

The complaint

Mr and Mrs B complain West Bay Insurance Plc hasn't covered all the damage to their property which they consider to have been caused by a storm.

Mr and Mrs B are being represented on this complaint, but for ease, any reference to Mr B includes the actions and comments of their representative.

And any reference to West Bay includes the actions of its agents.

What happened

- The circumstances of this complaint are well known to both parties, so I've summarised events.
- Following a storm, Mr B's property was damaged. West Bay accepted that the damage to his property's roof's tiles was caused by a storm. But said the storm wasn't the main cause of damage to the adjoining car port because the joists showed signs of gradual wear and tear. And so, it said it wouldn't cover this part of the claim.
- Unhappy, Mr B brought a complaint to this Service. An Investigator considered it but was satisfied West Bay could reasonably rely on its surveyor's report to decline cover. The complaint was closed, and Mr B was advised that if he provided further, new information to West Bay and subsequently, this Service, we might be able to consider it.
- Mr B arranged for his own contractor to give an opinion on the structure of the car port, cause of damage and to provide a quote for the repair. And he instructed a surveyor to review the damage. That surveyor concluded the storm was the main cause of the damage and so, Mr B asked this Service to investigate the complaint in light of this new evidence.
- An Investigator considered it and recommended a third independent surveying report be commissioned as both parties' experts had provided persuasive findings.
- Both parties provided responses explaining why they didn't agree with the Investigator's outcome and so, the complaint has been passed to me for an Ombudsman's decision.
- Having considered things, I issued a provisional decision, in which I said:

What I've provisionally 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.

- *Having done so, I intend to uphold this complaint and direct West Bay to accept the*

claim as I'm satisfied the main cause of damage to Mr B's car port was a storm. I'll explain why.

- *Mr B says the polycarbonate roof of his car port lifted following a storm, and that this caused damage to the lead flashing that goes around the perimeter.*
- *It's accepted there were storm conditions at the time of loss, and that the damage is consistent with that which could be caused by a storm. So, I don't need to consider these issues further. But the parties disagree as to whether the storm was the main cause of the damage or whether it simply highlighted a pre-existing issue with the car port.*
- *It's not in dispute 3 of the 21 timber joists - to which the polycarbonate roof was fixed - had been affected by dry rot. But the parties disagree as to the relevance of this when deciding if the damage is covered.*
- *Both parties have provided expert reports to support their positions. In summary, Mr B's surveyor said the proximate cause of the damage was the storm conditions lifting the polycarbonate roof sheets. And that the three joists affected by rot on and before the incident date had little or no bearing on the roof sheet damage.*
- *Conversely, West Bay's surveyor said the joists affected by rot would have caused a weakening of the timbers and was the most likely cause of the roof lifting. It said the rot was unlikely to have appeared between the date the claim was made (29 January 2022) and its surveyor's visit in early April 2022. So, the surveyor was satisfied the damage had occurred gradually and was therefore, not covered under the policy.*
- *Our Investigator considered both reports to be persuasive and so, recommended a third, independent surveyor, be instructed to reach a definitive outcome. But I don't think that's necessary here as I'm more persuaded by Mr B's surveyor's findings. I'll explain why.*
- *Of note is the surveyor's finding that if the rotten joist had been the prevalent cause of failure, he would have expected the fittings to have also been pulled from the soft and rotten timbers, but that didn't happen. He explains that there were two other rotten joists but that the roof didn't detach at these points, so he doesn't consider the rotten timbers to have a bearing on the claim.*
- *Additionally, the surveyor explains that all other joists showed acceptable levels of moisture content for external timbers, and that the joist which is the most important fixing – at the end of the structure – is clearly in sound condition.*
- *Conversely, West Bay's surveyor's report provides a limited explanation as to why the storm wasn't the main cause of the damage, saying: "The timbers in the roof are showing signs of dry rot suggesting damage by ingress" and "The heavy winds have highlighted poor conditions of the timbers which caused the integrity to be weaker."*
- *Whilst I'm satisfied both surveyors are suitably qualified to give an opinion on the matter, Mr B's surveyor has provided a more comprehensive and detailed opinion as to why the storm was the main cause of damage, and so, I'm more persuaded the damage should be covered.*
- *West Bay has said temporary repairs had been completed to the car port by the time Mr B's surveyor attended, but I note from its expert report that these temporary*

repairs were in place when its surveyor visited as the report says, “Roofing has been screwed back down as an emergency measure”. So, I’m not persuaded the temporary repairs having been completed means Mr B’s surveyor’s report can’t reasonably be relied on.

- *Whilst I recognise Mr B’s surveyor attended 14 months after the date of loss and so, the damage might have worsened by this time – the surveyor ultimately, agreed some of the timbers had rotted, which is the same finding West Bay’s surveyor made when they attended a couple of months after the date of loss. So, again, I don’t consider the fact Mr B’s surveyor attended a year after West Bay’s insurer to make a material difference in this complaint.*
- *West Bay said Mr B’s surveyor’s report incorrectly states that the car port had been in existence for 15 – 20 years prior to the date of loss, but that a street view image of the property, taken in 2012, shows it wasn’t in situ. I’ve looked at the same image and can clearly see the car port attached to Mr B’s property, so I’m not persuaded this argument carries any weight.*
- *The dispute brought to this Service was whether West Bay should accept the claim in respect of the car port. I’m satisfied it should, and so, it’s now for the two parties to agree how to settle it according to the remaining policy terms.*

My provisional decision

My provisional decision is that I uphold this complaint and intend to direct West Bay Insurance Plc to accept the claim.”

Both parties replied to my provisional findings. Mr B agreed with the outcome, but West Bay had further commentary it wanted me to consider. In summary it said:

- It had partially accepted the claim under the storm peril and offered a cash settlement for some of the works.
- It agreed there was little to be gained from obtaining a third report from an independent surveyor.
- Whilst it accepted – based on Mr B’s surveyor’s findings - the argument for covering the replacement of the polycarbonate panels, it didn’t think it should be responsible for covering the costs of replacing the entire timber frame. Its argument being that Mr B’s surveyor said the frame was in good condition apart from three joists affected by rot but which wouldn’t have contributed to the damage. And so, it wanted clarification on this matter.

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.

West Bay want me to clarify what I’m asking it to do and has pointed out that the quote provided by Mr B includes replacing the timber frame. As I made clear in my provisional decision, I’m satisfied the lifting of the polycarbonate roof was because of a storm – and that’s the aspect of the claim West Bay needs to accept and look at.

It’s a matter for the two parties as to how the insurer settles the claim as its only obligation

under the policy terms is to repair or replace the damage. So, this will require an assessment of what was damaged when the car port roof lifted and what needs to be repaired or replaced as a result. If West Bay wants to reinspect the property to determine this it can do so, but at this point, all I'm saying is the lifting of the roof is insured under the storm peril and West Bay, therefore, can't reject it on the basis it has – namely, that the damage was caused by dry rot which had happened gradually.

So, the next step is for West Bay to determine a scope of works for the insured damage and to get in touch with Mr and Mrs B about this.

My final decision

My final decision is I uphold this complaint and direct West Bay to accept the claim in respect of the car port roof.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 26 October 2023.

Nicola Beakhust
Ombudsman