

complaint

Mr and Mrs M complain that Legal & General Insurance Limited (“Legal & General”) won’t pay under their buildings and contents insurance policy to repair damage caused by a water leak in their house.

background

Mr and Mrs M said they had a leak in their kitchen, which caused damage in the kitchen and the hallway. They wanted Legal & General to pay for the repairs.

Legal & General said that there wasn’t any damage in the kitchen caused by a leak. And the damage in the hallway was caused by rising damp. So it said it didn’t have to pay Mr and Mrs M’s claim. But it didn’t think it had handled the claim very well, so it paid Mr and Mrs M £150 to say sorry for that.

Our adjudicator upheld this complaint in part. He thought that there was some damage in the kitchen from the leak, and Legal & General should pay to repair that. But he thought the damage in the hallway was caused by rising damp, so Legal & General didn’t have to pay for that. He also thought that the amount of compensation Legal & General had paid Mr and Mrs M wasn’t enough to make up for the stress this claim had caused them, so he said that it should pay the couple £100 more.

Mr and Mrs M didn’t agree with our adjudicator. They thought all the damage was caused by the leak. And Legal & General didn’t agree either. It didn’t think any of the damage was caused by the leak.

As neither party agreed with our adjudicator, the case was passed to me for a final decision.

my findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. I’ve reached the same conclusion as our adjudicator, and for broadly the same reasons.

Mr and Mrs M’s policy covers them for damage caused by escaping water in their home. The policy has an exclusion for damage that happens gradually over time. The policy explains in the exclusions section that this means it doesn’t cover damp.

Mr and Mrs M said that the leak they found in the kitchen caused lots of problems in the house. They said that they managed to dry out the kitchen, but that there was still water under other areas of the house. The problem continued to get worse in those other areas. Some walls were still very wet, and the sockets in the lounge were no longer working and fluid was leaking from them.

Legal & General said that it had tested the water in the walls that were still wet, and that water had nitrates in. That meant that the water wasn’t coming from a mains leak but coming up from the ground. Legal & General said the damp was caused by a failure of the damp proof course, and wasn’t anything to do with the leak.

Mr and Mrs M got a report which said that the damp proof course had failed because of the leak. They told us that the water had overcome the tanking from the damp proof course. And

they said that the water in the walls wouldn't be from the original leak now, so Legal & General's water testing didn't tell us anything.

Mr and Mrs M had a new damp proof course installed in part of their house in 2011. The guarantee they have for that work says that there was no tanking done then. They also said that they only had part of the building done. In other areas, the existing damp proofing was checked in 2011 and found to be working. I can see that some of the areas which didn't have new damp proofing installed in 2011 are now where some of the dampness has been found.

This is a difficult case, with conflicting expert evidence. But the report Mr and Mrs M got, which says that the damp proof course has failed because of the leak, seems to assume that there was a very big leak with lots of water. And that doesn't seem to me to be supported by the evidence. If there was a big leak, then I would expect quite a bit of damage in the kitchen, and there isn't much. There is no damage to the cupboard where the leak started, and reports suggest areas under the cupboards are dry and dusty, showing no signs of a recent leak. So, on balance, I think that it is unlikely the leak in the kitchen has caused Mr and Mrs M's damp proof course to fail. I think it's more likely that the older damp proof course in part of the property has failed. I can't rule out that some of the new damp proof course may also have failed. But I don't think either of these things are related to the leak in the kitchen. And that means Legal & General doesn't have to pay to repair the damp proof course, or to repair the water damage outside of the kitchen.

I do think that Legal & General should pay for any damage to the kitchen which was caused by the original leak. And I agree that this claim hasn't been well handled by Legal & General. There was a long delay in confirming to Mr and Mrs M that the claim wouldn't be paid. So I think that Legal & General should pay an additional £100 of compensation to make up for the stress that caused Mr and Mrs M.

my final decision

My final decision is that Legal & General Insurance Limited should consider the claim for any water damage to Mr and Mrs M's kitchen which is attributable to the original leak, subject to the remaining policy terms and conditions. If Legal & General Insurance Limited makes a cash settlement to Mr and Mrs M then it should add interest at 8% simple from the date of claim to the date of settlement.

Legal & General Insurance Limited should also pay Mr and Mrs M a further £100 in compensation, on top of the £150 it has already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 19 February 2016.

Esther Absalom-Gough
ombudsman