

## The complaint

4, a limited company, has complained about its property insurer Aspen Insurance UK Limited. 4 has complained because Aspen declined its claim for storm damage.

## What happened

A policy of insurance was arranged for 4's premises, a block of flats, in April 2019. Aspen was aware of some previous storm damage and applied an excess to the policy for future claims for storm damage of £10,000. In June 2019 Aspen surveyed the property. Aspen found work was still needed and decided that work would have to be done as a condition precedent to it providing cover, sending a letter to a broker acting for 4.

In February 2020 the roof of 4's premises was damaged during a named storm. Internal damage also occurred. A claim was made, Aspen investigated and had the roof assessed. It felt work had not been done following its assessment in 2019 – so it declined the claim on the basis of the condition precedent. 4 complained to the Financial Ombudsman Service.

Our Investigator noted that Aspen had arranged the policy without any indication it was being offered subject to an assessment which might require additions or changes to the cover. So she felt it had acted unfairly in seeking to rely on the conditions precedent to decline the claim. However, she did think the post-storm assessment showed the roof had not been damaged by the storm, that its condition had caused the damage and that was excluded. So she concluded that Aspen's decline of the claim was fair and reasonable.

Aspen objected – it felt it should be able to rely on the condition precedent. It explained that whilst there was nothing in writing confirming that an assessment was necessary for cover, it had an established relationship with the broker, with assessments being completed as part of their standard procedure.

4 said there might have been more than one cause of damage to the roof and it was clear the storm had caused some damage. It noted that the policy excludes wear and tear but then also specifically includes any resultant consequential damage which is not otherwise excluded. It reiterated that there was internal damage which should be covered.

Our Investigator reviewed matters. She wasn't persuaded the points raised changed anything. The complaint was referred to me for an Ombudsman's consideration. I found my views regarding the condition precedent and the roof itself, were similar to those expressed by our Investigator. However, I felt Aspen should be considering a claim for internal damage. So I issued a provisional decision to explain my views. My provisional findings were:

### "Condition precedent

*Aspen knew that repairs were outstanding when the policy was agreed. It added a specific excess to the policy to account for that. At that stage it could also have added a 'condition' that an assessment would be undertaken which might cause the terms of the policy to be amended. It didn't do that. I don't think it's fair for it to have tried to add such important terms later on without prior notice being given that that would likely happen. Especially not when*

these terms were only then sent to the broker as a separate note – the policy itself was not amended. So it's not fair or reasonable, in my view, that Aspen chose to rely on a breach of this condition to decline the claim.

### Roof damage

This is an 'all risks' policy. So all damage is covered unless it is specifically excluded. It is up to Aspen to evidence reliance upon an exclusion to decline the claim.

Strictly speaking, here Aspen did not rely on an exclusion to decline the claim for damage because it denied liability for cover on the basis of the condition precedent. However, the argument behind that is that the damage was not caused by the storm that, rather, it was the condition the roof was in that caused the damage. As is quite usual for insurance policies of this type the policy excludes cover for damage caused by wear and tear or gradual loss, both of which are to do with the underlying condition of the item claimed for. As such I think it is reasonable to consider, in relation to the policy exclusion, whether Aspen fairly declined the claim.

There was clearly a storm, and, generally speaking, roof damage can typically be caused by storms. The question then is, was the storm the main cause of damage, as 4 believes – or was it damaged due to its condition i.e. by wear and tear or due to gradual deterioration, as excluded by the policy, and Aspen has maintained.

I've considered the points 4 has raised. However, 4 has not provided any expert opinion on the cause of the damage to the roof. Aspen had a report completed by an expert. The expert concluded: "On balance therefore it is our opinion that the deterioration of the timber components and their fixings in the edging of the roof was the principal cause of the roof failure."

I find the report persuasive. I'm satisfied that the storm did not cause the damage to the roof, it maybe highlighted the issues with its condition, but it was not the dominant cause. Rather the condition of the roof – suffering wear and tear and gradually deteriorating – was the reason it failed. I'm currently satisfied that Aspen's decline of the claim for damage to the roof was fair and reasonable.

### Internal damage

From what I've seen the claim did not just relate to the roof. I can see that a number of flats were affected as well – with damage to certain numbered flats being discussed in an email chain (which references other damaged flats also). The email I've seen seems to acknowledge that the damage within the flats was typical for a claim for roof damage. There isn't anything within that email that suggests there were then any concerns about the damage having been on-going. But I bear in mind that a full assessment of the damage in the flats may not have occurred given the developing situation with the part of the claim for the roof.

I bear in mind that in contrast to what I've found about the roof, no report has been presented which satisfies me the internal damage which occurred at 4's premises most likely falls foul of a relevant exclusion to cover. So Aspen has not shown that it can fairly and reasonably decline cover for the internal damage. As such, I think it's fair and reasonable to make it consider the part of the claim for internal damage."

Aspen did not agree with my findings. It made a number of points in reply:

- Neither the broker nor 4 disagreed with the request for a survey.
- It acted in accordance with standard market practices.

- Imposing the condition can't have been unreasonable given the roof deteriorated.
- Being liable for consequential damage is misguided given the roof claim was fairly declined.
- If repairs had been completed, the internal damage would have been avoided.
- The internal damage was not fortuitous because the roof was not maintained.

4 did not object to my findings regarding the condition or the roof. Regarding the internal damage, 4 requested that my decision should include a direction that "Aspen must cover any losses that arose as a result of the storm which can be evidenced by the flat owners".

### **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.

I understand that Aspen feels this outcome is unfair. Whether or not Aspen feels it acted in line with market practice, and may have handled hundreds of policies in the same way, I've considered whether what happened here, including how the condition was applied, was fair and reasonable. I remain of the view that the way the condition was implemented was unfair and it can't, therefore, reasonably be relied upon to decline the claim 4 made.

This service has an established approach to complaints about declined claims of this type. Even if a roof is damaged by wear and tear that won't necessarily mean an insurer can fairly decline a claim for internal damage. To decline a claim for internal damage the insurer would need to show that the internal damage had been on-going, in other words it was not the result of a one-off event. Here Aspen hasn't shown that the internal damage had occurred gradually over-time, that, internally, wear and tear was occurring to the flats. To be fair and reasonable Aspen must consider the claim for the internal damage.

I note 4's request for me to make a specific direction to Aspen about determining the claim for internal damage. But I can't fairly do that at this stage. The internal damage has not yet been considered, so Aspen needs to do that. I trust that will now occur without the need for a further complaint to be raised. However, if 4 is not happy with Aspen's considerations, such as in respect of what damage it agrees to cover, it would be possible for a further complaint to be made and considered. That would be to Aspen in the first instance and then this Service if 4 remains unhappy.

### **Putting things right**

I require Aspen to consider the part of 4's claim for internal damage.

### **My final decision**

I uphold this complaint. I require Aspen Insurance UK Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask 4 to accept or reject my decision before 16 August 2024.

Fiona Robinson  
**Ombudsman**