

The complaint

Mr R complains about Aviva Insurance Limited (Aviva) declining a claim under his home insurance policy for damage to a ceiling at his property caused by an ingress of rainwater.

Reference to Aviva in this decision includes their agents.

This decision covers Mr R's complaint to this Service about Aviva declining a claim for damage to his kitchen from an ingress of rainwater through the roof. It doesn't cover a separate claim he made shortly afterwards for damage caused by a burst pipe, which Aviva assessed separately.

What happened

In November 2022 Mr R noticed water dripping through his kitchen ceiling. He contacted Aviva to tell them about the damage and lodge a claim. He said there had been heavy rain for the previous two days. Aviva appointed a firm (H) to assess the claim and inspect the damage. H's surveyor visited later in November (Mr R said he visited unannounced). Mr R said he didn't hear anything further about his claim until he received an email in August 2023 declining his claim.

Unhappy at his claim being declined, after nine months, Mr R complained to Aviva. He said his roof had been checked in November 2020 by a roofing firm (CR) and shortly afterwards a second firm (MR) replaced some damaged slates and checked the roof for other defects. Roofing work on a neighbouring property in 2022 would have meant the contractor noticing any damage to Mr R's kitchen roof. Mr R had also checked the roof in April 2023 and couldn't see any areas that would allow water to enter the property. He subsequently repaired some cracks in the roof. Mr R was also unhappy at the time taken to decline his claim, which he said hadn't happened until August 2023. He also raised concerns about the policy excess of £350 and a call from Aviva in May 2023 not mentioning decline of his claim.

In their final response, in October 2023, Aviva didn't uphold the complaint. They referred to their assessment of the claim under the Storm section of the policy and the policy definition of storm. While accepting there were storm conditions in the period leading up to the leak, the damage wasn't consistent with storm damage. They referred to puddling and sagging in areas of the roof, indicating the decking boards beneath the roof had failed, which wouldn't be the result of a one-off storm. The damage was gradually occurring and wouldn't be covered as there was a policy exclusion for such damage.

On the issue of the time taken to decline the claim, Aviva said the decline was made known to Mr R by H during their inspection. A letter declining the claim was then sent to Mr R at the start of December 2022. So, there were no delays in their declining the claim.

Mr R challenged Aviva's final response and Aviva issued a further final response (January 2024). Aviva didn't uphold the complaint. On the points raised by Mr R, they noted his comments about his roof being repaired and checked, they said the main roof was repaired, not the flat roof over the kitchen. And while it may have been checked, it didn't mean there weren't any issues. Mr R had mentioned indentations in 2018 which, if still present,

suggested no maintenance had been carried out in the four years before the leak. And the neighbour's roofer not noticing any issues wasn't evidence there were none. And while Mr R inspected the roof and repaired some cracks subsequently, it didn't negate the roof being in a poor state at the time of the leak. They also noted a comment from Mr R about roofers examining the kitchen roof stating the damage probably happened months before the leak became apparent. Which Aviva thought indicated the damage wasn't from a one-off [storm] event and happened gradually over time.

Mr R then complained to this Service, unhappy at having his claim declined. Water was continuing to leak into his kitchen and despite having contacted many contractors, only three had provided an estimate for the cost of repairs. Aviva's surveyor hadn't gone onto the kitchen roof but taken photographs from the stairs (but the cracks in the roof weren't visible from the stairs). The water had been lying on the kitchen roof for several months, the weight of which had caused the roof to crack allowing the water to get in. At no time had he said the damage was due to a storm (as Aviva had taken the claim to be because of storm damage). He was also unhappy the surveyor arrived without warning and that he hadn't been told the claim had been declined when speaking to a claims manager. He wanted Aviva to accept his claim and cover the cost of repairing the damage.

Our investigator didn't uphold the complaint, concluding Aviva didn't need to take any action. She noted Mr R told Aviva about the heavy rain preceding the leak, so it was understandable Aviva had assessed the claim under the storm section of the policy. The policy provided cover for insured perils. Given the circumstances described by Mr R, storm would have been the most likely cause of the damage. Based on what she'd seen, the investigator didn't think the damage was caused by an insured peril. The evidence indicated the damage that caused the leak happened months before the leak, indicating the flat roof above the kitchen had reached the end of its life expectancy (flat roofs had a limited life span). Without any evidence to show the leak from the flat roof was due to an insured event, it was reasonable for Aviva to decline the claim. And while the surveyor did arrive unannounced, he'd told Mr R at the time the damage wasn't caused by an insured event. Aviva had written to Mr R in December 2022 to tell him the claim had been declined.

Mr R disagreed with the investigator's conclusions and requested that an ombudsman review the complaint. He said he'd found tears in the roof felt when he went onto the roof in May 2023. And he didn't find out Aviva had declined his claim until August 2023 (and wasn't told of this in a call from Aviva in May 2023). Nor had he claimed the damage was due to storm. He also disputed what H had said to him during the inspection.

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.

My role here is to decide whether Aviva have acted fairly towards Mr R.

There are several issues in Mr R's complaint. The first is Aviva's decline of his claim, on the grounds of wear and tear to the roof. Mr R says the roof had previously been repaired and inspected. He also says he didn't make a claim under the storm section of the policy and that he found tears in the felt roof, which he thought had been caused maliciously by a neighbour. There's also the time taken to decline his claim. Mr R says he wasn't told the claim was declined until August 2023, some nine months after he lodged his claim. Aviva say H told Mr R the claim would be declined during his inspection and confirmed this by letter shortly afterwards.

There are other, more specific issues, including the policy excess on claims (£350) and Aviva not telling him, in May 2023, his claim had been declined.

On the first issue, the decline of his claim, I've first considered the point about Aviva considering the claim under storm damage. Mr R says he didn't make the claim under the storm section. But in notifying the damage he indicated it followed days of rain. In the circumstances, to consider the claim, Aviva would have to decide which insured peril the claim was most likely to have fallen under. Given the description of the incident and damage (water entering through the kitchen [flat] roof, it was reasonable for Aviva to assess the claim under the storm section of the policy. And to send a surveyor (H) to inspect the property and assess the damage.

Mr R subsequently said he thought the damage was malicious, caused by a neighbour climbing onto the roof and slashing the felt. However, by that point Aviva had assessed the claim under the storm section and declined the claim. That being the case, I will focus on their decline of the claim and the reasons they've given for declining it.

They've said they would have to consider a new claim, separately for any malicious damage Mr R alleges has occurred. I think that's reasonable.

Coming back to their assessment of the claim under the storm section, Aviva say in their final response (September 2023) the damage to the roof wasn't consistent with storm damage. They refer to the policy definition of storm:

"An unusual weather event with persistent high winds usually associated with rain, thunder, lightning or snow.

The wind speed or gust should normally exceed 55mph (48 knots) to be a 'storm' but we take other factors into consideration such as where the property is sited. A storm can highlight defects rather than cause them and damage due to lack of maintenance, wear and tear or which happens gradually is not covered.

Aviva go on to say that while there were these conditions in the six weeks leading up to the incident, the damage observed to Mr R's roof (a flat roof) wasn't consistent with storm damage. They referred to puddling and sagging in areas of the roof, indicating the decking boards beneath the roof had failed, which wouldn't be the result of a one-off storm. Aviva also refer to H's report from their inspection, the key extracts are as follows:

"EXTERNAL: Upon inspection of the extension flat roof we found that the damage is not consistent with an insurable peril for storm. The flat roof has evidence of previous repairs to the joints where they have been filled on the past with a bitumen paint. The roof is puddling and sagging in areas indicating a failure of the decking boards below due to gradual wear and tear. This is not consistent with a one off event of storm..."

INTERNAL: Upon inspection of the kitchen...we found that the damaged items were the ceiling which has 2 small holes and has staining to it. In our opinion the damage is not consistent with storm but is due to a failure of materials externally.

CONCLUSION: The claim has been declined in full as we found no storm damage to the property. We have discussed and explained our findings with the policy holder. The policy holder understood and did accept our claim decision , A confirmation letter is required to be sent to the policy holder."

Aviva say gradually occurring damage isn't covered under the policy. In the *General exclusions* section of the policy there is the following exclusion:

1. *"Gradually occurring damage*

- *wear and tear (natural and predictable damage which happens over time or due to normal use or ageing) this includes, but is not limited to, gradual weathering, the effect of light, deterioration or depreciation;*
- *any other gradually occurring damage..."*

In their second final response Aviva refer to the following statement from Mr R in his complaint letter:

"Those that have examined the damage to the kitchen roof have stated that the kitchen roof damage has probably happened months and months before the water has started to leak into the kitchen and cracked the ceiling due to the amount of water and its weight."

Looking at H's report, photographs of the flat roof show areas of water collecting, indicating sagging of the roof in those areas. Which is consistent with H's findings and conclusions set out above.

As a Service, we approach claims for damage from a storm by asking three questions:

- Do we agree that storm conditions occurred on or around the date the damage is said to have happened?
- Is the damage claimed for consistent with damage that a storm typically causes?
- Were the storm conditions the main (or dominant) cause of the damage?

Aviva acknowledge there were storm conditions in the period leading up to the incident. So, the answer to the first question would be 'yes'. On the second question, while Aviva say the damage wasn't consistent with storm damage, damage to roofs and consequent water ingress is something that can happen in a storm. So, arguably the answer would be 'yes'.

That would make the third question key. Given the points set out above, I've concluded that on balance the storm conditions weren't the main (or dominant) cause of the damage. And that the damage was due to gradually operating causes. In which case the policy exclusion would apply.

I've also considered the general principle, where a policyholder makes a claim for damage or loss under a policy, the onus is on them to show there was an insured event that caused the damage or loss. In this case, given my conclusions above, that the damage is more likely to have been the result of wear and tear and pre-existing issues, I think it's reasonable to conclude there wasn't an insured event (storm) that caused damage.

Where an insurer relies on an exclusion in the policy to decline a claim (as Aviva have done) then the onus is on them to show the exclusion applies. Looking at the available information and evidence, I think Aviva have done so in the circumstances of this case.

Taking all these points together, I'm persuaded Aviva acted fairly and reasonably in declining the claim on the grounds the damage wasn't due to storm conditions, but to gradually operating causes.

On the issue of the time taken to decline the claim, Aviva's final response says the decline was made known to Mr R by H in their inspection of the property. This is consistent with the extract from H's report set out above. They say a letter declining the claim was (or would

have been) then sent to Mr R at the start of December 2022. So, Aviva say there were no delays in their declining the claim. Aviva haven't been able to provide a copy of the letter they say would have been sent – and I note H's report states a confirmation letter is required to be sent. Which isn't proof it was, in the event, sent.

Mr R disputes both things, saying H didn't say the claim would be declined and that he didn't receive any letter from Aviva. In the absence of any other evidence, I can't reach a definitive conclusion, but nor can I reasonably conclude Aviva didn't inform Mr R of their decision. And if, as Mr R says, he wasn't told about the decline of his claim, I would have expected him to contact Aviva directly to find out what was happening with his claim. Either separate to, or alongside, his claim and contact with Aviva in respect of the burst pipe at his property.

On the specific issue of Mr R not being told his claim had been declined when Aviva contacted him in May 2023, looking at the email exchange it's clear the Aviva claim handler was dealing with Mr R's claim for the burst pipe – not the claim for the leak from the roof. So, they wouldn't have had any reason to mention the claim for the roof (which Aviva had declined). The claim handler refers Mr R to a separate claim handler for the roof claim. This seems reasonable and there's no reason to think the claim handler deliberately withheld information from Mr R, as they were dealing with a separate claim, not the roof claim.

On the issue of the £350 policy excess, Mr R says he never received a copy of the policy terms and conditions. I understand the policy was taken out online, but the policy schedule provided by Aviva (for both years of the policy) states the buildings excess is £350. An excess is a standard feature of most home insurance policies, so its inclusion in Mr R's policy wouldn't be unusual.

In any event, as his claim was declined, the excess wouldn't have been payable, so he hasn't suffered any financial loss.

Given these points, I can't conclude Aviva acted unfairly or unreasonably towards Mr R. So, I won't be asking them to take any action.

My final decision

For the reasons set out above, it's my final decision not to uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 26 September 2024.

Paul King
Ombudsman