

The complaint

Mr C and Miss J complain about Wakam Insurance Company (WIC) who declined their claim under their home insurance policy.

What happened

Mr C and Miss J were decorating their home. During the renovation works, they noticed that there was an issue with the newly installed flooring. They obtained a causation report, and this found that a large amount of the flooring had suffered from thermal shock. This meant that the adhesive that had been applied to the tiles had come away. The root cause of the thermal shock also found that some plastic protective matting (that had been taped over the tiles) had caused the heat to be forced down, whilst the underfloor heating had been on.

Mr C and Miss J submitted the report to WIC and made a claim. WIC considered the report and ultimately declined the claim. It said that as there had been extremes of temperature, this caused the thermal shock. And as a result, there was no cover under the policy.

Mr C and Miss J were unhappy with ; the outcome and raised a complaint. They said that the maximum temperature of the underfloor heating would not have exceeded 28 degrees. And as this wasn't an extreme temperature, the claim should be accepted. In its final response, WIC maintained its position. It said that the decision to decline the claim was the correct one, as there was no information to support that the damage caused was due to an insured event, that occurred in line with the policy terms and conditions.

Mr C and Miss J were given their referral rights and referred a complaint to our service. One of our investigators, considered the complaint and thought it should be upheld. She said that WIC hadn't done enough to show how the exclusion that it had relied upon applied. She said that Mr C and Miss J had obtained expert evidence to show that the damage wasn't as a result of the temperatures involved. So, she thought WIC should accept the claim and settle it.

Mr C and Miss J accepted the view. WIC did not. It said that Mr C and Miss J's own expert concluded that there had been thermal shock. The shock had caused the damage, which was due to extremes of temperature. Further, the fitting of the matting over the underfloor heating (whilst the heating was on) was against all industry recommendations and by installing it, would fall under the definition of faulty workmanship. Finally, accidental damage couldn't be considered as the damage wasn't due to a single or one-off event, that was sudden. As the heat was being redirected into the flooring over a number of days. So, it asked for a decision from 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.

I considered the complaint, and I thought the complaint should be upheld. I issued a provisional decision on 1 August 2023 and asked both parties to send me anything else by 29 August 2023. In my provisional decision I said:

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of the complaint.

Having done so, I'm minded not to uphold this complaint. I understand that this is likely to be a disappointment to Mr C and Miss J, but I hope my provisional findings explain why I think this is fair.

I have considered all the comments from both parties, as well as the policy terms and conditions. I think the main issue of this complaint is whether WIC fairly declined Mr C and Miss J's claim. Having reviewed the evidence, I think it did, so I'll explain why.

One of the terms that WIC declined the claim states:

'There is no cover for: damage caused by dryness, dampness, extremes of temperature and exposure to light.'

Mr C and Miss J said that the underfloor heating that had been left on, hadn't been on at a high temperature. So, the floor and adhesive hadn't been exposed to extreme temperatures. Further, for the temperature to be deemed extreme, the underfloor heating would have to be run at 32 degrees or higher. They provided evidence that the maximum temperature that it could be run at was 28 degrees. And this they said supported their contention, that the floor wasn't exposed to extreme temperatures.

I have thought about what this means and in particular in line with the policy terms and conditions. Mr C and Miss J provided expert evidence which concluded that the damage was due to thermal shock.

WIC provided a definition of thermal shock, and this stated:

'Thermal shock occurs when materials are rapidly exposed to extreme temperatures, Severe and/or repeated exposure to sudden changes in temperature can lead to degradations in material strength or performance. This can cause issues for some insulation materials, or even lead to thermal shock failure Depending on their thermal expansion coefficients, different materials may undergo varying levels of expansion which can cause tears, ruptures, and fractures.'

Having read the term in conjunction with the definition of thermal shock, as well as the report provided by Mr C and Miss J, I'm persuaded that the floor (and adhesive) were exposed to extremes of temperature. That is, sudden changes in the temperature that the floor and adhesive were exposed to. Rather than an extreme temperature, which I accept wasn't the case here.

WIC further said that rapidly changing temperatures was enough to put materials well outside their normal working tolerances and cause mechanical breakdown. Which wasn't helped by Mr C and Miss J's contractors covering the floor with a protective matting, that acted as a barrier and prevented the heat from escaping. In other words, it caused the heat to be forced back into the floor (despite the standard heat settings) and damaged the adhesive, thus causing thermal shock.

In addition, I'm satisfied that the policy term supports the thermal shock definition, that WIC relied upon. In that, it states that cover isn't provided for damage that is caused by 'extremes of temperature'.

Turning to the accidental damage comments that Mr C and Miss J have also raised. I have had a further look at this.

The policy term under accidental damage states:

'Covers you for unexpected and unintentional damage or breakage to your contents by a single and one-off event resulting from a sudden and external means'.

Whilst I agree that the damage was likely unexpected or unintentional, the second half of the term makes it clear that the damage ought to be caused by a 'one-off' or 'single event'. I'm not persuaded that this was a one-off event, given that Mr C and Miss J confirmed that the heating had been on for a few days. Consequently, I don't think that it's reasonable or fair to conclude that the damage was sudden, which means that the accidental damage term, can't be relied upon by Mr C and Miss J.

Finally, WIC also said that by fitting the matting over the underfloor system (whilst the heating was on) went against all manufacturer and industry recommendations. As a result, it could fairly decline the claim under the exclusion of faulty workmanship, as well.

I haven't been provided with any evidence from Mr C and Miss J that is contrary to this contention by WIC. If, however, Mr C and Miss J are able to provide any expert evidence that is contrary to this, then I will consider it. But currently, I'm persuaded by WIC's comments that faulty workmanship contributed to the damage caused.

Presently, I think that WIC was reasonable in its response to Mr C and Miss J. And I think it fairly declined their claim, under the policy terms and conditions.

I understand that this isn't the outcome that Mr C and Mrs J would've liked, but currently, I won't be able to reasonably ask WIC to do anything more at this stage, to resolve this complaint. I will though consider any further evidence that Mr C and Miss J might have if they wish to rely upon it.

Responses to my provisional decision

WIC agreed with my provisional decision. Mr C and Mrs J did not. They provided a number of comments which I have carefully considered. I also sent those comments to WIC for its comments.

I think, given the extensive comments made by Mr C and Mrs J, it would be best for me to put the comments in full, with my findings that will follow. It should be noted that WIC provided comments, which I also considered and have included them also.

'We are still yet to receive a definition of "extremes of temperate" from our insurer. Given this is the exclusion in the policy wording, this is the definition we should be provided with. Instead, we have been given a definition of "Thermal Shock". If the insurer could please evidence where "Thermal Shock" is an exclusion in the policy that would be greatly appreciated. Having re-read our policy wording I can confirm that "Thermal Shock" is not once mentioned in our policy wording.'

WIC commented as follows. As per some other definitions in the policy (e.g., 'Storm'), we do not define these specifically - and we take a view that has been supported by your service in

other decisions that where a specific term is not defined then it should be interpreted in a fair and reasonable way in line with what a customer should expect and in line with industry norms. We intentionally do not define 'extremes of temperature' in the policy definitions as this is very dependent on the item in question.

For example, a kitchen unit designed to house an oven, or a surround for a log burner would have normal expected temperatures that could reach very high levels (and the same would be true for items designed to be used in below freezing conditions or stored in unheated out-buildings or garages). So, we do not define a specific temperature range in general, and we base our decisions in these cases on whether the item has been placed or used in temperature conditions that it was clearly not designed for and would be considered 'extreme' by the manufacturer in terms of the item's tolerances. This was cross referenced with research on industry norms and expectations (more on that below).

'Thermal Shock' is not mentioned in our policy, however, your provisional decision report states that "The shock has caused the damage". By definition of Insurance principles and practices, we have now determined the causation of loss is "Thermal Shock". Going back to my first point, being "Thermal Shock" is not identified, defined, included in our policy wording, if the causation of loss aforementioned is "Thermal Shock" as mentioned, this claim cannot be denied on that basis.'

WIC replied as follows. We have an expert opinion (provided by the policyholder themselves) that the cause of damage was 'Thermal Shock' - by the very definition of that term (and the researched industry views that we have provided), this would be caused by an extreme temperature situation that the materials were placed under (and this can definitely have been caused by the direction the heat was forced into - not just the setting on the thermostat, we are not disputing the policyholders assertion of the setting he left the heating at).

'Faulty Workmanship - This exclusion cannot be considered. We (Mr C and Miss J) fitted the matting over the tiles and therefore the underfloor heating system, not the contractor. This is evidenced in the Claims Detail report from our contractor, "After the work was completed, in order to protect the tiles, the customer laid a black plastic protective matting". As such this should not be considered, so please can you remove from your findings'.

WIC commented as follows. Faulty workmanship does not have to be performed by external contractors. The policyholder themselves can undertake work of their own faulty design/specification, workmanship, or materials. It does not fall under the terms of this policy that they are covered for the ongoing or long-term effects this might have on their building or contents. The fitting of a matting system over underfloor heating (whilst leaving the heating system on!) is against manufacturer and industry recommendations that we have researched, and so for us would quite clearly fall under the definition of faulty workmanship.

Accidental Damage claim - The definition of "one-off event" according to the Collins dictionary is "when it is made or happens only once". We only once turned the underfloor heating on, and we only once laid the matting onto the floor. We didn't continuously turn the heating on or off. As a result, the one-off event of laying the matting on the floor falls in the accidental damage definition. In relation to the second point "sudden and external means". Have WIC provided industry evidence that it would take "a few days" for the adhesive to be damaged. Despite the heating being on "for a few days" the damage to the adhesive may well have occurred immediately and more importantly suddenly. Without evidence supporting it would take a few days for the adhesive to be damaged, I don't believe it is fair or reasonable to assume that this is case, and therefore we could just as easily assume that the damage was "sudden".

WIC said, we would reiterate here that the laying down of protective matting for a period of days and leaving the heating on whilst further decoration continued would not appear to meet a reasonable person's definition of sudden. It would ask has the policyholder provided evidence that the damage occurred from a sudden means? - it would be their responsibility to demonstrate such a thing under the terms of the policy - not an insurer's responsibility to demonstrate otherwise.

WIC provided a definition of thermal shock" - We have already determined that "Thermal Shock" is the causation of the loss here. As "Thermal Shock" is not mentioned in the policy, this definition is almost irrelevant to the case. Please could we get clarification as to where this definition has come from? This is the first I have seen of this definition. Precedent of this definition being used would also be required. Is this a definition WIC have produced themselves or is this an independent industry accepted definition?

WIC said and provided a number of examples to support its contentions: We researched a variety of sources for an accepted definition across the industry and in public facing science literature, and used their ranking on the first page of an internet search to be representative of the widely accepted definitions and there are a number of examples:-

<https://conceptgroupplc.com/vacuum-insulation-thermal-shock-test/> ("materials are rapidly exposed to extreme temperatures")"

<https://www.allthescience.org/what-is-thermal-shock.htm> ("The damage is a reaction to a rapid and extreme temperature fluctuation ")

<https://www.sciencedirect.com/topics/chemistry/thermal-shock> (" Thermal shock produces cracks as a result of rapid component temperature change")"

<https://engineeringlibrary.org/reference/thermal-shock-and-stress-doe-handbook> (" Thermal shock (stress) can lead to excessive thermal gradients on materials, which lead to excessive stresses. ")

The policyholder seems to be demanding here that only a single industry wide definition of a term should exist - I do not think such a thing is realistic or reasonable. However, I do think it is realistic to say that a common layperson (or even industry experts) definition of Thermal Shock would be that it comes as a result of the item being placed in an environment of extremes of temperature.

Bottom of page 2 - "Having read the term in conjunction with the definition of thermal shock (which is not an exclusion in our policy), as well as the report provided by Mr C and Miss J, I'm persuaded that the floor (and adhesive) were exposed to extremes of temperature. That is, sudden changes in the temperature that the floor and adhesive were exposed to. Rather than an extreme temperature, which I accept wasn't the case here". This paragraph states that "extremes of temperature" was not the causation of the loss here. As a result, if "extremes of temperature" was not the causation of the loss in this instance, the claim cannot be denied using this exclusion.

WIC commented as follows. The policyholder is trying to conflate the issue here. His definition of "Extreme temperature" seems to be that it can only be the raw magnitude of the temperature (e.g., 50oC). However, "Extremes of Temperature" can also represent environments of extreme temperature gradient. i.e., Rapidly heating and cooling in and of itself - in a way the material was not designed to withstand."

Rapidly changing temperature - WIC stated that "rapidly changing temperatures was enough to put materials well outside their normal working tolerances". Please could WIC provide evidence where my policy excludes "rapidly changing temperatures"? WIC have excluded this claim on "extremes of temperature" which the Ombudsman have clearly stated "Rather than an extreme temperature, which I accept wasn't the case here".

Already answered as above

Satisfied Terms - If WIC and the Ombudsman are deferring to the "Thermal Shock" definition as stated on page 3, please could WIC again provide evidence where my policy excludes "Thermal Shock"? If there is no evidence of "Thermal Shock" in my policy, WIC and the Ombudsman cannot use this definition, which would then remove "extremes of temperature" from the denied claim.

Again, already answered as above.

Manufacturer and industry recommendations - "Went against all manufacturer and industry recommendations. As a result, it could fairly decline the claim under the exclusion of faulty workmanship". We have researched the manufacturer and industry recommendations for the underfloor heating product used, and we have acted in accordance with those recommendations. Please see attached the manufacturer recommendations and turn to page 17. "Don't place any product over the floor covering that has a higher tog value than 2.5". Now please see the below referenced screenshot of the product we purchased with a Tog rating of 2.4. We have acted within the manufacturer and industry recommendations, so this point cannot be used in consideration when denying the claims. As a result, the faulty workmanship exclusion cannot be used in this claim.

WIC said that it couldn't see the policyholder's evidence, so was unable to comment on a particular TOG rating or that referenced manufacturer documentation. However, it had researched and provided industry view on how a newly installed UFH system should be treated on installation to minimise the risks of thermal shock:-

<https://www.bostik-profloor.co.uk/tiled-flooring-the-heat-is-on/>
<https://allthingsflooring.com/2018/11/dont-get-cold-feet-part-2-avoiding-floor-failure-ufh-systems/>

And they in turn reference British Standards (e.g., BSEN 1264) In particular - they advise a 14-day period of the UFH being at a cutback or switched off level (for the adhesives to cure and the tiles to settle) - and then they recommend a slow bring up to a working temperature.

By the policyholder's own description of the work (and subsequent covering of the tiles, which an expert concluded forced heat back down into the flooring) - it is clear that this guidance was not followed."

WIC further said that this seems like an untenable position for the policyholder to be arguing:-

- 1) That fitting protective matting and turning the underfloor heating on should be regarded by the policy as an 'Accident'.
- 2) That they operated within all manufacturer guidance and industry norms and did not contribute to cause the issue by fitting the protective matting.

I do not think that it is consistent to claim both things. If there was no 'Accident' and the items failed under 'normal' operation, then I do not think that the policy can answer (it would be a

case of faulty design/specification or materials - the responsibility of the manufacturer). If the policyholders are claiming that they were using the materials as described and completely within their tolerances - then what peril under the cover are they seeking to claim under? What was the 'accident' if the materials simply failed under normal operation?

I have reviewed both parties' comments and I think I'm more persuaded by WIC comments overall. Not only did Mr C and Mrs J admit that they had covered the tiles with a protective sheeting, but they did so immediately after the tiles had been laid.

In addition, their own expert evidence confirmed that the damage was caused by thermal shock. And the evidence indicates that thermal shock occurs where there has been extremes of temperature.

Mr C and Mrs J seem to suggest that the provisional decision accepted that the underfloor heating was set on a high temperature. But the provisional decision wasn't supporting this. The main word here is 'of'. So, the extremes of temperatures as WIC has indicated, represents extreme temperature gradients, that is, rapidly heating and cooling in an area. Rather than high temperatures.

Finally, I don't think accidental damage can apply here either. Not only as Mr C and Mrs J admitted that they turned the heating on for a few days, but also, they haven't provided me with enough evidence to support that the event, was sudden or one-off. And therefore, an accidental event.

I acknowledge Mr C and Mrs J's strength of feeling about this complaint and the reason why they referred it to our service. But, in the overall circumstances of this complaint, I haven't seen enough evidence to show that WIC acted unfairly. I'm therefore not going to tell it to do anything further here.

My final decision

For the reasons given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Miss J to accept or reject my decision before 10 November 2023.

Ayisha Savage
Ombudsman