

The complaint

Mr C has complained that Aviva Insurance Limited declined his buildings insurance claim.

What happened

Mr C has buildings insurance cover with Aviva. In early February 2020, Mr C says he noticed water leaking through his roof following a storm. He submitted a claim via his broker to Aviva. The broker also told Aviva that it considered Mr C to be in a vulnerable position.

Aviva didn't respond to the claim at all. In March 2021, a third party organisation contacted the broker on Mr C's behalf to enquire about the claim. The broker in turn, chased Aviva. Aviva arranged for a surveyor to review the damage. The surveyor attended in April 2021. He concluded that the internal damage to Mr C's property was not the result of a specific storm but a number of progressive maintenance issues. The surveyor also commented on rooms not being used for their original purpose.

One of our Investigators looked into the matter. She didn't think Aviva was unreasonable in declining the claim, as she thought it was entitled to rely on the report saying the current problems with the property are the result of lack of maintenance and Mr C had told her he'd not carried out any maintenance in 13 years.

The Investigator did, however, consider that there had been unreasonable delay by Aviva in responding to the claim, which had caused Mr C unnecessary and avoidable difficulties, including having to live in the property in a state of disrepair. She recommended Aviva pay £1,250 compensation for this.

Aviva does not accept that the compensation is justified. It said Mr C had a duty to mitigate his losses and maintain the property and he didn't do so knowing there was damage. Aviva also says that Mr C or his broker should have chased it for a response to the claim and "*we cannot resolve an issue if we do not know an error has happened*". Aviva suggested that compensation of £500 would be more appropriate.

Mr C does not accept the Investigator's assessment either. He has provided photographs and videos showing his property in good condition prior to the storm (on 8 and 9 February 2020). Mr C says there was no mould in the property until after the storm but there is now a significant amount of black mould, which is affecting his health. The surveyor only saw the property well over a year after the storm and so there had inevitably been a deterioration in that time. Mr C says he had to move his pianos away from the area of water ingress and also had to move his tractors inside to the music room to protect them from theft, as his fence had fallen down. This is why the rooms are not now being used as previously. Mr C also says the Investigator has misunderstood and he did not say he had not carried out any maintenance on the property in 13 years; he said the property was newly refurbished when he moved in 13 years before the storm. Mr C says the matter has left him distraught and in ill health due to the black mould.

As the Investigator was unable to resolve the complaint, it was passed to me. I issued a provisional decision on the matter in July 2023, in which I said the following:

“Mr C’s policy provides cover for various events which might cause loss or damage to his property, including damage caused by storm. The policy says:

“The buildings

Loss of or damage to the buildings caused by any of the following...

2. Storm or flood.

Exclusions...

Loss of or damage to fences, gates and hedges.”

There are no other specific exclusions to the storm damage section of cover. However, there is a general condition of the policy that applies to all cover which says:

“Your duty to prevent loss or damage

You and any other person this insurance applies to must take all reasonable precautions to prevent accidents, loss or damage.

All property insured by this policy must be maintained in good condition. Your policy is intended to cover you against unforeseen events like fire or theft. It does not cover wear and tear or damage which happens gradually over a period of time.”

It is for a claimant to establish they have a valid claim under an insurance policy, so this would mean Mr C would have to provide evidence that, on the balance of probabilities, his property was damaged as a result of a storm. If Mr C can do this, then Aviva is obliged to meet the claim unless it can establish that there is a relevant policy exclusion or condition that would apply. Again this would have to be on the balance of probabilities.

Mr C reported the damage to his property in or around mid-February 2020 and said this was as a result of a storm on 8 and 9 February 2020.

I have seen evidence that there was a storm in the vicinity of Mr C’s property on 9 February 2020, with winds of 78mph recorded. This would be enough to dislodge roof tiles. And I have also seen the evidence of Mr C’s fence having been blown over at the same time.

Aviva’s surveyor has confirmed that roof tiles slipped around a roof light on the single story part of the property above the kitchen and this is where the main ingress of water is coming from. He said:

“Close inspection reveals that there has been some disturbance of the pantiles...The rear main pitch roof lights physically have pantiles displaced either side as photos show. There is also a possibility to timber battens may have deteriorated which would lead to any roof subsidence. Condition of this large kitchen/diner and roof above is the main problem which rear pitched roof pantiles are missing/displaced to side of roof lights...”

The surveyor also said there was:

“a degree of frost damage, moss and maintenance issues appear to be the crux of the matter as no evidence of maintenance is noted...[and] that the damage claimed is not related to storm damage specific, but a multitude of progressive issues, maintenance as a primary factor and the internal damage would not have been due to one specific storm event, noting date of loss 09/02/20 and site visit 13/04/21, 14 months in between, the damage internally has only got much worse and progressive.”

I do not think the surveyor has explained how the frost damage (which I cannot see in the photos provided) or moss has caused the ingress of water to the property. He has stated there are missing and displaced roof tiles around the roof light, which is where the main ingress of water has been coming from, and once water is able to get under the tiles, it will spread to other areas causing damage to underlying felt and wooden battens and so on.

It is for Aviva to prove the roof was leaking before the storm and I do not think it has been able to do so. Aviva has not provided any convincing evidence that the roof tiles had slipped or were displaced prior to the storm or that they were damaged in any other way before the storm.

I also do not think that Aviva can reasonably blame the water ingress on lack of maintenance. Mr C has told us that the roof was around 20 years old and there is no evidence that it is generally in a poor state of repair. There is some moss on some tiles but this does not signify a lack of maintenance or that it is not generally in good condition. Most householders would not expect to carry out any roof maintenance on a roof of this age. There is no evidence the roof tiles slipped due to wear and tear or a gradual event.

The evidence from Mr C is that the roof was sound and kept the property watertight until the storm in February 2020 and there is nothing I have seen to cast doubt on this. Given all of this, I am satisfied that there was a storm at the relevant time that is likely to have caused the damage to Mr C's roof and allowed water into his property. In my opinion, Aviva should therefore meet the cost of repairing the roof under the policy.

With regard to the internal damage, Aviva says this is much worse than would have been the result of one storm in February 2020. Aviva has refused all cover for the internal damage on the basis that it says Mr C had a responsibility to mitigate his loss and if he had done so, there would not have been such extensive damage inside his property; it cannot attribute the internal state of the property with the one storm in February 2020.

I agree entirely that the current condition of the property will not be due to the one storm event in February 2020. However, I do not agree with Aviva that this means it is not liable for the current condition of the property. The fact is that because the roof was not repaired by Aviva in accordance with its duty under the insurance contract with Mr C, the property was exposed to damage as it was not watertight. Over the period of 14 months before its surveyor attended there would have been continuing damage and in the time since Aviva's surveyor attended in 2021, it would have become even worse.

If Aviva had attended in February 2020 when it should have done, it would have had the chance to assess the condition of the property. It did not do so. The only evidence about the condition of the property from that time is Mr C's testimony and his photos and videos. While the photos and videos are undated, they show the

property in very good condition. And I also bear in mind it was a relatively new barn conversion. There is no reason therefore for me to doubt that the property was in good repair before the storm.

Aviva also says it is not responsible for all the damage, as Mr C should have had the roof fixed himself to stop any further damage, when it did not respond to the claim, and Mr C and his broker should have contacted it again to chase up the claim when it didn't respond. [I have considered whether] Aviva may have a partial defence to a claim for all the current internal damage based on a failure by Mr C to mitigate the loss, perhaps by having the roof fixed at some point after he was aware it was leaking and Aviva had not contacted him in response to his claim.

Having considered all the evidence, I do not think it is fair for Aviva to place all responsibility on Mr C or his broker to have chased it for a response. While they could have done so, the primary failing was on Aviva's part, it had a contractual duty to Mr C and it completely ignored his claim. Aviva had also been made aware of Mr C's needs, which arguably create a higher expectation, and did nothing to meet its obligations to him.

In addition, Aviva failed to repair the roof in 2021 when it finally responded to the claim, so there will have been further water ingress and internal damage as a result of that delay.

Mr C's needs mean he is not in a position to mitigate his loss in the same way that we might ordinarily expect. He had made clear in his claim letter he felt vulnerable about using tradespeople. And it was only with assistance of a third party organisation that the claim was responded to by Aviva in March 2021. And, even if it was reasonable to have expected Mr C to do something about the roof at some point in the three years since the storm, it is difficult to determine how much internal damage is due to the original storm and Aviva's delays and how much might have been avoided had Mr C repaired the roof at some point since February 2020.

Overall, therefore I consider that Aviva should meet the claim for the roof repairs and the internal damage. I also consider that some compensation in addition to the meeting of the claim is appropriate. I think Aviva has caused Mr C avoidable and unnecessary distress and inconvenience for almost three years. He has been living in a property in poor condition, with black mould. Aviva also had an opportunity to rectify the matter in March 2021, which would have reduced the impact on Mr C but failed to do so. I consider that the sum of £1,500 is appropriate.

Mr C may find dealing with the contractors difficult and Aviva should bear in mind his needs when arranging appointments for the work to be done.

My provisional decision

I intend to uphold this complaint against Aviva Insurance Limited and require it to do the following:

1. meet Mr C's claim under the storm section of the policy (subject to the remaining terms and conditions of the policy); and
2. pay Mr C £1,500 compensation for the distress and inconvenience caused by its handling of the claim."

Responses to my provisional decision

Aviva does not accept my provisional decision. It says that it accepts the claim was closed in error but it was not aware this had happened until March 2021. Aviva says it now agrees to the £1,200 compensation recommended by the Investigator for this error. However, it maintains that it is not responsible for the damage to the property.

Aviva says its surveyor confirmed there'd been storm conditions at the time of the claim but he identified *"damage, moss and maintenance issues which appear to be the crux of the matter"*. Aviva says there is clear evidence that this damage has been there longer than a year, given the amount of moss and that it is growing under many of the tiles which have been displaced. Aviva says that moss tends to lift tiles causing them to slip and make them more susceptible to high winds; it also holds moisture which will leak into rooms below.

Aviva also says that the slipped and damaged tiles are not consistent with the pattern of damage it'd normally see following storm; it is more widespread than it would be from a single storm incident and indicates long term wear and tear.

Finally, Aviva says again that Mr C had a duty to maintain the property and have the roof repaired to prevent further damage; it does not agree it was reasonable for him not to do anything further about the roof.

Mr C has also responded. He says he agrees with my decision in the main but wants to add that the kitchen units were new prior to the storm and are now splattered with black mould and slime since the storm in February 2020. He also says that he has suffered significant deterioration of health, including partial paralysis, which he says is due to the mould and parasites that have entered his home following the storm.

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.

Aviva's surveyor said there were disturbed pantiles around the pitch roof lights. Aviva says this is more widespread than it would expect from a single storm but its surveyor did not say this. And in any case, it was inspected over a year after the storm so would have been subject to further weather events in that time.

Aviva says it's evident by the amount of moss and that there is some growth between and under some of the displaced tiles that this was present for over a year prior to its inspection. However, its surveyor didn't say this and I am not aware of any evidence to support this assertion. The surveyor said there was evidence of frost damage, moss and maintenance issues but I cannot see that he said this pre-dated the storm or that there is anything to prove that there was water ingress to the property prior to the storm.

Aviva also says the presence of moss would make the tiles more susceptible to lifting during a storm. It seems to me equally possible that after tiles were displaced by the storm, it allowed moss to grow in the gaps this created. As stated in my provisional decision, given that it did not attend in 2020, Aviva has lost the opportunity to prove this. There is no evidence that the property was not watertight before the storm in February 2020.

Mr C says the water ingress started after the storm in February 2020 and I have no reason to doubt that. There is evidence of a storm and Mr C reported the first ingress of water to the property shortly after that storm. This all means it is more likely than not in my opinion that the property was watertight and the roof was in satisfactory condition (whether there was presence of moss or not) and would have continued to be so but for the storm in February 2020. This means that Mr C has established that he has a valid storm claim under the policy and Aviva is responsible for the roof repairs.

Aviva essentially also asserts that it should avoid all liability under the claim because Mr C has not taken steps to have the roof repaired himself.

Aviva is correct that we would normally expect a policyholder to mitigate their loss. However, as set out in my provisional decision I think that Mr C's needs mean he was not in a position to mitigate his loss to the same extent we might ordinarily expect.

Mr C made a claim to the insurer that he had paid to provide him with peace of mind in the event of an event such as happened here and Aviva did not fulfil its responsibilities to him. It ignored his claim entirely and then when it had an opportunity to put this right in March 2021, unreasonably refused the claim.

Mr C had made clear in his claim letter he felt vulnerable about using tradespeople and it was only with assistance of a third party organisation that the claim was responded to by Aviva in March 2021. Aviva also knows nothing about his financial means and whether he was in a position to pay for the work himself. I do not therefore think it is fair for Aviva to avoid all responsibility, when it has been established in my opinion that there was storm damage to the property.

I also set out in my provisional decision that, even if it was reasonable to have expected Mr C to do something about the roof at some point in the time since the storm, it is difficult to determine how much internal damage is due to the original storm and Aviva's delays and how much might have been avoided had Mr C repaired the roof at some point since February 2020. Aviva has not responded to this point.

There was a storm and a lot of rain in February 2020. It was apparently the wettest month in the U.K. on record. So even if Mr C could be expected to have taken some action say a couple of months after the storm once he realised Aviva had not responded, it seems to me that the amount of water entering the property would already have been significant and the resultant internal damage extensive.

Overall, taking account that there would have been significant damage, even if Mr C had the roof repaired at some point since the storm, and the fact Aviva failed to respond to the claim at all until March 2021 and that it had the chance to put the matter right in March 2021 but didn't, I consider that Aviva should meet the claim for the roof repairs and the internal damage.

I also still remain of the opinion that some compensation in addition to the meeting of the claim is appropriate. I think Aviva has caused Mr C avoidable and unnecessary distress and inconvenience for almost three years. He has been living in a property in poor condition, with black mould for considerable time.

Mr C has said this has had a detrimental effect on his health. I do not think there is any doubt that living in these conditions would not be good for anyone's health. I have not however seen any medical evidence that it has caused Mr C's specific current medical problems, so I do not think I can make any additional award for this at this stage.

Having taken all the available evidence into account, I remain of the opinion that the sum of £1,500 is appropriate.

My final decision

I uphold this complaint against Aviva Insurance Limited and require it to do the following:

1. meet Mr C's claim under the storm section of the policy (subject to the remaining terms and conditions of the policy); and
2. pay Mr C £1,500 compensation for the distress and inconvenience caused by its handling of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 September 2023.

Harriet McCarthy
Ombudsman