

The complaint

Miss D is unhappy Ecclesiastical Insurance Office Plc (Ecclesiastical) has partially declined a claim she made under her Art and Private Client Insurance policy.

What happened

Miss D has an Art and Private Client Insurance policy underwritten by Ecclesiastical. This covers, amongst other things, damage caused to Miss D's property.

In August 2022, a ceiling in part of Miss D's property that is let to a tenant collapsed, so she contacted Ecclesiastical to make a claim under her policy.

Ultimately Ecclesiastical declined to cover the cost of the ceiling repairs as they said the likely cause was wear and tear and gradual deterioration over time, which is an exclusion under Miss D's policy. However, Ecclesiastical agreed to cover the resultant damage to the contents and décor.

Miss D also asked for loss of rent to be paid by Ecclesiastical, as she didn't charge her tenant rent whilst awaiting repair of the damage. However, Ecclesiastical also declined to cover loss of rent on the basis they say the property wasn't uninhabitable.

As Miss D was unhappy with Ecclesiastical's position, she asked this service to consider her complaint.

Our investigator looked into things and upheld the complaint. He said he wasn't satisfied Ecclesiastical had sufficiently demonstrated the exclusion applied, so he said they should pay Miss D the cost of repairing her ceiling with 8% interest added and also pay £200 compensation.

Ecclesiastical didn't agree and asked for a final decision from an ombudsman.

I was minded to reach a different outcome to our investigator. So, I issued a provisional decision, to give both parties an opportunity to comment on my initial findings, before I reach my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

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

Having done so, I'm issuing a provisional decision. I've provisionally reached a different outcome to our investigator about the ceiling part of the claim. And I've also considered the loss of rent part of the claim, which our investigator didn't consider or reach a finding on. So, I'm issuing a provisional decision, to give both parties an opportunity to comment on my initial findings on both points before I reach my final decision.

The ceiling damage

Miss D has an 'all risk' policy with Ecclesiastical. What this means is that the policy covers any damage which may occur unless it's specifically excluded.

Damage is defined in the policy as:

*"Damage
means physical loss, destruction or damage."*

The ceiling collapsed, so its clear damage has occurred. Therefore, in principle, there is an insured event. However, the policy also contains a number of exclusions. And it's for Ecclesiastical to show an exclusion applies in order to decline a claim for 'damage'.

Ecclesiastical says the following exclusion in the policy applies:

"General exclusions

Whilst we aim to make our policy comprehensive, there are certain things we do not insure. Each section contains exclusions specific to it. The following apply to all sections of the policy unless stated otherwise.

This policy does not cover

4 Uninsurable risks

We will not cover the following:

...

- Damage caused by wear and tear, atmospheric or climatic conditions (other than storm or flood) frost, rot, fungus, inherent vice, latent defect, insects, vermin or any gradual cause;"

When considering if Ecclesiastical has fairly declined the 'damage' claim, I need to consider whether they have sufficiently shown the exclusion applies. Our investigator didn't think Ecclesiastical had. However, and whilst I appreciate it will come as a disappointment to Miss D, I'm minded to conclude, on balance, that they have. I'll explain why.

Miss D's property is several hundred years old. The ceiling that collapsed is of a lathe, plaster and reed construction.

Ecclesiastical appointed a loss adjuster (after initially declining the claim and Miss D requesting someone inspect the damage), and Miss D appointed contractor, to comment on the cause of the ceiling collapse.

However, neither the loss adjuster nor Miss D's contractor has been able to determine with certainty the cause of the ceiling collapse.

My role here isn't to determine the exact cause of the collapse, this would be the role of the experts appointed by both parties. However, here in this case, none of the experts appointed have been able to determine this.

On this basis, Ecclesiastical has considered what they think is most likely, on the balance of probabilities, to have happened, and they say the likely cause is wear and tear gradually over time - which is excluded under Miss D's policy. And having considered all the information provided, on balance, I'm minded to conclude Ecclesiastical has reached a reasonable conclusion. I'll explain why.

None of the parties that have inspected the ceiling and damage have identified any signs of a visible cause of the collapse. There are no pipes in the surrounding area, and no visible signs of any leaks, or water ingress or staining, which ordinarily you might expect to see where a ceiling has collapsed.

There has also been no evidence or signs of excessive vibration or movement in the ceiling which may have caused it to collapse either.

And the information on file says that Miss D's contractor said it's possible a joist failed in the lathe and plaster ceiling causing the collapse, but they weren't sure, and there was no obvious cause of why this could happen, either impact, water ingress, or another cause.

So, in the absence of an obvious cause of damage, it has been concluded by Ecclesiastical that the most likely cause is wear and tear and gradual deterioration over time as there is no other explanation.

I'm inclined to agree with Ecclesiastical here, on balance, based on all the evidence provided. I say this because lathe and plaster ceilings are prone to collapse over time due to wear and tear and gradual deterioration. This is because of the brittle nature of the plaster. The ceiling is held in position by nibs which wrap around lathes and hold it in place. Over time, and by virtue of age, these can deteriorate and break away to the point that there isn't enough remaining to hold the ceiling weight, which then results in the lathe and plaster ceiling collapsing. And this deterioration occurs gradually over time until the ultimate point of the collapse. I also understand that there was a heavy chandelier hanging from the ceiling, which likely could have exacerbated this.

Having seen images of the collapsed ceiling, I think these support the above on balance too. I say this because the ceiling has collapsed across the entire room, right to the edges where the walls are. If there was a localised problem, such as a leak, impact, or water ingress, I'd expect the collapse to be in a more isolated, or localised area. But instead, the entire ceiling collapsed in a large area across the room, in my view, supporting the fact that it failed when there was no longer enough supporting the weight of it. And this, on balance, would have happened due to wear and tear and deterioration gradually over time.

So, whilst I can't conclude with absolute certainty what caused the collapse (and neither can the experts appointed by both parties), I'm persuaded on balance, based on the evidence provided, that this was the most likely cause. Consequently, I'm minded to conclude Ecclesiastical has acted reasonably by declining this part of the claim based on the gradual and wear and tear exclusion.

We sometimes do say that if a policyholder was unaware of gradual damage occurring, such as a hidden leak causing damage behind a wall, and the policyholder couldn't have been aware the damage was being caused, and did something as soon as they were, that it might not be fair or reasonable for an insurer to apply a gradual damage exclusion. However, this approach is only taken where it is a standard 'perils' policy which covers specific insured events such as storm, fire or flood.

With 'all risks' policies, which is what Miss D has, we have a slightly different approach. In these cases, we usually say someone with an 'all risks' policy shouldn't be worse off than someone with a standard 'perils' policy if they were both in the same situation. So, to put it a different way, it might be unfair for an insurer to turn down a claim using a gradual damage exclusion, if the consumer wasn't aware the damage was happening, and it would have been covered under a standard 'perils' policy by applying this approach.

However, in Miss D's case, there's no evidence a peril which would usually be covered under a standard insurance policy (such as storm or escape of water) has happened, as no one has been able to identify a specific event which caused the collapse. And as outlined above, on balance, I'm persuaded it is gradual deterioration and wear and tear, which usually wouldn't be covered as a peril under a standard policy. So, Miss D is no worse off than someone with a standard policy in the same position.

I do note Miss D has purchased her insurance policy at a significant cost, and that Ecclesiastical were already aware the property is several hundred years old. But this doesn't mean that anything that happens to the property is covered under Miss D's policy regardless, instead it covers damage which may occur, but subject to the policy exclusions. And for the reasons outlined, I'm minded to conclude Ecclesiastical has reasonably, on balance, shown that an exclusion applies here.

As the internal damage to the décor and contents has been accepted by Ecclesiastical and isn't in dispute, I don't need to make a decision on that part of the claim here.

Loss of rent

Our investigator didn't reach a finding on this part of the claim or complaint, but this is something raised by Miss D and considered and declined by Ecclesiastical. So, I'll also be considering this here.

The ceiling collapse was in the part of Miss D's property let to a tenant, and in the lounge area. The collapse was substantial in terms of the debris it caused. Miss D didn't think it would be fair to charge her tenant rent, which amounted to £1,800 per month, for the time they had to live with the damage whilst awaiting repairs.

Miss D's policy with Ecclesiastical does provide loss of rent cover in certain situations:

"Temporary accommodation and loss of rent

- 1. If your home cannot be lived in following damage insured under this section, we will pay for:*

.....

d. loss of any rent you would have been paid."

Ecclesiastical has accepted the damage to décor and contents, even though the ceiling damage was declined, so in principle there could be a claim made for loss of rent subject to it meeting the remaining requirements.

However, Ecclesiastical said the property wasn't uninhabitable – not able to be lived in – as the tenant still had bedroom, kitchen and bathroom facilities, as the collapse was isolated to the lounge. So, they said this section of cover wouldn't apply and declined this part of Miss D's claim.

I do appreciate the tenant would have been inconvenienced by not being able to use the lounge, but as they still had access to the kitchen, bathroom and bedroom, I wouldn't consider the property uninhabitable. Therefore, as loss of rent is only covered where the property is deemed uninhabitable, I'm minded to conclude Ecclesiastical has acted fairly by declining this part of Miss D's claim."

So, having considered everything, I wasn't minded to uphold the complaint.

The responses to my provisional decision

Ecclesiastical said they had no comments to make in response to the provisional decision.

Miss D responded but she didn't agree with the provisional decision. She said she should be permitted to appoint an expert to provide a report on the cause of the damage. Miss D also said she is surprised that the outcome is different to that reached by the investigator – which she agreed with.

In addition, Miss D says she has an 'all risk' policy with some exclusions and the cause of damage hasn't been determined, so she says the damage should be covered. She also said Ecclesiastical carried out a survey when she took out the policy, and if lathe and plaster ceilings were going to be excluded, then she would have expected this to be specifically excluded in her policy terms. Miss D also says Ecclesiastical has failed to show the exclusion applies and therefore her claim should be covered.

Miss D also says two thirds of the ceiling remained intact, so it didn't collapse across the entire room and she provided images of the ceiling. Miss D also says she didn't appoint a contractor to comment on the ceiling, it was a builder instead, who isn't an expert in this field.

In response to the loss of rent part of the provisional decision, Miss D says her tenant wasn't able to use the kitchen due to dust in it, and it wasn't until she made a claim for this that she was told it wouldn't be covered as the tenant had access to the remainder of the property.

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.

And I've thought carefully about the conclusions I reached in my provisional decision and the responses to it. Having done so, whilst I appreciate it'll come as a disappointment to Miss D, my final decision remains the same as my provisional decision.

Miss D has said she should be permitted to appoint an expert to determine the cause of damage and be able to provide this new information for consideration. To clarify, Miss D is able to obtain new information from an expert on the cause of damage if she chooses to. And once she's obtained this, she should submit this new information to Ecclesiastical for consideration. Once Ecclesiastical has considered this, and if Miss D remains unhappy with the decision Ecclesiastical ultimately reaches, we may then be able to consider that new information and Ecclesiastical's response to it as a new separate complaint. But that would be separate to this case, as Ecclesiastical would need the opportunity to consider the new information in the first instance before we could consider it.

Miss D has also said she is surprised the outcome is different to our investigators, as she agreed with their outcome. Our investigators consider the complaint and issue their opinion on the case. If either party disagrees with the outcome reached, an ombudsman can review the case afresh for a final decision. As Ecclesiastical didn't agree with our investigator's opinion of the case, it was passed to me to consider afresh, and independently of the investigators review, for a final decision.

Miss D maintains that as the cause of damage hasn't been determined with certainty, as the policy is 'all risk', then her claim should be covered. I considered the type of policy Miss D has when reaching my provisional decision, and I explained why I was persuaded, on balance, that the exclusion applied here. Nothing that has been provided in response to my provisional decision has led me to reach a different position on this point, so my final decision remains the same as my provisional decision and for the same reasons.

I recognise Miss D's property was inspected by Ecclesiastical prior to policy inception. But I don't share her view that Ecclesiastical should have added an exclusion for lathe and plaster ceilings specifically. The ceilings are covered for damage which occurs, unless an exclusion means the claim isn't covered. And I'm satisfied, on balance, that it's reasonable for Ecclesiastical to apply the exclusion for the reasons outlined.

Miss D says the entire ceiling didn't collapse, and instead only a portion of the ceiling did, and she provided images of this. I have already seen images of the ceiling collapse, and these were taken into account when reaching my provisional decision. But to clarify, where I said the ceiling collapsed across the entire room, to the edges where the walls are, this was on the basis of across the width of the room, in one large section, rather than the length and the ceiling in its entirety. And as I said in my provisional decision, if there was a localised problem such as a leak, impact or water ingress, I'd have expected the collapse to have been in a more localised or isolated area rather than wall to wall, across the room, in one large section.

I also recognise that Miss D has said she didn't appoint a contractor, and it was a builder instead who isn't a specialist in this field. But regardless of this, I'm persuaded on balance, based on all the information I've seen, that it's reasonable for Ecclesiastical to apply the exclusion for the reasons I've already outlined.

So, for the reasons outlined in my provisional decision and above, on balance, I think Ecclesiastical has acted fairly and reasonably by applying the exclusion and declining this part of Miss D's claim.

In response to the loss of rent part of the claim, Miss D has said the kitchen couldn't be used by the tenant at the time due to dust. So, she says that the loss of rent under her policy should apply.

However, I outlined the policy terms when loss of rent would apply in my provisional decision. And the fact here is that the tenant didn't vacate the property, they continued living there, so the property wasn't uninhabitable. And the tenant didn't stop paying rent because they had to live elsewhere, and Miss D also didn't have to pay for them to be housed elsewhere either, as the tenant remained in the property. Instead, Miss D decided not to charge them rent, but not because they couldn't live there, rather to take into account the inconvenience they incurred whilst they remained in the property.

With the above in mind, I'm satisfied the loss of rent part of the policy doesn't apply, so I'm not going to direct Ecclesiastical to pay Miss D the amount of money she decided not to charge her tenant.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 23 August 2023.

Callum Milne
Ombudsman