

The complaint

Mrs H complains that Hubener Versicherungs AG declined her claim on her property owner's insurance policy.

What happened

Mrs H owned a property that she rents out to tenants. She bought property owner's insurance for it that was underwritten by Hubener.

In April 2022 the tenant reported a problem with the bathroom floor. They said it was uneven and springy to walk on. Mrs H tried to instruct a contractor but had issues securing someone to come out and look at the damage. In August 2022 she found a contractor who took up the floor to inspect the issue. They found that there was a leak from a pipe under the floor that had caused the timbers below to become sodden.

Mrs H made a claim on her insurance but Hubener declined it. It said the problem had been caused by wet rot and had happened gradually overtime. And both of these causes were excluded in the policy. It also said the policy says Mrs H must contact it within 14 days of damage that may lead to a claim. And she hadn't done that so she was in breach of this condition.

Mrs H didn't think this was fair as she said she'd been unable to get a contractor to attend until August 2022 but that the damage hadn't got worse in this time. She made a complaint but Hubener didn't uphold it, so she brought it to this service.

Our investigator didn't recommend the complaint be upheld as he said Hubener had done enough to prove a policy exclusion would apply. Unhappy with this, Mrs H asked for the complaint to be reviewed by an ombudsman.

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.

When an insurance claim is made, it's first for the insured to show that there's been a peril that is covered under the policy. It's then for the insurer to either accept the claim or prove a policy exclusion or condition would apply.

Here Mrs H's policy lists the insured perils as follows:

'Fire; lightning; explosion; aircraft or other aerial devices or articles dropped from them; riot; civil commotion; strikers; locked-out workers; persons taking part in labour disturbances; malicious persons (other than thieves); earthquake; storm; flood; escape of water or oil from any tank apparatus or pipe; impact by any road vehicle or animal; theft or attempted theft; subsidence, landslip or heave.'

Here, there was an escape of water from a pipe, so there has been an insured peril as listed in the policy.

It is therefore for Hubener to show an exclusion would apply. The exclusion it's relied on is as follows:

'wear and tear; frost; wet or dry rot; dampness or dryness; or any other gradually operating cause;'

It's said it considers the cause to have been wet rot and that it's happened over time. Both of which are listed in the extract above as excluded from cover.

Hubener has provided the report and a video from its loss adjuster who attended the property to inspect the damage. The report stated as follows:

'...a large portion of the floor where all the floorboards and joists are rotten and have had to be removed and replaced.'

The video reflects this position, as it shows the timbers beneath the floor are sodden with water and have gone rotten.

From this, I think Hubener has done enough to show that the cause was gradually operating. The level of damage shown in the video wouldn't happen straight away and the rot that had developed would have occurred over a long period of time.

Further, Mrs H has said that the problem with the bathroom flooring was reported to her in April 2022. But a contractor didn't come out until four months later in August. There is a condition in the policy that states as follows:

'It is a condition precedent to Our liability under this policy that You shall:

(i) advise Us within fourteen days of any Damage, accident or injury which may give rise to a claim'

While I appreciate what Mrs H has said about the difficulties she experienced when finding a contractor, she still had the obligation under the policy to inform Hubener of the problem with the floor. As I think it would have been clear this may have given rise to a claim, even before the exact problem was known. Further due to the nature of the issue – an ongoing leak – it's likely that throughout this time the issue was getting worse under the floorboards. And had Mrs H contacted Hubener about the issue, it could have assisted in appointing a contractor. I therefore think Hubener has also acted fairly by relying on this condition in the policy.

For these reasons, I'm persuaded that Hubener has acted fairly and reasonably by declining Mrs H's claim. I therefore won't ask it to do anything differently.

My final decision

For the reasons I've given, I don't uphold Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 9 October 2023.

Sophie Goodyear
Ombudsman