

The complaint

Mrs E has complained that AA Underwriting Insurance Company Limited ('AA') declined her claim for water damage under her home insurance policy following an escape of water.

What happened

Mrs E reported a leak at her property to AA in early December 2022. The property had suffered previous leaks, which it had been thought was in relation to wear and tear to a flat roof. By December 2022, there was significant water damage to walls and ceilings in the kitchen and laundry room of Mrs E's home. Mrs E then called a plumber who found that there was a toilet pipe leak in the upstairs bathroom. AA declined her claim as it considered that the damage related to wear and tear to the flat roof. Mrs E complained about this decision. As AA maintained its position, Mrs E then referred her complaint to this service.

The relevant investigator upheld Mrs E's complaint and accepted the reasons Mrs E gave for not immediately contacting AA to report the leak. She also didn't think that AA had carried out a sufficiently thorough investigation into Mrs E's claim. She thought that AA should carry out a full investigation to include an engineer's visit, to see what help could be offered.

AA disagreed with the investigator's view. The matter was therefore referred to me to make a final decision in my role as Ombudsman. In August 2023, I issued a provisional decision for this complaint and explained why I was minded to uphold Mrs E's complaint as follows; -

'The key issue for me to determine is whether AA fairly and reasonably applied the terms and conditions of the insurance policy in declining Mrs E's claim and generally acted in a fair and reasonable manner in its handling of Mrs E's claim. On a provisional basis, I don't consider that it did, and I'll explain my reasoning as follows.

Mrs E explained that her property had suffered previous leaks dating from 2020 and she was led to believe that these related to her extension roof. She said that an insurance assessor had determined at the relevant time that the damage was due to wear and tear and wasn't covered by the policy. Mrs E had therefore employed a roofing contractor to seal the flat roof. However, identical damage happened around September 2022 and Mrs E employed another contractor to carry out further sealing work and repair. The damage became more extensive, and she then engaged a roofing business to seal the whole extension in mid-November 2022. She'd then noted staining on the arch between the kitchen and laundry room, however the roofer didn't consider that this related to the roof issue.

Mrs E said that as regards the leak in late November 2022, water appeared on the kitchen floor, near to the extension area. She took pictures of the leak and called the roofing business, who said that it shouldn't be anything to do with the roof. Mrs E then called a plumber to look at the problem. He found that a toilet pipe was leaking through the hole where pipes led through to the kitchen. Mrs E said that no-one could separate 'where the roof damage started and ended, and where the toilet damage started and ended,' but if it was from the toilet leak then she felt her claim should be upheld. Mrs E confirmed that the plumber installed a new pipe and Mrs E then arranged for a new toilet to be installed.

Mrs E explained that when water staining occurred on the extension ceiling, it was similar to the original damage, so she'd immediately alerted roofers. She didn't alert AA in September 2022, because she thought it had already assessed the previous damage and judged it to be down to wear and tear, and not covered by her policy. She said it wasn't until she; 'saw the pool of water on the kitchen floor that suspicion was raised and I responded by getting the plumber to see whether he could find a cause.' Mrs E said she'd asked AA what else she could or should have done differently but hadn't received a reply. Mrs E felt all her responses were timely and appropriate and in accord with what she knew at the time. She said she'd mitigated the issue as best as she could. She felt that she'd taken reasonable action in response to the information known at each stage, responding to each development as quickly as possible. She asked recommended professionals to carry out any work they deemed necessary, and the plumber was happy to be contacted to fully explain the issue.

Finally, Mrs E expressed concern in January 2023 that AA had promised, but failed, on more than one occasion to provide a decision regarding her case, to then be told that the case was with the complaints team, and so she may not receive a decision for eight weeks. Mrs E had been told that her cover was for escape of water. She was mindful that urgent repair work was needed 'and aware that the situation and further delay could be damaging to my health.' She'd also asked AA in mid-December 2022 for advice as to whether she needed to be taking any further action at that point to 'know for certain that no more water is escaping'.

I now turn to what AA has said about the matter. In AA's final response letter, it recognised this service's guidance that, in the event of a claim decline due to gradually operating causes, the insurer must also show that the policyholder would have been reasonably aware of the damage occurring. AA relied upon its surveyor's report dated December 2022, and his observation that the issues appeared to be due to an ongoing cause and not a one-off event. He thought that the amount of visible damage was too severe to have been from a slow leak from a toilet fitting. He said that the mould and amount of moisture in the walls, from ceiling to floor level, indicated that moisture had been affecting them for a long period of time. It was noted that Mrs E had indicated that the damage was evident before November 2022 and before she'd called her roofers back. AA added that for paint to bubble and mould to grow, 'time would be a factor, and even the customer admits she felt this was roof repair issues.'

The surveyor indicated that the repairs carried out to the flat roof didn't appear to be of a high standard. He also stated that 'PH may need to monitor the issue as all the damage in my opinion does not relate to a slow leak from WC fitting, seeing as the pipe is above ground level and no moisture has ever been seen on the tiled bathroom floor.' The report indicated that the policyholder's dates had been vague and it appeared to acknowledge vulnerability in terms of lack of building knowledge and also the policyholder's age. In conclusion, AA said that as the policy specifically excluded damage caused under the gradually operating clause, it wouldn't cover any of the damage caused by the leak.

The starting point for my provisional decision is the wording in the relevant policy documents. I note that Mrs E was covered in principle for escape of water events, including tracing and accessing a leak and repairing any damage caused to walls, flooring or ceilings during the search up to £5,000. Loss or damage caused by wear and tear however is not covered.

The photographic evidence which has been supplied in this case shows significant water damage in both the laundry room and kitchen. I note that both parties had assumed, up to November 2022, that the damage was due to a problem with the flat roof. It was only when Mrs E noticed a pool of water on the kitchen floor that she realised this was unlikely to be the case and she called in a plumber. He identified the fact that there was a leak from the pipe to the toilet cistern.

I note that AA's surveyor considered that the amount of visible damage was too severe to have been from a slow leak from a toilet fitting. He also thought that the repair work to the extension roof may not have been carried out to a high standard. The photograph of the exterior of the property indicates that the extension is not in the best condition. I find the surveyor's report persuasive to the extent that it's likely that a proportion of the damage was a residual issue to do with the state of the extension roof. However, the surveyor suggests that a proportion of the damage had been caused by a slow leak. He recommended that Mrs E monitor the issue as it was his opinion that not all damage related to a slow leak from the toilet pipe. He noted that the pipe was above ground level and no moisture had ever been seen on the tiled bathroom floor. This had however been clarified by Mrs E as the leak was running into the pipe cavity to the kitchen, rather than onto the bathroom floor.

A slow leak over a considerable period of time can cause significant cumulative damage, and indeed, cause mould and extensive damp issues. It's not known for how long the toilet pipe had been leaking. This didn't appear to be a visible, obvious leak at the site of the toilet and was only detected following the plumber's visit. AA recognised that it would need to show that Mrs E was reasonably aware of the damage occurring. Here, I don't consider that Mrs E could reasonably be said to have been aware that the damage was linked to a toilet leak. It's also unfortunate that the condition of the flat roof raised confusion as to cause of the water damage to Mrs E's kitchen and utility room and indeed, could have contributed to a proportion of that damage over a period of time. On a provisional basis however, and based on the available evidence, I conclude that a proportion of the damage, as indicated in the surveyor's report, was likely to have been caused by the toilet leak.

I also appreciate that the nature of the damage and state of the flat roof placed AA in a difficult position. It's not clear whether it was AA or an alternative insurer that had previously assessed damage at the property and concluded that it was due to wear and tear. I also note that Mrs E didn't immediately notify AA when a pool of water appeared on her kitchen floor. Nevertheless, I'm persuaded by Mrs E's consistent and candid submissions that she'd previously been led to believe that the leak in her kitchen and utility room was due to wear and tear of the extension's flat roof. She'd addressed this issue to the best of her ability and at considerable cost on several occasions. Having received a previous finding that damage was due to a roof leak, this would no doubt have been in the back of the mind as the continuing cause. However, when her roofing contractor suggested that the escape of water might come from somewhere else, she'd employed a plumber. She had therefore acted in a reasonable manner by calling a plumber who then traced the leak. AA doesn't appear to challenge the fact that this leak occurred and was addressed appropriately by Mrs E.

On a provisional basis, I agree with the service's investigator that AA hasn't done enough to assist Mrs E under her home insurance policy. I also agree on a provisional basis that it should now urgently instruct an independent, suitably qualified professional to carry out a swift and thorough investigation to apportion the amount of water damage likely to have been caused by the toilet leak, and which would be covered under the policy. This would necessarily include a comparison of current damp levels with those following the toilet leak repair as recorded by the surveyor in December 2022. A significant reduction would be a likely indicator that the toilet leak was the predominant cause of the damp conditions. I would also expect this individual to make all necessary efforts to discuss and take into account the findings of Mrs E's plumber as to the rate of flow of the leak, the likely length of time for which the leak had occurred and his views as to the extent of damage it would have caused.

As to the service provided by AA, its case notes show that in later 2022 and early 2023, Mrs E had asked AA for an urgent decision, as she was mindful that urgent repair work was needed. She indicated that the situation and further delay 'could be damaging to my health' but was informed that as the matter was now being treated as a complaint, a response was likely to take eight weeks. The surveyor's report references Mrs E potential vulnerability, and

I consider that AA should have done much more in the circumstances to assist Mrs E in its handling of the claim. This is particularly in the light of the fact that the surveyor's report strongly indicated that a proportion of the damage was indeed due to the toilet leak, but it maintained its decline position in the face of its own evidence. In addition, the early case notes indicated that AA had understood the points made by Mrs E's. I also appreciate that on-going investigations are likely to cause Mrs E further distress and inconvenience and I would expect AA to proceed with this work diligently and to settle Mrs E's claim promptly.

In summary, it's most unfortunate that Mrs E has found herself in such a difficult and stressful situation with water leaking into her kitchen and utility room, causing damp and damage. She tried to address what she was led to believe was the cause of the problem and then rapidly addressed the toilet leak when professional contractors eventually recognised the problem. Whilst I have some sympathy with its position, I don't consider that AA adequately engaged with Mrs E on all occasions, particularly bearing in mind an identified vulnerability. Most importantly, I don't consider that AA carried out adequate investigations into the cause of damage to Mrs E's property, particularly bearing in mind that its surveyor's report stated that not all the visible damage was due to the toilet leak, which strongly suggested that a significant proportion was due to this.

I'm therefore minded to require AA to re-open and fully investigate Mrs E's claim and to settle Mrs E's claim in an appropriate sum for damage caused by the toilet pipe leak and in relation to any relevant trace and access element. I'm also minded to require AA to pay Mrs E compensation in the sum of £500 in any event for the distress and inconvenience caused by the manner in which AA has handled her claim.'

In my provisional decision, I asked both AA and Mrs E if they had any further comments or evidence that they would like me to consider before I made a final decision.

What I've decided – and why

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

AA didn't provide any further information or evidence following my provisional decision. Mrs E accepted the provisional decision and didn't provide any further information or evidence.

In all the circumstances, I've concluded that the provisional decision provides a fair and reasonable outcome to the matter.

My final decision

For the reasons given above, I uphold Mrs E's complaint and to require AA Underwriting Insurance Company Limited to do the following in response to her complaint.

- To reopen and fully investigate Mrs E's claim in the manner described in this decision letter.
- To settle Mrs E's claim for water damage in an appropriate sum.
- To pay Mrs E compensation in the sum of £500 for the distress and inconvenience caused by its handling of this claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 31 October 2023.

Claire Jones
Ombudsman