

complaint

Miss S and Mr M complain about how Legal & General Insurance Limited handled and settled a claim they made under their home insurance policy for water damage.

background

On 27 March 2018 Miss S and Mr M contacted Legal & General (L&G) to make a claim for water damage they said occurred following a boiler leak and bad weather in early March 2018.

Miss S and Mr M instructed a company, which I'll refer to as "B", to repair their boiler. B said the pressure release valve on their boiler was blocked. It replaced this valve on around 20 March 2018.

Miss S and Mr M said when their boiler broke in the loft it caused water to overflow continuously and exit their house via an overflow pipe down the side of their house.

At the time their boiler broke Miss S and Mr M say they experienced a period of bad weather, which consisted of constant heavy snow, rainfall and very low temperatures causing water that had leaked outside the house to freeze. When the ice thawed they say the water entered their extension via the flat roof.

Miss S and Mr M sent L&G photographs which showed ice on the side of their house and extension and the damage their property had sustained. They also provided L&G with a report they'd obtained from a builder who had inspected the damage. They told L&G they thought the damage had been caused by water leaking from the boiler.

L&G appointed a surveyor, who I'll refer to as "C" within this decision, to determine the cause of the damage. C said the damage had been caused by a defective roof felt upstand and defective mortar joints to the gable wall. C said this was wear and tear which had happened over a period of time. And it said water wouldn't have penetrated the roof if it had been maintained properly.

L&G told Miss S and Mr M wear and tear wasn't covered by their policy and declined their claim on this basis. But they didn't agree with L&G. They said they had never had a leak prior or since the one they'd reported. And they felt the weight of snow and the ice had caused the damage to their extension.

Miss S and Mr M say L&G told them it would cover the cost of repairing the damage if they could provide proof from B that it had repaired their boiler. They provided a letter from B to L&G. But when L&G showed this letter to C it maintained its view that the water ingress had been due to wear and tear of the roof. It said the condition of the roof had deteriorated over a period of time and, so, was excluded under their policy.

Unhappy with this, Miss S and Mr M brought their complaint to our service. However, our investigator didn't uphold it. She agreed with L&G's outcome and thought it had acted fairly in declining to cover this claim. But Miss S and Mr M disagreed and asked an ombudsman to review their complaint.

my findings

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

There's no dispute that extensive water damage occurred to Miss S and Mr M's property. However, there's a disagreement between the parties about the cause of the damage and correct outcome of this claim.

I can see Miss S and Mr M have gone to some trouble to provide our service with some very detailed submissions and feel very strongly that their claim should be paid. I want to assure them that I've read everything they've sent us. I hope they will understand if I don't address every comment they've made in this decision. I intend to concentrate on what I consider is key to the complaint – namely whether L&G acted reasonably in declining this claim. And I'll explain why I think it has.

Miss S and Mr M's policy provides cover for damage caused by a range of perils that might happen. These are specific one-off events and include storm, for example. In order for a claim to be successful, a policy holder would have to show that the damage they're claiming for was caused by a storm.

L&G considered whether or not a storm had caused the damage. I think that this was reasonable because Miss S and Mr M told L&G they thought the internal damage to their home had been caused by the weight of the snow on their roof.

When considering a claim for damage caused by a storm I need to consider three main questions:

1. Is there evidence that there was a storm around the date of the damage?
2. Is the damage consistent with what we would normally consider storm damage?
3. Was the storm the main cause of the damage?

In weighing up the first question I've looked to see if Miss S and Mr M's policy defines storm. I can see on page 8 of the policy booklet storm is defined as having "*wind speeds with gusts of at least 47mph/75kmh or torrential rainfall at a rate of at least one inch/25mm per hour or snow to a depth of at least one foot/30cm in 24 hours or hail of such intensity that it causes damage to hard surfaces or breaks glass*".

I've reviewed weather records to see what it was like in Miss S and Mr M's locality at around the time of the damage. Having done so, I can see that the highest snowfall recorded was 15-17cm (12cm of snow accumulating in the 24 hours to 9.00am). This was on 1 March 2018. I can see that our investigator checked weather records from another source, which gave comparable results.

I've seen Miss S and Mr M's photos of their house covered in ice. But under the terms of their policy the weather recorded doesn't meet the conditions of a storm. So, I'm not satisfied that storm conditions existed at around the date of the damage.

I think that the adverse weather that Miss S and Mr M experienced in March 2018 has exposed the underlying deterioration of their roof and caused that to worsen. But based on the information provided I think the roof damage was caused by wear and tear, which

happened over a period of time. I'm not persuaded it was caused by a one-off storm event or the boiler breaking.

On page 2 of the policy booklet L&G makes it clear that its policy "*covers the costs of unexpected loss or damage*" It goes on to state that it doesn't cover "*wear and tear, maintenance costs such as refixing loose roof tiles, repointing brickwork or replacing guttering or damage that happens over a period of time, for example damp, rot and damage from vermin*". This is in common with most home insurance policies because insurance is intended to cover the unforeseen, and something wearing out or requiring maintenance isn't unforeseen.

If an insurer wishes to decline a claim on the basis of wear and tear it has to show that this is how the damage happened. In this case L&G is able to rely on C's opinion that the damage was caused by a poorly maintained roof and pre-existing issues with the mortar. I've seen the report from Miss S and Mr M's builder. They think this report shows the damage wasn't due to wear and tear. But this report says mortar had been washed out of the brickwork on the gable end wall and that this had caused water ingress into the property.

Miss S and Mr M's think the water was coming out of the overflow pipe outside their property causing damage to their roof. But the overflow pipe is designed to take water away in circumstances when the valve inside isn't working.

While I appreciate the valve inside their house wasn't working I'm satisfied that the overflow pipe was doing the job it was intended to do. And I don't think the mortar washed away because of the water leaving their house via the overflow pipe.

Mortar washing away is something that happens gradually. It doesn't happen due to water pouring from an overflow pipe as happened in Miss S and Mr M's case. Mortar is intended to be weather and water resistant though it will deteriorate over time when exposed to extremes of weather. And I think the report they obtained supports L&G's argument that the damage to the roof is most likely due to wear and tear instead of a single one off leak, which is what is covered by Miss S and Mr M's policy.

As the damage is most likely due to wear and tear and something that's happened gradually it isn't covered under the terms and conditions of Miss S and Mr M's insurance policy. So I don't think L&G made an error in declining their claim.

I'll now address some service complaints Miss S and Mr M raised about the way in which they were dealt with by L&G. I can see that they've complained about the content of messages L&G play to policyholders while they're on hold. They say they heard a message saying L&G "*cover all weather related damages, except fence panels*". They feel this was misleading and unfair given their claim was declined.

L&G has told our service that this is a generic message and I think that's fair. I say this because we wouldn't expect an insurer to use different messages for policyholders whose claims it had declined. Miss S and Mr M may feel the message they heard doesn't go on to specify policy exclusions. But it wouldn't be reasonable to expect messages to contain the full terms and conditions of a policy.

Miss S and Mr M say L&G misled them because it told them if they provided a report from B stating what had caused the leak it would cover the damage caused. But I've listened to the phone recording during which this discussion took place. And I can hear L&G's agent

explaining clearly to Miss S and Mr M why their claim had been declined and that L&G would consider any further information it received from them. I don't think the information Miss S and Mr M were given was incorrect or misleading.

When L&G reviewed the report B provided it maintained its view that the damage had been caused by wear and tear. It didn't think B's report identified a cause for the damage Miss S and Mr M's property had sustained. And it also didn't think the boiler valve breaking was consistent with the damage that Miss S and Mr M's roof sustained. Based on the evidence I've seen I don't think L&G's decision about their claim was unreasonable.

Miss S and Mr M are also unhappy because they say C failed to attend their property on the agreed date with no prior warning. They say this resulted in them unnecessarily taking a day off work. L&G disputes this. It's shown our service evidence that C was initially due to visit Miss S and Mr M's property on 29 March 2018 but they called to cancel that appointment the same day. L&G has provided evidence that C then attended their property on 5 April to inspect the damage. I can see that Miss S and Mr M refute this evidence.

I appreciate it may have been frustrating and inconvenient to Miss S and Mr M for C's visit to have been put off. I can see they were proactively trying to progress their claim with L&G. But, C was able to attend their property within ten days of them making a claim for damage. I think this shows that all parties were dealing with this claim in a timely manner.

Miss S and Mr M say there were periods of time where they were chasing L&G for information about their claim. But claims for an escape of water can be complex and tend to take some time to resolve. While Miss S and Mr M may feel there were periods of inactivity I can see L&G were assessing the cause of damage and considering information Miss S and Mr M provided as we'd expect.

I acknowledge that, as loyal paying customers, Miss S and Mr M feel let down by L&G. They say they're unable to afford to repair the damage caused and they're suffering considerable distress. But, overall, I'm satisfied L&G handled their claim fairly and I think it applied the terms of their policy reasonably in declining their claim. It follows that I don't think it would be fair to require L&G to pay their claim.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S and Mr M to accept or reject my decision before 16 February 2020.

Julie Robertson
ombudsman