

complaint

Mr W complains about esure Insurance Limited's decision to decline his accidental damage claim.

background

Mr W made a claim to esure under his contents insurance policy when he found that some things in his loft had become really damp. At first he thought there must be a hole in the roof allowing rain to enter the loft. However, a roofer confirmed this wasn't the case. Mr W concluded that the damage had happened due to condensation forming in the loft. esure declined Mr W's claim. It relied on two policy exclusions. Firstly, it said that the damage was caused by atmospheric conditions. It then said the damage had been caused gradually. As both types of damage were excluded from cover under the policy, it declined the claim.

Mr W disputed esure's decision. He said the condensation had formed suddenly after a new boiler had been installed in the house eight days before the damage was found. Before that, there was no heating in the house. Once the boiler was installed, the heating was switched on and allowed to run continuously for 3-4 days. Mr W said the loft space was dry before the boiler was fitted. He'd no reason to believe items stored there would be damaged.

esure wouldn't alter its decision. Mr W brought a complaint to this service. Our adjudicator investigated his complaint and recommended that it be upheld. She said the policy exclusion for atmospheric conditions applied to accidental damage to buildings. As Mr W was claiming for damage to contents, not buildings, this exclusion had been wrongly applied. She also said that esure hadn't fairly applied the 'gradually operating cause' exclusion to Mr W's claim. She recommended that esure consider the claim.

esure disagreed with our adjudicator. It said it was unrealistic to believe there was no condensation before the new boiler was fitted. It also said Mr W had described the damage as mildew with some items rotting. It said this indicated the damage was caused over a longer period. Our adjudicator said that mildew could form very quickly and that her view remained unchanged. esure asked for an ombudsman's 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.

Mr W has accidental damage cover under his contents policy. The contents in his loft were damaged accidentally by condensation. esure must pay Mr W's claim unless it can successfully rely on one of the policy exclusions to defeat it. esure has to prove the exclusion.

esure has put forward two exclusions to defeat the claim. The first one relates to damage caused by atmospheric conditions. It now accepts it was wrong to try and apply this exclusion because it only applied to accidental damage to *buildings* claims. This claim is for *contents* and the policy contains no such exclusion.

The second exclusion it has relied upon is the general policy exclusion that it won't pay for any damage which has been gradually caused.

This service's approach to the application of this clause is long established. We don't think it is fair for an insurer to rely on it to defeat a claim when the policyholder didn't, and couldn't, know the damage was happening. Mr W has said that he uses his loft quite a bit because they are a large family and they need the storage space. He says he's in the loft quite often. He's explained that he moved into the house in March 2013. The house had central heating but the boiler was broken. The boiler wasn't replaced by his landlord until November 2013. Prior to that, they were relying on an electric heater in the living area. Once the boiler was fitted, they ran it continuously for the following 3-4 days because it was cold outside.

Mr W says he'd been in the loft a few days before the boiler was fitted and everything was fine. When he went into the loft 8 days after the boiler was fitted, his partner discovered everything was very damp and damaged. He says that there were items of sentimental value in the loft that they'd never have left there if they knew they were at risk of damage. Mr W also says that the condensation would've formed almost immediately the heating was turned on for the first time. In turn, that would have damaged the stuff in the loft within hours. He has said that if he'd gone into the loft the day after the boiler was fitted, he would have found his contents damaged. He doesn't think the fact he only discovered the damage 8 days later is relevant.

Esure says it doesn't believe the house had been without heating until the new boiler was installed. It thinks it was unrealistic to believe there was no condensation before the new boiler was fitted. As it thinks the home must have been heated, it considers the installation of the boiler to be a 'red herring'. It sent in some evidence about the formation of condensation in a roof space.

I think that condensation would have formed immediately and caused the water damage. I think the fitting of the boiler, and the house suddenly being warm and causing condensation, falls within the definition of accidental damage: "*loss or damage which happens as a direct result of a single unexpected event*". I also think it is possible for mildew to form very quickly. I don't think it is fair to say Mr W knew the condensation would form. I see no reason to doubt Mr W when he says that on the weekend before the boiler was fitted, the loft was completely dry.

Consequently, I don't think esure has done enough to prove that the gradually operating cause exclusion can be relied on in this claim.

my final decision

My final decision is that I uphold this complaint. I require esure Insurance Limited to deal with Mr W's accidental damage claim.

Claire Woollerson
ombudsman