

complaint

Ms L has complained that U K Insurance Limited ('UKI') refused to accept her claim for damage to her kitchen. UKI rejected the claim as dry rot is excluded under the home insurance policy. Ms L believes the dry rot was caused by a leak.

background

In August 2010, Ms L noticed fungus under the kitchen units. Ms L's plumber could not find any evidence of a leak. Three companies specialising in dry rot reported the cause to be due to defective wall to floor detailing. Ms L made a claim for dry rot under her policy. UKI declined the claim and informed Ms L this type of damage was specifically excluded from cover.

Ms L went ahead with repairs but once these began it was noticed that there was a leaking pipe (previously concealed). Ms L contacted UKI to report this. UKI said it would send its agent to inspect the damage. When UKI's agent attended the risk address, he noted all the repairs had been carried out. In addition, there were no signs of water damage. As a result, he was unable to determine the cause of damage was due to an insured peril. UKI also stated its position had been prejudiced by the works being carried out prior to inspection.

Our adjudicator felt the complaint should not be upheld. Having considered the reports from the dry rot specialist, she considered the damage was more likely caused by poor installation of damp proof membrane and damp proof course.

Ms L did not agree with the adjudicator's assessment and argued the following:

- Repairs had to be carried out as soon as possible because her contractor had another client.
- Her home insurance policy states emergency repairs should be carried out to prevent further loss or damage. For this reason, her contractor stopped the leak and took photographs for UKI.
- UKI did not tell her that its position would be prejudiced by her having the works carried out.
- The dry rot specialist reports were written before the leak was found.

It was then noted that Ms L had said that her contractor had found no signs of rot in one of the other walls that was also reported to have the same defective damp proofing. Ms L was asked if she had any evidence to support this. Ms L replied with a statement from her contractor which said he had opened up one of the other walls to check for similar damage to that present in the area of the leak. No signs of rot were found.

Our adjudicator sent this evidence to UKI and told it that this seemed to be compelling evidence that might mean Ms L's complaint was upheld. To date, UKI has not responded.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I note UKI has relied upon the first reports provided by Ms L that suggest this outbreak of rot was caused by a defective damp proof course affecting all of the walls but I note these

reports were completed before the leak was found. The leak was occurring out of sight and so was not initially considered as a factor or possible cause of the damage. Following its discovery though, the hypothesis of the original reports was tested further by opening up one of the other walls. I find it likely that if the damage claimed for by Ms L had been caused by poor damp proofing that was present elsewhere, the same damage would be seen elsewhere too. The fact that it was not is, in my opinion, compelling.

I agree it was not ideal for all works to have been completed before UKI had a chance to inspect but Ms L did need to mitigate her situation. Mitigation is not just limited to making a property safe from further harm. Ms L says she had to move ahead as her contractor had other work waiting. If Ms L had allowed her contractor to go elsewhere she may have been waiting for a long time for them to become free again or feel forced to use an alternative contractor. Ms L's contractor did take photographs to evidence what it found to be the cause of the damage before repairing it. Ms L could not reasonably have been expected to do anything more.

I am satisfied that Ms L has done enough to show that she had an escape of water from a pipe that caused damage to her property. UKI knows that where rot is caused by an escape of water that otherwise could not have been known about we will not allow it to rely on an exclusion for rot to defeat the claim. Therefore, I find that UKI should deal with Ms L's claim for damage caused by an escape of water at her property. It will have to add interest to any cash settlement it makes. I am also satisfied that this situation has caused an element of distress and inconvenience for Ms L and so find that £100 compensation is due to her.

my final decision

My final decision is that I uphold this complaint and I order U K Insurance Limited to deal with Ms L's claim for damage caused by an escape of water. It will need to deal with the claim in line with the remaining terms and conditions of the policy. It will have to add interest to any cash settlement made. Interest will be at 8% simple per annum (less tax if properly deductible) and applied from the date of loss until the date of settlement.

I also award £100 compensation to Ms L. This is for the distress and inconvenience that UKI's incorrect and thus unfair decline of her claim caused her.

I make no other award against UKI.

Fiona Robinson
ombudsman