

complaint

Ms K complains about Legal & General Insurance Limited (L & G).

background

I issued a Provisional Decision on this case as follows –

‘Ms K purchased a property for investment purposes in late 2016. She took a policy with L & G to cover this. A claim was made, just under a month after the policy commenced. This concerned an escape of water.

A number of reports were made about the claim, but eventually L & G sought to reject it. They felt that a valid claim had not been proved. Ms K complained to us.

One of our investigators considered the matter and felt that Ms K’s claim should succeed. L & G objected to this, so the case has been passed to me for consideration.

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I am currently minded to reject the complaint. I’ll explain why.

I would also comment on the issue of whether Ms K received a policy document. As the cover seems to have been sold through a broker it would be they who would need to ensure Ms K got the relevant documents. So I won’t be looking at that issue here. If Ms K wishes to question her broker about that, that is up to her.

Turning to the claim it is for a policyholder to prove their claim to a reasonable standard. It is not enough for matters to be 50/50. There are a number of problems with the claim.

First of all escape of water, whilst covered under the policy, normally does not cover the property whilst it is not being lived in. I haven’t seen any proof that the property was being lived in at the time of claim.

Second, it is alleged that the water escaped from a soil pipe and was at least partly sewage. I’ve not seen a reasonable explanation, if this was the case, of how the pipe was damaged. Failure due to wear and tear is not usually covered by such policies, and as there is no indication of any works going on at the property prior to the escape of water being discovered, I cannot see that any insured peril has been identified as the cause of the water escape.

Third, there seems to be a quite serious issue with the contractor who undertook repair works on the damage. L & G found that the address given by the contractor was not valid, nor was a second address given later. The business seemed to be big enough for VAT registration but was not registered for that. And they could not trace the contractor via their name either. Whilst all of this is no reflection on Ms K it does cause some problems with the extent of the works and how some issues arose in the first place.

Taking all of the above into account I don’t think I have enough at the moment to ask L & G to meet the claim. I’m not persuaded cover applied due to the unoccupied status, I haven’t seen enough proof of an insured peril, and I can’t place much faith in reports from the contractor.

My current view is that I can’t uphold Ms K’s complaint on the evidence I have. If she wishes to submit more complete evidence of all three points she should do so.’

Since my Provisional Decision Ms K’s representatives have responded with a very detailed comprehensive document. L & G had nothing further to add.

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 won't be upholding the complaint, I will explain why.

The respond from Ms K's representative has answered some of the problems in this case, but not all of them. Whilst I can accept in part the comments on the contractor, and also the occupancy issue, I am still not persuaded this is a claim covered by the policy.

I should highlight it is for an insured to prove their claim, not for the insurer to disprove it. And it must be proved to a reasonable degree, above 50% in most cases. I note the various suggestions re the actual source of the water but these do not persuade me this is a covered claim.

There was an empty house with no signs of illegal entry and no note of ongoing works. For a sewer point, via a manhole or some other source, to suddenly break or become blocked seem unlikely to me, had it been in good repair. With no one living there and no contractor working the most likely explanation would be a lack of upkeep. This is no reflection on Ms K, as it would have occurred under the previous owner, but a policy won't usually cover a failure due to wear and tear, which is the most likely cause here, or something that was wrong before the policy started, which is also a possibility.

I am sorry for Ms K but I'm afraid that enough doubt exists over the cause of the escape, and still a few matters re the checking of the property and the contractor, that I can't accept the claim has been proved valid to the extent necessary for me to require L & G to pay it. Both of the two most likely causes of the escape of water would not be covered.

my final decision

I make no award against Legal & General Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 12 April 2018.

Christopher Tilson
ombudsman