

The complaint

Mr and Mrs B have complained about their home insurer, CIS General Insurance Limited because it's declined their claim made for damage to the structure of their conservatory.

What happened

In April 2020 Mr and Mrs B noted water was coming in through their conservatory roof. They hadn't noticed a problem before but now saw the flooring was damaged below the leak. Upon investigating further Mr B noticed a roof purlin was wet and had dropped, the window sill below this was soft and upon opening this up Mr B found the base of the timber upright, directly below the dropped end of the purlin, was rotten.

Mr and Mrs B felt this damage would be covered by their policy and called CIS. CIS began to consider this as a storm claim. It appointed an assessment company to attend the property and consider the damage. Mr B was told a surveyor would visit. When the assessor attended Mr and Mrs B's home they were disappointed to learn the he was just a builder. They were also disappointed with the inspection that was undertaken and, later, with the findings of the report produced. Mr B had taken some guttering down to expose the supports for the affected purlin. Mr B felt the assessor wasn't much interested in looking at the rest of the conservatory and seemed focused on damage which had occurred in this area, with an intention Mr and Mrs B felt, of finding a way to decline the claim.

The report found that there was no sign of storm damage to the roof. Rather water had been getting in behind the gutter for some time, causing the timber supports there, as well as the timbers below, to rot. The assessor concluded that this damage had been occurring over a very long time. As a result of the report CIS declined Mr and Mrs B's claim in its entirety.

Mr and Mrs B were unhappy for a number of reasons. They felt this was an issue of health and safety – meaning CIS should have taken greater care to trace and determine the cause of the problem. And the policy covered them for trace and access too. They were disappointed because, they said, they take care of their conservatory, varnishing it every year, and they couldn't have known this damage, concealed by the guttering, was occurring – not until the purlin dropped, breaking the roof seals and allowing water in.

When Mr and Mrs B complained to CIS, it agreed to cover the damaged flooring. Mr B was also pleased when he believed an agreement was reached for CIS to appoint an independent surveyor or loss adjuster to re-assess the matter. However, CIS then issued a final response on the complaint stating it stood by its decision to decline the claim because the cover carries exclusions for loss which occurs gradually or by wear and tear and it was satisfied the damage in question here had been occurring over the long term. Mr and Mrs B complained to us.

Our investigator felt that CIS could reasonably rely on the findings of its assessor's report. He felt this showed it had fairly relied on the policy exclusion to defeat its liability for the claim. He wasn't persuaded that CIS reasonably needed to do anything on account of the trace and access cover or because this was a health and safety issue.

Mr and Mrs B were disappointed by our investigator's findings. They also said that no-one had considered that when Mr B removed the guttering, it was unavoidably damaged. They feel CIS should pay to replace this. They asked for an ombudsman's 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.

I can understand Mr and Mrs B's frustration. Despite CIS classifying this as a storm claim, their policy offers cover for damage howsoever caused, *unless* its caused by something specifically excluded. There's nothing unfair about that in terms of the way the policy is constructed or regarding what it offers cover for or excludes. But, unfortunately for Mr and Mrs B, despite the broad cover afforded by this policy, the available evidence shows it's more likely than not that the conservatory has been damaged gradually over time – which is specifically excluded.

I know Mr and Mrs B have concerns about the assessor sent to consider the damage. I think it's unfortunate that he was referred to as a surveyor. It's true he was there to look at or 'survey' the damage, but the term 'surveyor' in reference to buildings damage does suggest a person with certain qualifications. So I think it was unfortunate that CIS was less than clear about this. But the assessor was sent to consider the damage against the policy cover – and, in the circumstances here, I don't think there was any need for CIS to appoint a professionally qualified surveyor to do that. Nor do I think, by sending the letter it did, that it entered into a contract to do so. And the policy doesn't say only qualified surveyors will be appointed. Whatever qualifications the party attending possessed, they did so under instruction and authority from CIS, so CIS retains liability for the actions and findings.

Whilst Mr and Mrs B report that CIS did agree to appoint an independent surveyor later during the course of the claim (although they also use the phrase loss adjuster), I don't think it was unreasonable for it to, upon review, to decide to maintain its decline based on the evidence already available to it. The report its assessor had produced explained that the conservatory had suffered damage over time, and the accompanying photos seem to support that view. Mr B having a relevant building qualification that may well outrank that of the assessor which completed the report, doesn't make me think the conclusions the assessor reached were likely flawed. Whilst I know Mr and Mrs B feel the report is generic and doesn't go far enough, I'm satisfied its content is appropriate in the circumstances, especially considering the photographs.

Mr B has said he couldn't have known water was getting in behind the guttering and that the water damage in that area – which caused rot and ultimately the purlin to drop – couldn't be seen. I don't doubt that but the assessor explained that the timber coming down from the joint was suffering from rot too, and I can see, from the photos, that the timbers immediately below the guttering and above the security light do look worn. And Mr B even discovered that the window sill at the base of the upright timber (below the security light) was soft. On further inspection he found the base of the upright timber was rotten. Photos of the dropped end of the purlin, which was always in view, show discolouration of the wood. So I'm not persuaded that there weren't visible signs available to Mr B that should reasonably have alerted him to the fact damage was occurring. I think the situation here is significantly different to ones referred to by Mr and Mrs B where this service might normally expect an insurer to honour a claim for on-going but hidden damage. The evidence provided by Mr and Mrs B – sketches and video footage – don't dissuade me that this damage occurred over time and that there were visible signs of a problem occurring.

Mr and Mrs B say the purlin dropped suddenly. This then caused roof seals to break and let water in. CIS agreed to cover damage to the flooring, seemingly because it gave Mr and Mrs B the benefit of the doubt that this particular damage had occurred as a result of one period of exposure to water. That doesn't reasonably mean it is liable for other damage caused to the structure of the conservatory (whether on its internal or external facades) which it has shown, by its report and photos, likely occurred over time. And whilst the purlin dropping may have occurred suddenly, that only happened because the damage that had occurred over time reached a point where the wood around a securing bolt failed.

Mr B has said that other bolts have not failed in this way. So he believes this bolt can't have failed due to normal wear and tear. However, it isn't disputed that, over time, water has got in behind the guttering – whether from heavy rain or a leak from the overflow pipe above. CIS doesn't need to determine why that has occurred. It is also clear that the wood has rotted. This occurs due to long-term exposure to water – if there had just been one short-term leak from the overflow pipe, for example, that wouldn't have occurred. Why this hasn't happened in other areas, around other bolts, is not clear, although I do see that Mr and Mrs B have hypothesised that the rain may be more driven in this area. But the fact it hasn't happened elsewhere doesn't negate the fact that, in this area, long-term damage has occurred. As I've said above, I think that visible signs that long-term damage was occurring, were there.

I know Mr and Mrs B also think that CIS should have done more to investigate the cause because of the trace and access cover on the policy. Whilst this would normally relate to tracing leaks from water or oil systems or equipment, it's purpose is always to find the source of the water or oil. For example, where a leak is suspected but can't be seen. Therefore, in order to fix the problem, thus preventing further damage from occurring and allowing that which has been caused to be resolved, the source of the leak has to be found. Here, even if I were to feel some liability under this section could reasonably attach to CIS, it seems that all concerned seem to agree water, whether from rain or the overflow pipe, was getting in behind the gutter. So the source of the leak, or rather ingress in this case, was known.

I see that Mr and Mrs B think CIS failed them because they believe that, in a matter that relates to health and safety, it has a duty of care to explore the cause of that. That is not the case. In many cases it is up to the policyholder to show they have a claim covered by the policy. Here, in order to reasonably decline liability for the loss, CIS needed to show that the damage was excluded. I'm satisfied it did that. It had no other existing duty of care, including on account of the fact of water ingress occurring.

I can't say whether or not CIS should cover a claim for damaged guttering. That's because, according to Mr and Mrs B, this damage only occurred after the loss in question here, subject of this claim and complaint. If Mr and Mrs B want to claim for the damaged guttering, they should contact CIS.

My final decision

I don't uphold this complaint. I don't make any award against CIS General Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 5 February 2021.

Fiona Robinson
Ombudsman