

The complaint

Mr and Mrs H complain AA Underwriting Insurance Company Limited unfairly declined their home insurance claim.

What happened

In Autumn 2023 Mr and Mrs H noticed the septic tank for their home wasn't functioning effectively. It was overflowing. In October 2023 a drainage firm inspected the tank. I refer to the firm as 'U'. U's October 2023 report noted damage to the tank's baffle. It found the baffle had collapsed.

In June 2024 Mr and Mrs H claimed against their AA home insurance policy for the damage. Their policy covers them for accidental damage (AD) to septic tanks. They felt theirs had been damaged during routine emptying.

AA appointed its own drainage specialist to investigate the claim. I refer to it as 'E'. E's report said there appeared to be 'damage' to the tank. It didn't specify exactly what was damaged. Neither could E confirm, due to weather conditions, if the damage was a cause of the leakage. E concluded the tank's loss of function was due to bulging, resulting from hydrostatic pressure. E considered the cause of the hydrostatic pressure to be incorrect installation of the tank – it should have been surrounded in concrete due to the wet conditions of its location. Based on E's opinion AA applied a 'faulty design' policy exclusion to decline the claim.

E also found the tank's soakaway to be no longer functioning. E found no evidence of sudden failure (as required to meet the policy's AD cover), instead concluding the soakaway had reached the end of its working life. Based on this opinion AA applied a 'gradually operating causes' exclusion to decline the claim.

Unhappy with AA's response to the claim Mr and Mrs H arranged for U to represent them for the claim and for this complaint. In July 2024 U provided a further report and took CCTV footage of the inside of the tank. U believed this footage demonstrated the only damage to be to the baffle, and that it's the cause of the tank's failure.

In November 2024 AA issued a complaint response. U's latest report didn't persuade it to accept the claim. It didn't accept there had been AD to the system. It still considered the faulty design and gradually operating cause exclusions to be reasonable grounds for a decline.

Unsatisfied with AA's response Mr and Mrs H referred their complaint to the Financial Ombudsman Service. As a resolution they would like AA to accept the claim, cover the cost of the tank's repair and compensate them for the distress and inconvenience arising from the decline.

Our Investigator felt the evidence supported the tank's baffle being damaged when emptied. He considered it to be the reason for the system's failure. He concluded, for these reasons, the loss meets the policy requirements for AD cover. He wasn't persuaded it was reasonable

for AA to rely on the two exclusions to decline the claim. So he recommended it reconsider the claim under the remaining terms of the policy. He also suggested AA pay £400 compensation, to recognise unnecessary distress its response to the claim had caused Mr and Mrs H.

AA didn't accept that proposed outcome. It believed the Investigator to have considered evidence it hadn't seen previously, including CCTV footage provided by U. So it suggested a third-party specialist be appointed to review the evidence to determine the most likely cause of the tank's failure. U, on behalf of Mr and Mrs H, rejected that proposal. The Investigator wasn't persuaded to change his recommended outcome. After being provided with the additional evidence AA didn't change its position. As the complaint wasn't resolved it was passed to me to consider.

I issued a provisional decision. In it I explained why I intended to require AA to settle Mr and Mrs H's claim in line with the terms of the policy and pay £1,000 compensation. As the provisional decision's reasoning forms part of this final decision, I've copied it in below. I invited Mr and Mrs H and AA to provide any further comments or evidence they would like me to consider before issuing this final decision. Mr and Mrs H responded to accept my proposed outcome. AA didn't provide a response.

what I've provisionally 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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Mr H and AA have provided. Instead, I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

Mr and Mrs H's policy requires AA to pay for loss of damage to his building resulting from various causes (or insured perils). These include 'Peril 9':

'9. Accidental damage for which you are legally responsible to cables, underground pipes or underground tanks servicing the property'.

Mr and Mrs H claimed for damage to an underground tank that services their property, so this would seem the appropriate cover or cause to consider the claim against. It's worth noting here that the policy's 'faulty design' exclusion, that AA has referred to when declining the claim, doesn't apply to Peril 9. That exclusion is listed below, and is specific to, 'Peril 10'. That is the policy's optional and broader AD cover:

'10. Accidental loss or accidental damage to your building'.

For this reason, if the loss is considered to meet the requirements of Peril 9, including the policy definition of AD, AA wouldn't be able to rely on the 'faulty design' exclusion to decline the claim. So there would be no need for me to consider the application of this exclusion. The only exclusion that would remain in consideration would be 'gradually operating' cause.

I've no reason to believe Mr and Mrs H aren't legally responsible for the tank. So all that remains, for Peril 9, is for there to have been accidental damage to it. AD is defined by the policy as 'Unexpected and unintended damage caused by sudden and external means'.

I accept there is 'damage' of some sort, as the tank isn't operating effectively. However, the exact nature of the damage and its cause is disputed. Mr and Mrs H feel it was damaged

accidentally when the tank was being emptied. AA don't accept this. Having considered the available evidence, I intend to find the policy requirements for Peril 9 have been met – and so AA should settle the claim.

In April 2023 the tank was emptied. Around six or seven months later Mr and Mrs H became aware the tank wasn't operating effectively. U described how tanks can become damaged during the emptying process, without the operator being aware. In short, the vacuum hose, inserted into the neck of the tank can, strike it when moving around or when switched on under pressure.

If this is what did happen here, I would consider the policy's definition of AD to have been met. There's unexpected and unintentional damage, caused by sudden and external means. The hose is external to the tank, the contact between the two being sudden, rather than some ongoing long-term process. And it's unlikely the operator would intend or expect to cause such damage.

Having viewed the CCTV footage of the inside of the tank, and seen a diagram of a septic tanks design, I'm persuaded there is damage as U describes. The baffle appears to be sitting incorrectly on the base of the tank. Other parts appear to have suffered impact damage, seeming to be distorted and out of shape.

I accept it's possible the damage is the result of wear and tear, or the system coming to the end of its working life. But I'm not persuaded that's the most likely explanation. U said the baffle was welded in place. Whilst I note the corrosive nature of sewage, I consider it more likely that a welded joint would sever through impact, than by wear and tear. That's particularly so considering the distortion to the other parts – that doesn't, for me, seem typical of wear and tear or corrosion.

U's explanation, for why the damage to the baffle, would prevent the tank from operating effectively is plausible. It would eventually lead to the system backing up and waste escaping above ground. That's what Mr and Mrs H have experienced.

AA has said the baffle wasn't damaged when E inspected the tank. It's not clear when exactly this site visit happened, but it seems to have been around June 2024. E's provided photos it believes show the baffle in place. It's not clear if they do show this. However, U's initial report, from October 2023, predates E's inspection. This report notes the cause of the problem being a detached baffle, laying on the base of the tank. This is the same condition demonstrated by U's later CCTV footage. Based on this I'm satisfied the baffle was most likely damaged before Mr and Mrs H made their claim and E made its visit.

AA makes a reasonable point about the length of time between the tank being emptied and discovery of the problem – around seven months. Its point being that it would expect the damage to be apparent sooner. U provided a plausible response; explaining that signs of the problem, backing up and above ground escape of waste, can depend on the extent of use of the system. U said that with only Mr and Mrs H this might take longer than it would with a heavier use household, for example one with more residents and so greater water usage. So AA's point doesn't cast enough doubt to persuade me not to accept U's position that the cause was the routine emptying in April 2023.

E reported there being visual evidence of damage by 'hydrostatic pressure'. It referred to pressure potentially forcing the tank to bulge. This formed part of AA's reasoning for relying on the faulty design exclusion to decline the claim. As I've said that exclusion doesn't apply to Peril 9, so I haven't considered the possibility of 'hydrostatic pressure' in the context of that exclusion. Instead, I've considering it as an alternative, to AD, as a cause of damage.

U considers hydrostatic pressure would meet the requirements of AD. AA doesn't agree, arguing it would be a long term, gradual cause, rather than a 'sudden' one.

E provided photos it considers demonstrate bulging to the tank, resulting from hydrostatic pressure. Unfortunately, they aren't very clear. I can't determine, from the descriptions provided, any bulging. Neither is there any obvious indications in the CCTV footage of bulging'.

Whilst I accept its possible there is damage from hydrostatic pressure, I'm not persuaded it is most likely the cause of the failure of the tank system. It hasn't, for example, been clearly explained how such bulging, if it has occurred, would damage and sever the baffle.

AA has, based on E's comments, argued the cause of damage is gradual. I've considered its points about the effect of bulging and the corrosive impact of sewage across the life of the tank. I've considered E's comments on the soakaway reaching the end of its life. However, as I've explained the pictorial evidence, and U's testimony, supports impact to the baffle being the most likely cause of failure. It does seem the most likely event for this to have happened was emptying of the tank, I haven't been provided with any alternatives for impact damage.

So to conclude, having considered everything Mr and Mrs H, via U, have persuaded me damage to the tank's baffle is the most likely cause of the system not operating effectively. Further they have done enough to demonstrate that damage did likely occur during routine emptying. And as I've explained I'm satisfied this meets the policy definition of AD. As its requirement or AD to be sudden, it follows that it can't also have occurred gradually. So I intend to find AA can't fairly rely on the relevant exclusion to decline the claim.

My intention then is to find the loss is covered by Peril 9. The Investigator recommended AA reconsider the claim. I intend to reach a different resolution, requiring AA to settle the claim in line with the terms of the policy. Mr and Mrs H have persuaded me the claim is payable. Unfortunately, they have been living in unpleasant conditions, with waste continuing to overflow, for a long period now. During this time AA had plenty of opportunity to raise any further grounds for declining their claim. So, to progress matters for Mr and Mrs H, I intend to require AA to settle the claim in line with the terms of the policy.

I did consider AA's suggestion that another drainage expert be appointed to determine the cause. I'm not persuaded that is necessary or desirable. This service is intended to resolved complaints based on the available evidence. I've considered evidence provide by two drainage experts. For the reasons given above I consider its sufficient for me to determine the claim payable against the terms of the policy. Appointing a third expert isn't necessary and would only prolong matters.

AA should have accepted Mr and Mrs H's claim at some point in 2024. U's evidence, including CCTV footage, was available to them at that point. Had it done so the tank would likely have been made fully operative by the winter of that year. But as, instead, AA continued to unfairly decline, Mr and Mrs H experienced a further 12 months or so living with the effects of the ineffective system. They have described how waste discharges below their kitchen and bedroom windows, attracting rats and insects. They are exposed to raw sewage when using that area of their garden and have been unable to open windows due to the odour. It sounds a very unpleasant and distressing experience. To recognise this distress and inconvenience resulting from AA's unfair decline, I intend to require it to pay Mr and Mrs H £1,000 compensation.

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.

I haven't been provided with any new comments or evidence to consider. So I've no reason to revise the outcome I proposed in my provisional decision.

My final decision

For the reasons given above, I require AA Underwriting Insurance Company Limited to settle Mr and Mrs H's claim in line with the terms of the policy and pay them £1,000 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 1 December 2025.

Daniel Martin
Ombudsman