

complaint

Mr B's complaint is that London and Edinburgh Insurance Company Limited ("London and Edinburgh") only accepted part of his claim following an escape of water.

background

In September 2009, Mr B lodged a claim with London and Edinburgh under his home insurance policy following an escape of water at his neighbour's property, which caused damage to his own.

London and Edinburgh appointed a loss adjuster and 'expert 1' to manage the drying of the property and assess the water damage. Expert 1 identified water damage on all four floors of Mr B's property, and commenced a drying regime to allow repairs to the property to start. Mr B's property did not dry as expected and London and Edinburgh appointed 'expert 2' to handle his claim from July 2010 onwards. It concluded that expert 1 had used incorrect equipment when assessing whether the property was dry. Using appropriate methods of measuring the moisture content of the walls of the home, expert 2 determined that the ground, first and second floors of the property did not need further drying and that they were ready for repairs to commence.

Expert 2 completed a limited assessment of the basement of the property and in its opinion the basement had returned to its pre-loss condition as it would have had some damp due to its age and construction. However, in order to confirm this, further investigations would need to be completed which were of a destructive nature, i.e. the affected wall would need to be stripped to complete the investigations, which would cause damage to the existing waterproofing arrangement.

In response, Mr B obtained a report from a firm of chartered surveyors. This stated that the basement damage was caused by the water leak.

Both Mr B's and London and Edinburgh's experts agreed that exposing and analysing the brickwork in the basement would provide more certainty. Therefore, London and Edinburgh stated that if Mr B wanted the invasive investigations completed in order to attempt to prove his claim, it would either complete those works or he could arrange to have them completed himself.

In the event that the damage was attributable to the escape of water, London and Edinburgh would pay the cost of the investigations, but if it was not, Mr B would have to pay these costs. London and Edinburgh also offered Mr B £250 for the distress and inconvenience caused by the delays in the drying process.

Mr B arranged for the affected walls in his basement to be stripped and appointed 'expert 3' to investigate the damp problem and determine its cause. Expert 3 concluded that the wall was affected by an escape of water from a pipe, as there were chlorides present at high level in the walls, but no nitrates, as would be expected if it was rising damp.

London and Edinburgh instructed expert 2 to complete its own investigations as it believed expert 3's report lacked detail and a conclusive opinion. Expert 2 concluded that the damp was not caused by the escape of water, but rather by rising damp. Therefore, London and Edinburgh maintained its decision to decline to complete any works on Mr B's basement.

I considered the complaint and issued a provisional decision regarding the merits of the complaint in February 2013. When considering the matter of the damage to the basement of the property, I concluded that the relevant reports were those completed following the basement being stripped out, i.e. those from expert 3 and the second report from expert 2.

The expert 3 report found that there was inherent dampness present to the height of one meter, but the wall was wet above that level. It confirmed that salt tests had been completed and found that nitrates and chlorates were present in the wall to a level of one meter from the floor and that above this level only chlorates were found. It stated that this indicated that the water causing the damage above that level was from internal pipe work. There was no comment about the methods used or any detail of the results.

Expert 2's report explained the various methods of investigation it completed, the results from these investigations and its interpretation of the results. Whilst the salt tests completed by expert 3 confirmed that nitrates were only present in the lower meter of the walls in the basement, expert 2's results confirmed that there were nitrates present throughout the wall. It also found that the walls were very wet at the bottom of the wall, but the moisture levels reduced rapidly close to the ceiling. It also put forward possible explanations of why there were chlorides present throughout the walls. It concluded that the damage to the wall was due to rising damp, rather than the escape of water.

Having considered the details of the two reports, I was more persuaded by the investigations and conclusions of expert 2's report. I also noted the comment from London and Edinburgh that had there not been an existing rising damp problem, there would have been no need for the affected walls to have been waterproofed. As such, I was unable to conclude that the damp in Mr B's basement was caused by the escape of water from his neighbour's property.

Therefore, I concluded that London and Edinburgh's decision to decline to deal with the damage in the basement as part of the claim was reasonable. As such, I did not consider that Mr B should be reimbursed for the costs he incurred in attempting to prove his claim, in completing works to his basement, alternative accommodation costs during those processes or for any loss of income he suffered during that process.

Mr B had also asked to be reimbursed for loss of income he suffered when he had to meet with various parties involved in the claim and repair process.

A policyholder will be required to have involvement with a claim, especially when personal choices are involved, such as decorating matters. This may necessitate being at meetings, which involve taking time off work. Given that the insurance company was not responsible for the insured event occurring, it would be unreasonable to require it to pay for the policyholder's time in dealing with the claim.

Mr B expressed dissatisfaction with the way that his claim was handled and the timescales involved. Given that the claim was made in September 2009, but the property was not determined to be dry until July 2010 - a period of ten months, for much of which Mr B was living in damp conditions, I found that the handling of this matter was not acceptable. Furthermore, I noted that expert 1 had confirmed that the drying equipment was only in the property for eight weeks, it may not have needed to be used for the entire period and there was a significant delay in the drying process commencing. Whilst once the property was considered dry the claim does appear to have been progressed reasonably, there do appear

to have been issues in communication and some of Mr B's communications were not acknowledged or responded to appropriately.

As such, I found Mr B's submission that this had caused significant disruption to his normal lifestyle and distress and inconvenience was entirely plausible. Whilst the awards this service makes for distress and inconvenience are usually modest, I considered that a significant award was merited and awarded £1,000.

London and Edinburgh responded to my provisional decision and confirmed that it had no further submissions to make.

Mr B raised the following points in his response:

- Expert 1 was appointed to manage the drying and the loss adjuster was appointed to manage the claim.
- In a letter dated 2 June 2010, London and Edinburgh (via the loss adjuster) agreed to pay for the cost of the investigations, as well as the stripping out costs inclusive of the central heating system.
- Expert 2 were only called in when he pointed out that the central heating unit could not be reinstated after the drying process because it would contravene present Building Regulations.
- Expert 2's report does not provide a conclusive opinion as it stated that laboratory testing of brick and render samples would be required to ascertain the true nature of the salts.
- Due to the incorrect drying process being used by Expert 1, the whole process was protracted, and he was involved in meetings and supervision that were unnecessary.
- He was not responsible for the insured event – the leak came from his neighbour's property, which is insured by Aviva (which London and Edinburgh is part of).

my findings

Although I have provided only a brief summary of the complaint above, I have considered all the evidence and arguments from the outset, including Mr B's most recent submissions, in order to decide the outcome of this complaint.

I acknowledge that the letter Mr B refers to dated 2 June 2010 suggests that the loss adjuster agreed to carry out investigations, and stripping out works including the central heating system. However, this was at a point in time when London and Edinburgh believed that the damage to the basement was likely to have been caused by the escape of water; which was based on expert 1's findings. After it was established that expert 1 had used incorrect equipment to assess whether the property was dry, expert 2 conducted a full review of the property. Expert 2 concluded that the damp in the basement was not caused by the escape of water, but rather by rising damp. In the circumstances, London and Edinburgh is not responsible for the damage in this area, I am unable to require it to reimburse Mr B for the investigation and stripping out costs.

I also acknowledge expert 2's report does state that further investigations could be completed in order to provide complete certainty regarding the salts found to be present in the wall. However, the report does reach conclusions, as does that produced by expert 3, which I consider to be sufficient to reach a conclusion in this matter. Having considered both of these reports, I remain more persuaded by the investigations and conclusions of expert 2. As I explained in my provisional decision, expert 2's report explained the various methods of investigation it completed, the results from these investigations and its interpretation of the results. In expert 3's report, there was no comment about the methods used or any detail of the results. Furthermore, it is clear from the previous need for waterproofing in the basement that there was a pre-existing problem with damp.

As I remain satisfied that London and Edinburgh's decision to decline Mr B's claim for damage to the basement was fair and reasonable, I am unable to recommend that it reimburses him for the costs he incurred in attempting to prove his claim, in completing works to his basement, any loss of income during this process or alternative accommodation required during the investigations and whilst works were completed.

I empathise with Mr B for having to attend meetings throughout the claim, including the time period in which expert 2 reassessed the drying of the property. In addition, I understand Mr B's point that he was not responsible for the insured event occurring. However, London and Edinburgh was also not responsible for the insured event occurring and as I have previously explained, a policyholder will need to commit time and effort to resolve an insurance claim. As such, I remain persuaded that I do not consider it would be reasonable to require London and Edinburgh to pay for Mr B's time in dealing with the claim.

I do not consider that the points raised in response to my provisional decision highlight any further delays or inconvenience caused by London and Edinburgh. Therefore, I remain satisfied that London and Edinburgh should pay Mr B £1,000 for the distress and inconvenience it caused.

my final decision

It is my final decision that I partially uphold this complaint. Whilst I am unable to make an award in relation to the damage to the basement of Mr B's property or any associated costs, I consider that London and Edinburgh Insurance Company Limited should pay him £1,000 for the distress and inconvenience its handling of the claim caused him.

Derry Baxter
ombudsman