

The complaint

Mr B complained that part of his claim for storm damage under her home insurance policy with Highway Insurance Company Limited (“Highway Insurance”) was unfairly declined.

What happened

Mr B made a claim on his policy. He said storm force winds had caused damage to the gable of his property. He said the external brickwork was leaning inwards and he could observe cracking to the internal brickwork. Roof tiles were also blown from the roof.

Highway Insurance appointed a structural engineer to review the damage. Having reviewed the surveyor’s report, Highway Insurance decided to decline part of the claim, it said *“the issue you are experiencing to your home in relation to the gable is the result of age and/ or gradual deterioration and perhaps poor design when the window was replaced”*. It did agree the storm caused the tiles to be blown from the roof, so cash settled this part of the claim to allow Mr B to use his own builder to do the work.

Mr B disagreed with the claim outcome and commissioned his own structural engineer to review the damage to the gable. Mr B said his report shows the storm was the main cause of the damage. He wants Highway Insurance to settle the claim in full. He asked for the cost of his report to be reimbursed and would like his own builders to complete the repairs.

Our investigator decided to uphold the complaint. Based upon the evidence presented he thought it was more likely the storm had caused the damage. He didn’t think Highway Insurance had been fair in declining part of the claim. He decided that the full claim should be settled in line with the remaining terms and conditions. Highway Insurance disagreed, so the case has been referred to an ombudsman.

My provisional decision

I issued a provisional decision on this on 23 March 2023. I said:

“When our service looks at a storm claim, there are three questions to consider:

- 1. Do I agree that storm conditions occurred on or around the date the damage is said to have happened?*
- 2. Was the damage claimed for consistent with damage a storm typically causes?*
- 3. Were the storm conditions the main cause of the damage?*

I will use this structure to work through the complaint. I’m likely to uphold the complaint if the answer to all three is ‘yes’. If the answer to one of the questions is ‘no’, I’m unlikely to uphold the complaint.

Do I agree that storm conditions occurred?

Highway Insurance accepted that storm conditions were present at the time of the report incident. So, I will move on to the next question.

Was the damage claimed for consistent with damage a storm typically causes?

Using our resources, I have checked weather conditions at the time of the incident. I can see there were gusts of wind recorded at 67 mph. I think winds of this strength are significant – they can cause structural damage to a property. So, I think the damage claimed for is consistent with damage a storm of this strength typically causes. Therefore, I will consider the final question.

Were the storm conditions the main cause of the damage?

Mr B has only raised issue with the outcome on the damage to the gable of his property, so I haven't considered the settlement paid on the roof tiles. Highway Insurance accepted damage had been caused to the gable but declined the claim as it thought the damage was a result of age and/ or gradual deterioration and perhaps poor design when the window was replaced. So, I have considered whether I think it was fair to do this.

I have checked the policy and I've noted there is an exclusion under the storm damage peril for "anything which happens gradually". Therefore, if Highway Insurance have provided enough evidence to show the damage was most likely caused gradually, then I'm likely to say it has been fair in declining the claim.

Both Highway Insurance and Mr B have provided reports from structural engineers. From reading the reports I can see Highway Insurance and Mr B have reached a different conclusion on what caused the damage to the gable. I've read both reports in detail. They are both factual and professionally produced. As the parties have reached different conclusions, in reviewing the reports I have considered what I think is most likely to have caused the damage based upon the structural engineers' observations and conclusions.

From reading the report provided by Mr B's structural engineer, I think he's clear in his opinion that strong winds caused the damage to the gable. He did touch on characteristics of the property due to its age, but he didn't point to these as been the main cause of the damage.

Highway Insurance said its surveyor's report concluded the damage was that of gradual deterioration and poor design. I find the report interesting. It's factual and it explains how some of the historic characteristics of the build would have contributed to the damage. For example, the "[cavity wall ties] age it is highly likely that they would have corroded and become ineffective" and "the general deterioration of the pointing of the mortar has contributed to the deflection of the gable wall". However, whilst it talks about the age / design of the property being a contributory factor, it doesn't go as far as saying it was the main cause of damage. It also doesn't discuss whether the storm was the main cause of the damage or not.

Mr B was surprised when Highway Insurance declined his claim, as he felt it contradicted what its surveyor had told him. I can see Mr B contacted Highway Insurance's surveyor directly to understand this contradiction further.

Having reviewed the correspondence between them, I can see the engineer stated "I understand that [a builder representing Highway Insurance] seem to be rather harshly interpreting our report" "from our conversation they are disputing our report and are reported to dismiss your claim on the basis that the building has not been maintained and has no strapping in the roof and that the damage noted was not due to wind". The same surveyor then put Mr B in touch with another surveyor to assist him further in disputing the decision made by Highway Insurance.

Based on the evidence, I don't think Highway Insurance has shown its most likely gradual causes were the main cause of damage, so I don't think it has been reasonable to rely on the exclusion in the policy to decline the claim. Its own surveyor indicated it had "harshly" interpreted the report. The report itself didn't conclude the main cause of damage. Mr B's commissioned report was clear that the storm was the main cause of damage. Therefore, I intend to uphold this complaint. I think it's more likely the storm was the main cause of damage. I don't think the evidence is clear that the main cause was gradual.

I appreciate that Highway Insurance would've preferred a third report to be produced by an independent surveyor. However, I don't think that's necessary in these circumstances. I think the evidence is sufficient to decide on what's most likely to have happened. I don't think a further report would add anymore clarity and would further delay the claim.

I intend that Highway Insurance settle the claim for the damage. Mr B has indicated he's lost faith in Highway Insurance's builder, so has requested any settlement is in cash so he can use his own appointed builder. I have checked the policy and it sets out how claims are settled. It states Highway Insurance "may make a cash payment".

I think it makes sense for a cash payment to be arranged due to the history of this claim and to avoid further stress. So, I intend that Highway Insurance cash settle the claim, in line with the options set out in the policy. Mr B should get three quotes and the settlement should be based on the lowest quote to repair the damage. Highway Insurance should be given opportunity to review the quote to ensure it's reasonable and is consistent with the remaining terms and conditions of the policy. No further excess should be charged.

I think the decision Mr B received on this claim would've been distressing for him. It would have resulted in anxiety about the safety of living in his home and the financial outlay. The repairs have been delayed and he's been inconvenienced by getting his own report commissioned. However, I'm not intending to award compensation for distress and inconvenience. If Highway Insurance used its own builders to do the repairs it's likely to have cost less due to the commercial rates it has in place. Therefore, in allowing Mr B to get a cash settlement it may potentially cost Highway Insurance Company Limited more, so I don't think it would be reasonable to add compensation as well in these circumstances.

Had Highway Insurance reached a fair outcome initially, Mr B wouldn't have needed to commission his own surveyor. Therefore, I think it's fair if the cost of this report is reimbursed by Highway Insurance. So, I intend for Highway Insurance reimburse these costs to Mr B on the production of valid receipts".

Responses to my provisional decision

Mr B said, "*I think that the [provisional decision] is fair and I was not looking for compensation for the stress caused but I felt I that Highway Insurance were almost being deliberately difficult and exacerbating the problem*". Mr B clarified that his claim included the costs for his boiler to be moved from the damaged wall (on safety grounds). As he chose to upgrade the boiler, he said he wasn't expecting the cost of the new boiler to be covered.

Highway Insurance said it referred my decision to its technical team. It didn't confirm if it accepted or rejected my provisional decision. However, it did raise some questions.

It said my decision solely relied upon the opinion of Mr B's surveyor. It questioned the independence of the report provided by Mr B's surveyor – which is why it said it suggested the engagement of another surveyor to review the damage and provide a third report.

Highway Insurance said it could provide other contractors from its own network to do the work. It said it would save Mr B from having to seek his own quotes. It said any cash settlement should be based on its own rates.

Highway Insurance said it agrees if it is paying the claim it would be accountable for settling Mr B's surveyor fees.

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.

As neither party has provided any new information, I won't be changing my decision. Highway Insurance said my decision was based only on Mr B's surveyor – however, my decision sets out how I've considered both reports. I didn't feel Highway Insurance's surveyor had concluded the storm was the main cause of damage.

Highway Insurance has questioned the independence of Mr B's surveyor. I don't see any reason to question the professional opinion of Mr B's surveyor. I don't think the surveyor is any less independent than the surveyor Highway Insurance appointed themselves. I've explained in my decision why I don't think a third report would be helpful.

Highway Insurance has said it can get a different builder from its network to do the work. Mr B can decide if he wants to proceed with this offer. However, I also think it's fair for Mr B to get his own builder to do the works and be refunded the value of the lowest reasonable quote.

I appreciate Highway Insurance has access to lower commercial rates, and it has said any settlement should be based on these rates. However, in these circumstances, I think it's fairer for Mr B to be refunded in the manner I've set out if he chooses to use his own builder. I think the claim has been delayed and Mr B is extremely frustrated with the service he has received. I don't think he should be limited to using one of Highway Insurance's builder or a settlement on that basis. This has potential to cause further frustration and distress for Mr B. I'm also mindful that Mr B has been fair in not asking for any compensation to be awarded for distress and inconvenience. So, I think my decision provides a fair outcome for all involved.

As Mr B had his boiler moved due to safety concerns with the damaged wall, I think it's fair as part of settling the claim, that Highway Insurance refund a fair proportion of the labour costs that Mr B incurred when he had the works completed (on production of valid receipts) to reimburse him for the costs involved in moving the boiler.

My final decision

My final decision is I uphold this complaint. I require Highway Insurance Company Limited:

- To allow Mr B to choose whether to:
 - use an alternative builder provided by Highway Insurance to complete the works to settle the claim or,
 - cash settle the claim (*Mr B should get three quotes and the settlement should be based on the lowest quote to repair the damage. Highway Insurance should be given opportunity to review the quote to ensure it's reasonable and is consistent with the remaining terms and conditions of the policy. No further excess should be charged*).

Either way, Highway Insurance as part of the settlement need to refund fair labour costs of moving the boiler (on production of valid receipts).

- Reimburse Mr B for the cost of his surveyor's report (on production of valid receipts).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 May 2023.

Pete Averill
Ombudsman