

The complaint

Miss L is complaining that Accredited Insurance (Europe) Ltd (AIE) has declined a claim she made on her buildings insurance policy.

What happened

In August 2022 Miss L contacted AIE to advise that the cast iron guttering had fallen following heavy rainfall and had damaged the back of the property. So she wanted to make a claim on her buildings insurance policy. AIE instructed a surveyor to inspect the property, who reported that the damage was down to wear and tear and wasn't a sudden and unexpected event. So AIE said the claim wasn't covered.

Miss L didn't think AIE's decision was fair. She said when she first contacted AIE, she said the call handler had told her it would deal with claim as either storm damage or accidental damage. She also said the guttering had come down because her neighbour's guttering had collapsed, which in turn brought her guttering down.

Miss L instructed her own surveyor, who concluded that Miss L's guttering was in a good state of repair, but said her neighbour's was in a poor state. Miss L also provided a statement from her neighbour's neighbour who said he'd spoken with Miss L's neighbour before the incident as he was concerned her guttering was about to collapse and would bring his guttering down in turn. But he said the neighbour said she was aware of the issue but she couldn't afford to fix it. So he said he entered into an arrangement where he would pay for all the works and the neighbour would pay him back over time. But he said the guttering gave way before they could do the work.

AIE maintained its decision to decline the claim. And it highlighted that Miss L had initially said that it was, in fact, her guttering that had brought the neighbour's guttering down.

Our investigator upheld this complaint as he was persuaded that Miss L's guttering was brought down by Miss L's neighbour's guttering being in a poor state of repair.

AIE didn't agree as it remained of the opinion that Miss L's guttering failed due to wear and tear and reiterated that Miss L had at first said it was her guttering that had brought down all the guttering.

As AIE didn't agree with the investigator, the complaint's been passed to me to decide.

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've decided to uphold this complaint and I'll now explain why.

Miss L is claiming for loss or damage arising from her guttering giving way following a period of heavy rainfall. Under the terms of her insurance policy, Miss L may be able to claim for the loss of damage by either:

1. Demonstrating the loss arose from a storm; or
2. Showing it was caused by accidental damage arising from a sudden or unexpected event.

In either circumstance, the terms of the insurance policy also excludes cover where the failure is down to wear or tear, or happened gradually. However, also in this case, while there was a high level of rainfall, the weather conditions weren't to the extent to be considered a storm as defined by the terms of the policy. This isn't disputed by either party, so I won't comment further on this. The issue for me to decide is whether it was fair for AIE to say the loss wasn't down to accidental damage.

The terms of the policy defines accidental damage as:

"Sudden, unexpected and physical damage which:

- (i) happens at a specific time; and*
- (ii) was not deliberate; and*
- (iii) was caused by something external and identifiable."*

It's not disputed that the guttering suddenly collapsed, but AIE says the policy also says it won't cover *"loss or damage which happens gradually or is caused by normal wear and tear"*. And it says its surveyor has said that the guttering failed due to wear and tear. However, I'm more persuaded by the information Miss L has provided. I'll explain why.

I've found the surveyor report provided by Miss L to be particularly persuasive here. He's highlighted maintenance issues relating to the neighbour's property, not only limited to the guttering. But, in particular, I've found the statement by Miss L's neighbour's neighbour to be the most persuasive. He's gone into detail about the conversations he had with Miss L's neighbour regarding the condition of the guttering. He's also provided photos which show the guttering being in a very poor state of repair before the collapse. So I'm persuaded that Miss L's neighbour's guttering was in a poor state of repair *before* the incident. And it's clear there was a very real concern that it was in a perilous state. It seems to me that it's *most* likely that the failure of the neighbour's part of the guttering is the catalyst that caused the remaining guttering to give way.

But, I also need to think about whether this was the *primary* cause for Miss L's gutters to collapse – i.e. was there another reason for them to collapse as well. AIE says Miss L's gutters failed due to wear and tear as its surveyor has said the following:

"On carrying out our inspection we found damage to the cast iron guttering to the rear of the property. The complete length of guttering to the rear of the property had come down including all fixings. Around 6 meters in total. When inspecting the fascia boards up close we found these to be wooden and noted they were showing gradual operating decline of age related wear and tear and weathering. The wood was rotting and around the fixing holes in poor condition. The guttering had fallen partly on the single story roof below causing damage to the slate tiles. There was damage to around 5 or 6 slate tiles which was causing water ingress to the kitchen when it rains. Another section of the guttering had fallen on the fence and damaged the fence and also on the stone window ledge which was chipped for the lounge window."

I acknowledge that the wood supports were wearing, but I need to decide whether I think this was the primary reason or at least a significant contributing factor to the guttering coming down – in short do I think the guttering would have come down even if I think the wood supports were in a stronger state. I think they would have done.

The statement by Miss L's neighbour is strong evidence and is supported by photographs that her neighbour's guttering was in a really poor condition. It seems to me that this is the underlying and primary reason for all the subsequent damage. I don't think Miss L's guttering came away because of a gradual deterioration or wear and tear, but because of the failure of her neighbour's guttering. I'm satisfied that the loss or damage is down to accidental damage as defined under the terms of the insurance policy.

I acknowledge AIE's comments that Miss L initially said her guttering brought the rest down, but this hasn't changed my opinion as I'm satisfied the evidence supports what I've said above. And it seems to me that Miss L wasn't aware of the issues with her neighbour's guttering until after she reported the incident to AIE.

But, even if this wasn't the case, I don't think it was fair or reasonable for AIE to have declined the subsequent damage caused by the guttering falling away. As a result of this, damage occurred to a number of roof slates, damage to the fence and window ledge and water ingress occurred as a result of the damage to the slates. But, even if I thought the guttering failed due to wear and tear – i.e. it wasn't a sudden or unexpected event – the consequential damage was caused by a sudden and unexpected event and should have been covered. But I don't need to comment on this further, given I'm satisfied that the original failure to the guttering was as a result of accidental damage. So I think AIE should arrange to rectify all the damage that's occurred.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Accredited Insurance (Europe) Ltd to arrange for the damage to the guttering and the resulting damage to be repaired at no cost to Miss L.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 28 March 2023.

Guy Mitchell

Ombudsman