

The complaint

Mrs D is unhappy her storm damage claim has been declined by AA Underwriting Insurance Company Limited (AA).

What happened

In November 2021 Mrs D's chimney was damaged during a storm, so she made a claim to AA, her buildings insurer.

AA sent a surveyor to inspect the damage and subsequently declined Mrs D's claim. They said that whilst there was a storm, the chimney was in a poor condition and the damage was the result of wear and tear over time, which isn't covered under Mrs D's policy. However, AA offered £200 compensation for the delay in receiving the surveyor report and reaching a claim decision.

Mrs D was unhappy with her claim being declined and approached this service.

Our investigator didn't uphold Mrs D's complaint. She said that whilst there were storm conditions at the time, she was of the view that the chimney was suffering wear and tear, and that was the dominant cause of damage, rather than the storm. So, she said AA hadn't acted unfairly by declining Mrs D's claim.

The investigator also noted that AA had offered £200 for the delay in reaching a claim decision. She said this amount was reasonable so didn't recommend AA do anything further. The investigator also mentioned that whilst she noted part of the claim was for damage to guttering, AA hadn't considered that as part of Mrs D's complaint.

Mrs D didn't agree with our investigator and asked for a final decision from an ombudsman.

I reached 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 reached 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 minded to reach a different outcome to our investigator. Therefore, I'm issuing a provisional decision, to give both parties an opportunity to comment on my initial findings before I reach my final decision.

When we consider complaints about storm damage claims, we take into account the following questions, and if any of the answers are no then it's likely a claim won't succeed:

- *Were there storm conditions?*
- *Is the damage consistent with storm type damage?*
- *Was the storm the main or dominant cause of the damage?*

I've considered each question in turn.

Were there storm conditions?

Mrs D's policy defines a storm as:

"A period of violent weather defined as: a) Wind speeds with gusts of at least 48 knots (55mph) which are the equivalent to Storm Force 10 on the Beaufort Scale; b) torrential rainfall at a rate of at least 25mm per hour; c) snow to a depth of at least one foot (30cms) in 24 hours; or d) hail of such intensity that it causes damage to hard surfaces or breaks glass."

AA checked weather records for the date of loss, which showed windspeeds reaching 74mph. AA accept that storm conditions occurred, our investigator also agreed with that. As this point isn't in dispute, I don't need to decide whether there was or wasn't a storm.

However, Mrs D says that she believes windspeeds reached around 115mph, so considerably higher than those speeds determined by AA.

I've looked at the weather report relied on by AA (and our investigator). I note that the weather station readings were from was around 14 miles from Mrs D's property, and of importance, around 14 miles inland. Whereas Mrs D's property is very close to, and exposed to, the seafront wind and weather elements (looking at a map – the sea is approximately 100m away), and it's in an elevated unsheltered position above other properties, further exposing the roof and chimneys to the elements.

So whilst 74mph winds are storm conditions in line with the terms of Mrs D's policy, and a storm occurring isn't actually in dispute, on balance, windspeeds could well have been more significant as Mrs D alleges, given the location and exposed nature of Mrs D's property.

Therefore, whilst this question is satisfied on its own based on the weather records, I think the location of Mrs D's property vs the weather station is particularly relevant when answering questions two and three below.

Is the damage consistent with storm type damage?

From the images I've seen, during the storm Mrs D's chimney has essentially been pushed backwards, slightly twisted which has caused it to lean and bricks and mortar to come apart. This type of damage could be consistent with storm type damage.

Therefore, on balance, questions one and two above have been satisfied.

Was the storm the main or dominant cause of the damage?

AA says the storm wasn't the dominant cause of damage. Instead they say the chimney was already in a poor condition and suffering from wear and tear over a considerable amount of time and the storm highlighted this. Mrs D's policy excludes:

“This policy does not insure the following:

- 1. Loss or damage arising from gradually operating causes including deterioration, wear and tear, corrosion, rot or similar causes.”*

AA says the images provided support their position. However, based on what I’ve seen, I don’t think AA has shown the storm wasn’t the main or dominant cause of damage for several reasons. I’ll explain why.

After the loss, AA’s surveyor inspected the damage. Their report is at odds with the position AA ultimately later reached that there was wear and tear and that was the dominant cause. By contrast, the surveyor said:

“Summary of External Damage *There is damage to the chimney stacks and to the guttering on the out building (sic)”*

The surveyor didn’t note any pre-existing issues, and outlined that the damage would be covered by the policy:

“Any pre-existing or ongoing external buildings defects/issues that are not peril related? No

Is the external damage covered by the policy? Yes”

And then went on to confirm:

“Description of reinstatement repairs *The stack have (sic) been damaged by the storm winds. A full chimney stack inspection and report will be required”*

The above is the full content of the report. So, it is limited in nature, but does confirm the damage was caused by the storm, there were no pre-existing issues, and the damage is covered by the policy. The only item which was inconclusive was the actual reinstatement works needed – which needed a separate inspection. Therefore, the surveyor was satisfied an insured event had occurred, and wasn’t due to pre-existing issues such as wear and tear.

AA’s internal notes reflect they had concerns with the limited nature of the report that had been completed:

“when we did receive it there wasn’t sufficient information provided in the report and it says the claim is to be covered.”

This was then referred internally by AA for review, and it was concluded:

“looking at the photos provided it appears that chimney is in very poor condition damage related to age.

It appears the sand – cement pointing has failed over a considerable period of time, the recent storm conditions have highlighted the lack of maintenance resulting in near collapse of the chimney.”

Therefore, AA reached a completely different position to the surveyor, based on images of the chimney after damage. However, I’ve also seen images, and I’m not persuaded AA has demonstrated its position. I agree the mortar isn’t in a brand-new condition, but that wouldn’t be expected since it has been in place for around ten years. The images taken are post loss, and after the chimney had been distorted, causing bricks to move, mortar to be displaced and the chimney to lean over – which then gave rise to the claim. I think the movement of the chimney has caused much of the visible displaced mortar issues.

Given the strength of the winds in the storm, I don’t think, on balance, it has been shown the chimney only moved due to the condition of it pre-storm. Instead, I think it’s likely a storm of that magnitude could cause the type of damage that has occurred here even to a well maintained chimney – taking into account how exposed Mrs D’s property is, with the chimney taking the brunt of winds straight from the coast.

Furthermore, Mrs D has two chimneys at her property. The second chimney didn’t suffer the same distortion during the storm. Mrs D has explained that this is due to the direction of the wind at the time of loss. The condition of that chimney looks well maintained. And I can’t conclude the condition of the two chimneys would be vastly different pre storm, given they were installed and maintained at the same time. So, I think this second chimney gives a fair likelihood of the condition of the damaged chimney prior to the storm – and I’m persuaded that it’s reasonably well maintained.

It is also important to note that it wasn’t just one of Mrs D’s chimneys which were damaged in her area during the storm. A neighbouring property chimney collapsed, falling onto Mrs D’s car, writing it off.

Mrs D has also provided maps of the properties in her immediate area (which have also been sent to AA), which show many other properties suffered damage at the same time. This includes a church spire, a brick garage being flattened, several properties with roofs which had come off, chimney’s down and a chimney which went through a roof. And this was just on Mrs D’s street and immediately adjacent to her. There was also further damage to a large number of properties across Mrs D’s town, including the uplifting of a static caravan which landed on a nearby house roof.

I think the additional widespread damage to other properties also supports that the storm was significant, so on balance, I’m persuaded this also supports the dominant cause of damage to Mrs D’s chimney was the storm, rather than wear and tear over time. The fact that Mrs D’s chimney twisted, rather than collapsing like a number of others in the immediate vicinity also supports that her chimney was in a reasonable condition, otherwise on balance, I think it’s likely it would have come down like others nearby.

Mrs D was going to have her second chimney repointed after AA declined her storm damage claim to make sure there were no issues in future storms, and she also provided later information that the builder didn't think it needed any maintenance due to its condition. So, I don't necessarily think it's been shown the second chimney was damaged by a one-off event of storm, therefore I don't think AA would be responsible for maintenance on that second chimney. But if Mrs D does have further information to show that chimney was also damaged, she should submit that to AA to consider further.

On balance, I'm persuaded the storm was the dominant cause of damage to the chimney in question, so I don't think AA acted fairly by declining this part of Mrs D's claim.

With this in mind, unless anything changes as a result of the responses to my provisional decision, I'll be directing AA to deal with Mrs D's chimney damage claim in line with the remaining terms of her policy (such as the applicable policy excess) – subject to Mrs D providing evidence of the costs she incurred.

It's also important to note that Mrs D arranged for repairs to be completed, to stop further damage and/or her chimney falling and injuring anyone. So, Mrs D has had the works completed to the damaged chimney already, which included scaffolding to make safe and provide access.

The policy terms say that where AA pay a cash settlement, they will only pay what it would have cost them. However, I don't think AA fairly declined Mrs D's claim. And she had no option but to carry out the repairs to mitigate any further damage. Therefore, AA would need to settle at the costs Mrs D incurred in repairing the storm damage, rather than what it would've cost them if they hadn't declined the claim. 8% simple interest would also need to be added from date of payment of the invoice to date of settlement.

Some guttering was also damaged during the storm. The surveyor noted this in their report. But it doesn't seem like this was considered by AA when it rejected (unfairly in my view) the chimney damage claim. However, given the surveyor did inspect this, and didn't raise any concerns over the damage, then I'm also minded to direct AA to deal with the claim for the guttering, in line with the remaining policy terms. 8% simple interest would also need to be added to this from date of payment of the invoice to date of settlement.

AA previously offered Mrs D £200 compensation for the delay in receiving the surveyor report and reaching a claim decision. I don't think the compensation already offered for that specific point is unreasonable. However, I don't think the claim decision reached was fair or reasonable, and it's clear that whilst the storm causing damage was distressing for Mrs D, having her claim declined (unfairly) further added to that distress. So, unless anything changes as a result of the responses to my provisional decision, I'll also be directing AA to provide a further £200 compensation (taking the total to £400), for the additional distress caused to Mrs D."

Therefore, I was minded to uphold the complaint and to direct AA to:

- Deal with Mrs D's chimney damage claim, subject to evidence of costs incurred, and the remaining policy terms
- Deal with the guttering damage claim, subject to evidence of costs incurred, and the remaining policy terms
- Add 8% simple interest from date of payment of the invoice for the chimney and gutter repairs to date of settlement
- Pay a further £200 compensation (taking the total compensation to £400)

The responses to my provisional decision

Mrs D responded agreeing with the provisional decision. She said she wouldn't be pursuing the guttering part of her claim as she had other works completed at the same time, and the guttering wasn't itemised separately in the total bill at the time.

AA responded but they didn't agree. They said they don't dispute there were storm conditions which had potential to damage the chimney. But they say if the chimney was in a good state of repair, then damage would have been limited, or not occurred at all.

They also said that the attending surveyor recommended a full chimney inspection and report was required. AA said this was then completed by their in-house experienced, and qualified, surveyor.

AA maintained that the chimney was damaged as a result of wear and tear prior to the storm, and they say the images support that.

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 initial conclusions I came to, and the responses to my provisional decision. Having done so, my final decision remains the same as my provisional decision. I'll explain why.

I outlined in my provisional decision why I was minded to conclude, on balance, that the storm was the dominant cause of damage to Mrs D's chimney, and therefore that AA should deal with Mrs D's claim. Nothing that has been provided by either party in response to my provisional decision has changed my view of that.

The surveyor who inspected the chimney was satisfied the chimney was damaged by the storm and the policy should cover it. And they also noted on their report there were no pre-existing issues or defects with it. The only thing they didn't comment on was what specific repairs would be required.

The surveyor at the time also said a full chimney stack inspection and report would be required. Whilst AA has said that their in-house surveyor then carried out an inspection and report, from what has been provided, this was a desktop review of the same information and images that were already provided – including from the surveyor who already inspected it and was satisfied it was storm damage which should be covered. I don't consider this a full inspection or report which is more persuasive in demonstrating wear and tear, as it was based on the same information, but at odds with the original surveyor's (who actually looked at the chimney) conclusions.

I agree the mortar wasn't in a brand new condition, but that wouldn't be expected given it has been in place several years. And, as I said in my provisional decision, I think much of the visible displaced mortar on the damaged chimney was caused by it distorting and twisting as a result of the storm.

The images AA has provided in response to my provisional decision were already considered when I reached it, so they have already been taken into account. But to add, one was of the chimney post damage, after it had been twisted and distorted, and during initial works by Mrs D's contractors. So, I don't think this is persuasive in supporting AA's position of wear and tear pre-storm.

The second image is of the other chimney not being claimed for by Mrs D. I'm still minded to conclude this gives an indication of the likely condition of the damaged chimney pre-storm. Mrs D sent more recent photos to this service of that chimney, and explained that her contractor said no further maintenance was required, and no additional damage has been caused, well over a year after the storm which damaged the other chimney. This further supports that they were both reasonably well maintained prior to the storm. And in any event, this isn't the chimney which is the subject of the claim, and I said AA wouldn't be responsible for any routine maintenance required to it.

Furthermore, the damaged chimney remained upright, albeit twisted and distorted, after the storm. As I outlined in my provisional decision, there was extensive damage to properties in the immediate area. This included Mrs D's car being written off by debris from a neighbouring property landing on it during the storm. This further demonstrates that the weather was severe in the immediate vicinity. And if the chimney was in a poor condition like AA alleges, then on balance, it likely would have collapsed like others immediately nearby did. But it didn't, which further supports, on balance, it was in a reasonable condition prior to the storm.

So, with the above and my provisional decision in mind, I'm persuaded the storm was the dominant cause of damage to the chimney in question, so I don't think AA acted fairly by declining Mrs D's claim. Therefore, AA need to deal with Mrs D's chimney damage claim in line with the remaining policy terms – such as the excess – subject to Mrs D providing evidence of the costs incurred.

As I also outlined in my provisional decision, and for the same reasons, this should be at the cost Mrs D incurred (rather than restricting costs to that which AA would have incurred if they hadn't declined the claim). 8% simple interest also needs to be added from date of payment of the invoice to date of settlement.

AA also need to increase the compensation from £200 already offered to £400 (total) for the same reasons outlined in my provisional decision.

Furthermore, in my provisional decision, I said AA also need to deal with Mrs D's guttering claim, subject to evidence of costs incurred and the remaining policy terms – with 8% simple interest added. Mrs D said in response to the provisional decision that she didn't intend to pursue this part of her claim as she didn't have a separate invoice for this.

However, as I'm satisfied this should be dealt with by AA under the policy cover (for the reasons outlined in my provisional decision), subject to the remaining terms, I'm still going to direct AA to deal with it, subject to Mrs D providing evidence of the costs incurred. It'll be for Mrs D to decide if she wishes to retrospectively obtain further evidence of the costs incurred from her contractor to present to AA, or if she still decides not to pursue this part of her claim.

My final decision

It's my final decision that I uphold this complaint and direct AA Underwriting Insurance Company Limited to:

- Deal with Mrs D's chimney damage claim, subject to evidence of costs incurred, and the remaining policy terms
- Deal with the guttering damage claim, subject to evidence of costs incurred, and the remaining policy terms – if Mrs D wishes to proceed with it
- Add 8% simple interest* from date of payment of the invoice for the chimney and gutter repairs to date of settlement
- Pay a further £200 compensation (taking the total compensation to £400)

*If AA Underwriting Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs D how much it's taken off. It should also give Mrs D a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 6 March 2023.

Callum Milne
Ombudsman