy terms and conditions.

Mr J complained to SCOR about this decision, and the amount of time take to reach the outcome. SCOR said it believed the decision to decline cover was correct, additionally pointing to a duplicate cover condition of the policy which said that if cover existed on one section of the policy then there would be no cover under a separate section. It did acknowledge there had been unnecessary delays to the assessment of the claim and offered £300 compensation to recognise this.

Mr J remained dissatisfied and referred his complaint to our service. Our investigator thought SCOR had acted reasonably. Mr J disagreed and asked for an ombudsman's decision.

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.

When it declined cover for Mr J's claim and rejected his complaint, SCOR gave two reasons for this. It referred to the duplicate cover condition of the policy, saying it believed the damage Mr J was claiming for could be submitted under the home insurance section of cover. It also referred to an exclusion in the policy which said that events which had occurred before the policy cover started weren't covered.

I'll first examine the exclusion SCOR has relied on and whether I believe that applies in this

situation. I think that only if that exclusion can't reasonably apply do I need to consider the duplicate cover issue in detail. This is because if the claim can be reasonably excluded from cover then the possible existence of duplicate cover isn't particularly relevant.

The policy exclusion

The relevant exclusion in the policy terms and conditions says:

"We will not cover any actual or alleged act or omission or dispute happening before, or existing at the start of the period of insurance and which you believed or ought reasonably to have believed could have led to a claim."

There are two parts to this exclusion, firstly that the act, omission or dispute happened before the cover started and secondly that the policyholder had to believe or should have believed a claim could arise.

The first element of this doesn't seem to be disputed. All the evidence suggests that Mr J was aware of water damage and an intermittent leak or escape of water from an unknown source since at least 2008. The policy cover started in 2022. While the specific of the leak source (the neighbouring property) wasn't known until after the cover started, it does seem fair to say that the leak led to the claim and that had been a known issue since 2008.

The second element is disputed. I think what I need to decide is whether Mr J knew, or should have known, that legal action could be required in order to resolve the leak and / or damage caused by it.

Mr J says that when he took the policy out, the investigations which had been carried out to that point had ruled out the neighbouring property as the source of the leak. He says that as a result, no legal action was contemplated against the property owner when the policy cover started. He would therefore appear to be arguing that the exclusion should only apply where the specific legal action against the known party is known about (or should have been known about) when the cover starts.

I don't think that's a reasonable interpretation of the exclusion. I think it should be interpreted to mean that the policy excludes cover for claims where the possibility of legal action is known (or should be known) to resolve an issue which already exists at the time of cover starting. It doesn't depend on the specific legal action, or party to the legal action, being identified.

I think it's fair to say that for a period of several years, Mr J wanted to establish the cause of the leak and by extension it would follow he wanted whoever was responsible for the source of the leak to resolve this and be liable for the repairs to his property. It's clear from his claim that Mr J is seeking to recover all of his costs related to repairing his property and locating the source of the leak from 2008 onwards.

It therefore also follows that it was reasonably foreseeable that once the source of the leak was identified then legal action may be required to ensure the responsible party resolved the leak and paid for the damage caused by it. I note that after the source of the leak was located, the owner took action to prevent further leaks, so Mr J's claim was seeking to cover the cost of the various investigations and repairs which have occurred since 2008.

A relevant question here is, I think, if Mr J didn't envisage that legal action would be possibly necessary once the source of the leak was located, what was his intention if the responsible party refused to resolve it and pay for the damage? The only reasonable answer is that he'd have intended to take legal action. That's why the claim was made, as the property owner

declined to pay for the damages when Mr J contacted them directly. I think it follows that Mr J believed, or reasonably ought to have believed, that legal action (and therefore a claim) could result from the investigations into the source of the leak.

On that basis, I think it's fair for SCOR to have declined cover for the claim. Mr J could, or should, have believed a claim could arise before the policy cover started. The terms and conditions say a claim in those circumstances isn't covered.

Duplicate cover

As I said above, I don't think I need to examine this point in detail as the duplicate cover point would only apply in the event that the policy would potentially provide cover for the claim.

SCOR said the duplicate cover condition applies because a claim for damage caused by a leak could be made under the property insurance section of the policy, which is provided by A. Mr J says the duplicate cover section only applies to A, and SCOR can't rely on it. He also says any claim with A won't be covered.

The relevant condition says:

"If you are covered under one section for your loss, we will not pay for that loss under a different section."

The condition is included in the General Conditions of the policy, and within this section, it says:

"These conditions apply to every section of this policy, unless otherwise stated."

It would therefore seem that the condition applies to all sections of the policy, including the property and legal expenses cover. The definition of "We" in the policy draws a distinction between A as the insurer for the property section and SCOR as the insurer for the legal expenses cover. However, it doesn't say anywhere in the policy that the duplicate cover section only applies to A, and no reasonable interpretation of the condition could, in my view, imply this.

I think it was fair for SCOR to make reference to this condition of the policy as a potential obstacle to cover for Mr J's claim. While Mr J contends that any claim under the property section would be unsuccessful, that's beyond the scope of the complaint I'm considering here as our role isn't to give advice on policy cover or act as a claim handler. I'm only looking at whether SCOR acted reasonably when it declined cover for Mr J's claim.

Finally, I've considered the offer of compensation made by SCOR. It's rightly identified that it could have dealt with Mr J's claim more quickly and that there was an opportunity to advise him that the claim wasn't covered earlier. It offered £300 to recognise this. I think this is a fair amount which recognises the distress and inconvenience caused by having extended contact with SCOR during the claim only to be told the claim wasn't covered, when this should have been apparent sooner.

My final decision

I don't uphold Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 23 December 2024.

Ben Williams
Ombudsman