

The complaint

Mr B and Ms A have complained about Casualty and General Insurance Company (Europe) Ltd's (Casualty and General's) decision to decline a claim they made under their building warranty policy.

What happened

Mr B and Ms A have brought a complaint about a claim they made for water ingress to their property caused by issues with their roof.

Mr B and Ms A's property is covered by a ten-year structural warranty, underwritten by Casualty and General. The cover provided by this warranty is split into various sections, and the relevant section in this case is section 2. Under section 2, Casualty and General have no liability under the terms of the policy unless the developer has been informed of the issues and has failed or refused to put things right in good time and/or has been declared insolvent.

Casualty and General was first notified about a claim for water ingress at Mr B and Ms A's property in June 2020, after Mr B and Ms A had made a claim to their home insurer for storm damage, which was declined. Casualty and General referred them to the developer in the first instance and they say the developer carried out some temporary repairs. Further issues were reported in 2021, but Casualty and General say Mr B and Ms A didn't provide all the necessary information for them to assess the issue at that stage.

In 2022 Mr B and Ms A provided the remaining information Casualty and General had asked for, which included information from their home insurer and a roofer's quote/report they say was carried out as part of their home insurance claim. Then, in early 2023, Mr B and Ms A made a formal claim to Casualty and General, providing another roofer's report on the issues with their roof.

Casualty and General have declined Mr A and Ms B's claim for several reasons. It says the evidence from the time of construction shows the roof was constructed in line with the technical drawings and building regulations. It says Mr B and Ms A's home insurer declined their claim based on the damage being caused gradually over time (wear and tear) which is excluded under the warranty. And it says Mr B and Ms A didn't inform them in 2020/2021 that the developer failed to remedy all the issues, which prejudiced its position to provide support at the time.

Despite the above, Casualty and General made a goodwill offer to resolve Mr B and Ms A's complaint. It offered to meet the cost of the repairs they had carried out by their roofer in 2023, including the cost of his report, after a 50% deduction for the wear and tear issues present on the roof and deduction of the policy excess (£1,000). This meant a cash offer of £535.

Mr B and Ms A didn't accept Casualty and General's offer, so one of our investigators considered their complaint. She didn't think it should be upheld because she wasn't persuaded that the issues reported with the roof were caused by a defect, and because she didn't think Mr B and Ms A had met the reporting requirements under the policy with regard to the developer repairs in 2020/2021. But she highlighted Casualty and General's offer and said Mr B and Ms A could accept it if they wished to.

Mr B and Ms A didn't accept our investigator's opinion. So, because no agreement has been reached, the complaint has 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.

There have been many different points and arguments raised by both sides during the life of this complaint. And while I've given careful consideration to all of them, my decision will focus on what I consider to be the key points relevant to reaching a fair and reasonable outcome. This isn't meant as a discourtesy to either party, rather it reflects the informal nature of our service, and my role within it.

Mr B and Ms A's warranty policy is split into various sections of cover, and the relevant section of cover in this case is section 2. This section provides cover for 'major damage' which has a specific definition. Particularly important to this case, it covers water ingress caused by issues with the waterproof envelope, resulting from a defect in the design, workmanship, materials or components of the waterproofing elements of the waterproof envelope.

The definition of 'waterproof envelope' includes roofs.

The warranty document also explains that Casualty and General won't cover damage caused by wear and tear or a lack of maintenance under any section of cover.

Mr B and Ms A are seeking reimbursement of the repairs they had carried out to their roof in 2023 and the cost of the report their roofer provided prior to the repairs, totalling £3,070.

The roofer's report sets out the issues identified with the roof which included cracked or damaged tiles and poorly carried out repairs to both flashing and broken tiles. I think it's clear these issues are the result of wear and tear and/or a lack of maintenance, and so would not be covered under the warranty.

The report further highlights an issue with the construction of the lead detailing at the foot of the parapet wall, and that some lead flashing where the main roof meets the lower roof had not been chased into the wall, allowing water to get in behind and penetrate the property. And it points out dampness in the loft which it says could be the result of inadequate ventilation.

So, in order to decide whether Mr B and Ms A's claim should be covered, I need to decide whether the above reported issues amount to a defect in the design, workmanship materials or components of the roof, which is what the policy covers. And, based on the evidence available, I'm not satisfied this has been shown.

I should first acknowledge that the policy terms do not provide a specific definition for the word defect. Where this is the case, I would usually think it reasonable to consider the normal or everyday meaning of the word. But the word 'defect' can apply to all sorts of things, not just the construction of buildings. So, in this particular case, I think it's fairer and more reasonable to consider how that word is typically defined by building warranty providers across the industry.

In the context of building warranty policies, defect is usually defined as being a breach of either, the warranty provider's own technical requirements which the developer is required to adhere to, and/or the relevant building regulations which applied at the time of construction. So, in this case, I think it's reasonable to consider that a defect in the design, construction etc, would be a failure of the developer to comply with either the agreed plans for the construction of the property and/or the relevant building regulations which applied to its construction. And, while I appreciate it will come as a disappointment to Mr B and Ms A, I've not seen any evidence to support that either were not complied with.

I appreciate that Mr B and Ms A's roofer's opinion was that the lack of a secret gutter beneath the parapet and the flashing not having been chased in amounted to defects with the roof's construction. But there is no evidence that either of these details were part of the original design or that they were requirements under the relevant building regulations. And the roofer's findings about the dampness in the loft are not definitive, and merely suggest a possible cause. In the absence of a more firm finding from an expert on this point, I think it could be equally likely that dampness in the loft could have been caused by the other issues reported with the roof.

Casualty and General have provided copies of the 'completed structure assessment', to show the building was signed off by building control. This report, taken in 2019, confirms the roof was inspected and doesn't highlight any concerns or defects. And, more importantly, Casualty and General have provided a copy of the building regulation completion certificate, which is evidence that the requirements of building regulations have been complied with.

While neither of the above are absolutely definitive evidence, I find them more persuasive than Mr B and Ms A's roofer's report in isolation. So, on the balance of probabilities, I'm persuaded that the issues highlighted by Mr B and Ms A's roofer do not amount to major damage, because they haven't been shown to result from a defect. This means there is no requirement for Casualty and General to deal with their claim under the terms of the warranty.

However, Casualty and General has offered to settle Mr B and Ms A's claim for the repair and report costs they've incurred, on a goodwill basis. But its offer includes a 50% deduction for wear and tear and a deduction of the policy excess of £1,000.

I've already explained above why I don't consider that there is sufficient evidence of a valid claim under the warranty. But for completeness, even if I accepted that the issues did amount to a defect, I think the offer Casualty and General have made would be fair, based on the available evidence. I'll explain why.

Mr B and Ms A's roofer's report and invoice do not separate out the costs for each item of work required. They simply set out the works required/completed and the total cost of the works.

As set out above, I'm persuaded that some of the issues with the roof were the result of wear and tear and that these issues wouldn't be covered under the warranty. So, in the event of a valid claim, I think it would be fair for Casualty and General to make a deduction for wear and tear. And as the report and invoice do not separate the issues, a 50% deduction seems equitable and reasonable based on the information which is available.

The excess is the amount of any claim Mr B and Ms A are required to pay under the terms of the policy. So, if the offer was made in response to a valid claim (as opposed to being a goodwill offer), I don't consider it would be unfair for Casualty and General to deduct this amount from the settlement.

Ultimately, I don't think Mr B and Ms A have shown they had a valid claim, under the terms of the warranty, for the issues being claimed for. But Casualty and General has made an offer to settle their claim after deductions for wear and tear and the policy excess and I consider that this offer is fair and reasonable in the circumstances. So, I won't be directing Casualty and General to do anything more than it has already offered to do.

My final decision

Casualty and General Insurance Company (Europe) Ltd has already made an offer to pay £535 to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that Casualty and General Insurance Company (Europe) Ltd should pay Mr B and Ms A £535 to settle the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Ms A to accept or reject my decision before 26 February 2024.

Adam Golding
Ombudsman