

complaint

Mr H and Mrs S say Legal & General Insurance Limited (L&G) unfairly declined their claim on their home insurance policy.

background

An agent visited Mr H and Mrs S from their water supplier in April this year. He said a leak had been traced to their property. The leak was identified as coming from a pipe embedded in concrete under the kitchen floor area. Mr H and Mrs S say this was the first time they were aware there was a leak. The agent said they had 30 days to fix the leak or risk being taken to court.

Mr H and Mrs S had two policies that could cover the repair of the pipe. They had a buildings insurance policy with L&G, and a home emergency policy with another insurer. They chose the other insurer to complete the repair, as there was no excess on that policy. The repair was completed by rerouting the pipe.

Mr H and Mrs S then made a claim with L&G for the damage caused by the escape of water. L&G sent a surveyor to Mr H and Mrs S' property to obtain a quote for the repair costs.

The surveyor provided a report of the damage caused which included:

- Water damage to the plaster, including rusty plaster trims
- Damage to the skirting boards and walls, including delaminating décor
- Mould and heavy staining on the vinyl flooring

The surveyor concluded the damage had been going on for several months, and recommended the claim be declined as the damage began before the policy started. L&G then referred Mr H and Mrs S to their previous insurer.

Mr H and Mrs S disagreed with the surveyor's assessment. They said they didn't think the damage up to the point the leak was found was serious enough to investigate further. So they asked our service to look at the complaint.

Our investigator upheld the complaint. She said L&G would be responsible for any damage that occurred since the policy started. And, if it was unable to distinguish between the damage that happened before and after the policy started, it needed to complete a lasting and effective repair of all the damage.

L&G disagreed with the investigator. It maintained its position that the damage occurred before the policy cover started, and it also said that the damage was ongoing and a result of the original leak. So it didn't think it was liable for any of the damage caused.

As L&G disagreed with the investigator, the complaint's been passed to me for a decision.

I issued my provisional findings on the 29 November 2018. In summary I said I wasn't intending to uphold Mr H and Mrs S' complaint.

I said I didn't think it was fair for L&G to decline the claim under its pre-inception exclusion. I said this was because it was likely that some of the damage happened whilst the policy was

in force. And whilst I appreciated it was likely the leak started before the policy start date, the claim was made to cover the damage caused by the insured event, not the event itself.

But based on the damage I'd seen I thought it was fair for L&G to decline the claim under its gradual operating cause exclusion. After reviewing photographs of the property, I thought there was sufficient damage to give Mr H and Mrs S an indication that something was wrong, and if the cause had been identified earlier, the impact of the leak would've been reduced.

developments

Mr H and Mrs S responded to my provisional decision. They disagreed with the outcome and provided further evidence to support their complaint. In particular, about whether they knew, or ought to have known there was a problem such as a leak sooner. They also provided a report from a contractor who'd done a number of maintenance jobs on the property.

In summary Mr H and Mrs S said:

- The property was in the middle of being redecorated when the surveyor assessed the kitchen.
- Their plasterer said the original plastering left no breathing space when the skirting board was put back on. This caused the plaster to bubble. The plasterer didn't find a leak when he investigated further.
- The flooring had been down for a number of years so they thought the marks were due to wear and tear. They also bought a black mat to cover the floor and thought it could be residue for that also
- They've said the assessor took photos from the back door facing the kitchen, but the leak was in front of the kitchen cooker
- The whole experience has left them extremely stressed

I provided this evidence to L&G and asked if it wanted to reconsider its position. L&G reviewed the report and said it would continue to decline the claim. Its main reasons were:

- The report provided by the contractor was written almost a year after they visited the property
- The surveyors report was more detailed and backed up by supporting photographs
- The damage listed by the surveyor wasn't consistent with the damage, or cause of damage mentioned in the contractors report
- The issues had clearly been ongoing for several months and the consumers didn't take sufficient steps to maintain the property
- The damaged areas were already compromised prior to the policy commencing

my findings

I've again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I'll now be upholding this complaint, and I'll explain my reasons why below.

In my provisional decision, I explained why I thought it was unfair for L&G to decline the claim as pre-inception. And I've seen nothing from the additional evidence and comments provided to change my opinion on this.

But I have thought again about whether it would be fair for L&G to decline the claim under its gradual operating cause exclusion and whether it applies. I want to reassure both parties that I've thought carefully about this, and I've fully considered all the additional points they've raised.

I've considered whether there was enough evidence to show Mr H and Mrs S took reasonable steps to investigate the signs of the particular problem, and whether they took reasonable action to stop it from getting worse. The contractor's report states Mr H and Mrs S made him aware of the issue of peeling paint in January 2018. The contractor did a number of investigations including removing a part of the skirting board, checking the underlying plaster, and lifting a section of the floor. He stated the areas appeared dry with no odour. He did notice a small damp area at the bottom of a wall but stated the areas either side were dry. He suggested to Mr H and Mrs S the areas could be getting damp from occasional spillages of water from nearby cat bowls, and due to poor ventilation, the area was unlikely to dry quickly. He didn't recommend any further action be taken.

Mr H and Mrs S's testimony has been consistent throughout this complaint, and I see no reason to doubt the report provided by their contractor. I am satisfied that investigations were carried out in January 2018. The contractor was a trusted professional who had done a number of jobs for Mr H and Mrs S over the years, so I think it was reasonable for them to accept his recommendations and take no further action at this time.

When Mr H and Mrs S did become aware of the problem, they contacted the insurers immediately and got the repairs done quickly – within a few days. So there's no evidence to suggest they left it to get worse, and increase the area of damage once they were aware.

I appreciate L&G's comments about the damage being ongoing for some months, and from the beginning of this complaint, neither party has disputed this. The surveyors report was produced some time after the contractor visited the property, so it's highly likely the damage would be worse at this point as the leak had only recently been identified. But I don't think a gap of three to four months is unreasonable for Mr H and Mrs S to take no further action after they'd been reassured things were ok in January.

Ultimately my role is to decide if Mr H and Mrs S took reasonable steps to identify the cause of the problem. And based on the investigations done in January, I don't think there was anything more they could've done to mitigate the damage at that point.

So having looked at everything, I don't think it was fair for L&G to decline the claim as pre-inception, or due to a gradual operating cause.

my final decision

My final decision is that I uphold this complaint.

Legal & General Insurance Limited must settle the claim in line with the remaining policy terms and conditions

If Legal & General Insurance Limited decides to settle by cash then it must add 8% simple interest from the date the claim was made, to the date of settlement †;

† Income tax may be payable on any interest paid. If Legal & General Insurance Limited deducts income tax from the interest it should tell Mr H and Mrs S how much has been taken off. Legal & General Insurance Limited should give Mr H and Mrs S a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs S to accept or reject my decision before 4 March 2019

Dan Prevett
ombudsman