

The complaint

Mrs O and Mr O complain that Ageas Insurance Limited have declined their claim for damage due to an escape of water.

What happened

Mrs O and Mr O jointly hold a buildings insurance policy with Ageas.

In July 2022 during a kitchen renovation the builder discovered a leak in their upstairs shower which had caused extensive water damage behind the tiles in the shower and behind the plaster in the kitchen wall below.

The builder who was on site carried out a leak repair and then rectification work.

Ageas sent out their surveyor in September to validate the claim, but the rectification work was already in progress. The surveyor reported that in their view, the escape of water had been caused a failure of the grout and sealant, which would mean that it was gradually occurring damage due to wear and tear, and therefore not covered by the policy.

Mr and Mrs C were unhappy with this response and also with the service provided, and so they brought their complaint to us.

One of our investigators looked into Mrs O and Mr O's complaint and initially she thought that Ageas had acted fairly and reasonably in declining the claim, but then changed her view and said that Ageas had delayed in sending a surveyor and so they should settle the claim.

Ageas disagreed with our investigators view, and so the came to me to review.

I issued a provisional decision on the complaint. My provisional findings were as follows:

I have to decide whether Ageas have properly applied the terms of the policy and acted fairly and reasonably when declining the claim.

The decision to decline the claim

Ageas have declined the claim on the basis of two of the "General exclusions" in the policy:

"b) We do not cover any loss or damage that happens gradually over a period of time, such as rust, corrosion, fading and shrinkage.

c) As with most insurers, you are not covered for any loss or damage resulting from wear, tear and depreciation."

Gradual damage

Mrs O and Mr O were having a new kitchen fitted in July 2022. When the workmen removed the kitchen tiles, they noticed mould and damage on the wall behind them. They traced the

leak to the shower in the bathroom upstairs where they identified leaking pipes which they thought had been leaking for a while.

Mrs O and Mr O's builder took photographs of the damage and it is evident from these that there is mould and damp in the plasterboard behind the kitchen tiles, and in the plasterboard and wooden frame that was behind the shower tiles.

I'm satisfied that it's fair to say that this damage has occurred gradually over a period of time, as a sudden escape of water just prior to discovery is unlikely to have caused the extensive rot and mould that is evident in the photographs here.

So on that basis, on a strict application of the policy terms, it would be fair for Ageas to exclude cover and decline the claim.

However, I then have to consider whether Ageas is treating Mrs O and Mr O fairly by excluding the claim given that they say they weren't aware of the leak until it was discovered by the builders who were undertaking work in another area of the house.

So I've looked at the evidence provided by Mrs O and Mr O and also the two reports prepared by Ageas to consider whether they should have reasonably been aware of the leak and the damage that it was causing.

Mrs O and Mr O have said that they had been aware of a couple of mould patches that appeared not long before discovery of the leak, and that they took remedial action to try and deal with these.

Looking at the photographs, one mould patch was on the top right of the kitchen window recess, where Mr O says he had noticed some water. The mould patch is in the corner of the recess, stretching around 15 – 20cm along the joint of the window and the plaster, and also along the corner edge of the recess.

Mr O says that after noticing this, he resealed the sealant in the shower and regouted the shower but he didn't identify any additional underlying issues, such as the leaking pipes.

Looking at this patch of damp in the photo provided I can't say it is substantial enough to be an indicator of a significant underlying problem in the room above and could easily have been attributed to other issues such as penetrating damp or condensation mould. I'm not satisfied that this in itself would have alerted Mrs O and Mr O to a significant issue. However, they acted on this sign and took remedial action which they thought would resolve the issue, and believed it had. So I think that they acted reasonably here in the light of what they saw. I note that Mr O didn't note any significant issues with the sealant and grout itself when he undertook the maintenance work, and he doesn't appear to have noticed any issues with the plasterboard underneath. I'm satisfied that had he done so, he would have addressed the issue, as there is no suggestion that he was not on top of his home maintenance.

The second mould patch was under the kitchen sink on the wall at the back. Mrs O and Mr O say that they attributed this to the breakdown of the sealant around the kitchen sink and resealed it. I am satisfied that this was a reasonable assumption, and I don't think that mould in that location would necessarily lead to a natural conclusion that there was a leak behind the tiles in the room above. Again, they took what they considered to be remedial action for the problem.

All of the photographic and anecdotal evidence suggest that Mr O and Mrs O maintain and upgrade their property on a regular basis, and the upgrading of the kitchen supports this. I think if they had been aware of the extent of the issue, they would have done something

sooner. In addition, I consider that even if Mrs O and Mr O had investigated further, discovered the leak and alerted Ageas when they first noticed mould, it is likely that the damage would have been largely the same given that the mould appeared not long before and the ingress of water had already reached the rear of the kitchen sink without causing extensive obvious damage to the kitchen walls.

In view of the above, I don't consider it is fair for Ageas to exclude the claim under the exclusion for gradual cause.

Wear and tear

Ageas have also quoted the wear and tear exclusion, attributing the leak to the breakdown and deterioration of the sealant and grout, which they say Mrs O and Mr O should have been aware of.

So I've looked at what evidence there is about the cause of the leak, and whether it is likely to be as the result of wear and tear to the sealant and grout.

Mr O says his builder had informed him that when he discovered and isolated the leak that leaking pipes were the cause.

I've listened to the first notification of loss call in which Mr O confirms what his builder has told him. The call handler does tell Mr O that if the cause is failing sealant and grout, the claim will likely not be covered, but agrees that he can go ahead and get a quote for the repair.

On 8 July Mr O emailed Ageas and confirmed that his builder has told him the damage from the leaking pipes is worse than he thought and hopes to have a repair estimate by the following week. Ageas didn't respond to this, nor did they contact the builder to confirm the source of the leak or ask for additional information as suggested by Mr O.

Mr O subsequently sent in photographs and a quote for the rectification work due to the leak. This did include some work to the kitchen, which may or may not have been part of the original work that was being done anyway.

I haven't seen any evidence of the condition of the sealant and grout at the time of the leak, and neither have Ageas, as there are no photographs of the shower before the cubicle was removed, and the surveyors visit didn't take place until the shower cubicle had been removed, and much of the material had been disposed of.

I appreciate that Ageas were not given the opportunity to examine the shower prior to it being removed, but given the anecdotal evidence of the builder, the extent of the damage, and the absence of any evidence at all about the sealant and grout condition, I don't think Ageas can fairly say the damage is solely attributable to sealant and grout issues.

Indeed, their own internal notes in October 2022 record that:

"As with all claims involving water damage from concealed pipework difficulties arise in establishing how long the incident has been ongoing and any potential failure to mitigate the damage on the part of the customer. In summary, it is feasible the damage to the bathroom and kitchen below is as a result of a combination of sealant grout failure and the leak from the pipe as identified by the insured's plumber. As detailed, the insured was aware of some issues as damp appeared around the kitchen window in the weeks and months prior to the pipe work to be found leaking. In summary we are unable to categorically confirm or validate the cause of all the damage discovered was as the sole result of the leak from the pipework.

Conversely, we cannot recommend the claim be declined for the damage being as a result of an ongoing issue as opposed to a one-off incident. The risk address was found to be adequately maintained and no evidence of a lack of maintenance. As such it is considered Insurers may have little choice other than to accept liability on this occasion but we would seek insurers instructions on this point.

And so I don't think for all of the above reasons, Ageas have fairly declined Mrs O and Mr O's claim.

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.

Ageas haven't responded to my provisional decision, but Mrs O and Mr O have, and they have accepted my decision, and so I'm making my final decision in line with my provisional decision for the reasons I've given above.

Putting things right

In order to put things right Ageas should:

- Reinststate Mrs O and Mr O's claim, and settle it in line with the remaining terms and conditions of the policy using the scope and invoice provided by Mrs O and Mr O's builder.
- Pay Mrs O and Mr O 8% interest on the settlement figure from the date that they paid their builders invoice for the repair work until the date of settlement .

My final decision

My decision is that I'm upholding Mrs O and Mr O's complaint about Ageas Insurance Limited and directing them to put things right as above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O and Mr O to accept or reject my decision before 27 November 2024.

Joanne Ward
Ombudsman