

The complaint

Mr D and Mrs D are unhappy International General Insurance Company (UK) Ltd (IGIC) declined a claim made under their building warranty.

Any references to IGIC include their agents.

What happened

In November 2021, Mr D and Mrs D purchased a new build property which had the benefit of a structural defects insurance policy. In July 2023, Mr D and Mrs D made a claim under their warranty for a defect to their fibreglass roof. They said the inadequate fall on the roof resulted in water standing rather than draining away towards the gutters. As water had been standing for a long period of time, it had begun to ingress. They contacted the developer, then IGIC who arranged for a survey.

In October 2023, IGIC's surveyor wrote to Mr D and Mrs D. They confirmed the roof was delaminating and crazing which resulted in water entering the property. However, they also noted an endorsement on the insurance certificate which excluded any claims for water ingress arising from or relating to any flat roof areas. The surveyor said IGIC were unable to consider the claim. The surveyor later said with regards to the falls being incorrect the warranty only came into force when there was physical damage caused by a defect, and that wasn't the case here as the roof itself hadn't been damaged as a result of a defect.

Unhappy with IGIC's handling of the claim, Mr D and Mrs D complained. They said their concerns had been misunderstood and could be considered under five separate headings including how their complaint had been handled, the information contained in the policy documents, how long it took to decline their claim and the financial impact on them in terms of carrying out repairs. They also said they'd received limited insurance documents when they purchased the property.

IGIC issued their final response letter on 12 December 2023. They recognised there had been some confusion about the nature of their claim and apologised for this. IGIC accepted the claim outcome had been delayed by approximately two months and they offered £75 compensation. IGIC agreed that, unlike the policy terms, the Insurance Product Information Document (IPID) didn't define major damage, but rather, the IPID gave an overview of the cover provided by the policy. And it addressed Mr D's concerns about due diligence in relation to the construction of the property.

Unhappy with IGIC's response to their complaint, Mr D and Mrs D referred their complaint to this Service. Their concerns were passed to one of our investigators who didn't think the policy terms had been unfairly applied when declining the claim. He also said the compensation offered by IGIC was fair in the circumstances.

Mr D and Mrs D didn't agree. They provided further information from their own surveyor, but this information didn't cause our investigator to reach a different conclusion, so this case 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.

It's helpful to clarify that there are some issues raised by Mr D and Mrs D I'm unable to consider. These include the checks the insurer carried out when deciding to offer the policy to the developer, the background behind the decision to apply the endorsement and how the paperwork was sent to the developer rather than their solicitors. These concerns, whilst important to Mr D and Mrs D, aren't matters I can consider as part of this complaint. This is because these are matters that relate to non-insurance and non-regulated activities, or they are matters that are between IGIC and the developer. Mr D and Mrs D didn't buy the policy in the conventional sense, and nor were they party to its arrangement. The policy was passed on to them by the developer when they completed their purchase of the property.

I'll now turn to the matters I can consider, which are the claim decision and claim delays (and the impact of those delays).

When making a claim on an insurance policy, the policyholder must show there's cover for the claim. When an insurer relies on an exclusion or an endorsement to decline a claim, the onus is on them to show they apply. I'll be considering the evidence in light of this principle while keeping in mind what I consider to be fair and reasonable.

The claim about the defective roof is being considered under Section 2 of the warranty. Mr D and Mrs D raised concerns about the definition of major damage, which I agree isn't set out in the IPID. However, major damage is set out in the policy terms, and I've quoted the relevant section below:

*“a) Destruction of or physical damage to a load bearing element of the **Residential Property** caused by a defect in the design, material or components of the **Structure** which adversely affects the **Residential Property's** structural stability, resistance to damp and/or water penetration; or*

*b) A condition requiring immediate remedial action to prevent damage to a load bearing part of the **Residential Property** which adversely affects its structural stability, resistance to damp and /or water penetration;...”*

I've considered the expert reports provided. The surveyor instructed by IGIC noted the gradient of the roof wasn't sufficient in allowing water to drain towards the guttering. He also said water shouldn't have been able to enter into the property if the roof covering was watertight. The surveyor concluded water had entered the property and the most likely cause of the water ingress was due to the defective nature of the flat roof finish.

I've also considered the findings of the surveyor instructed by Mr D and Mrs D. He said the roof was suffering from delamination, crazing, cracking and had been affected by standing water. He said this shouldn't have occurred if the roof and roof covering had been properly constructed. Mr D and Mrs D's surveyor stressed that his report was not made in relation to any water ingress, but in relation to the construction of the roof.

Both reports make the finding the roof covering is of poor quality and the roof is poorly constructed. So, it's accepted there are defects in the design and construction of the flat roof. The issues include an inadequate fall causing rainwater to pool and a defective roof covering allowing the standing water to ingress.

However, for the claim to succeed, the policy definition of 'major damage' needs to be met, and where met, exclusions must not apply.

In terms of the water ingress and the resulting damage, even if I were to accept the policy definition of 'major damage' had been met here, I'm satisfied the following policy exclusion applies – which was added via a policy endorsement after the property was constructed:

“This policy excludes any claims for water ingress arising from or relating to any flat roof and/or balcony areas.”

So, this means I'm satisfied there's no cover for the water damage, or for rectifying the cause of the water ingress.

I'm also not persuaded the policy covers the defects in the roof independently of the water damage. In other words, the inadequate fall isn't physical damage in itself. And whilst the defective roof covering – delamination, crazing and cracking – can reasonably be described as physical damage, I'm not persuaded the roof covering can reasonably be described as load bearing. For a claim to succeed there needs to be physical damage to a load bearing element of the structure.

I acknowledge Mr D and Mrs D's home isn't free from defects and this has impacted them. But having carefully considered the expert evidence, I'm satisfied IGIC acted in line with the warranty terms when it declined the claim. So, I won't be asking them to do anything more in relation to the claim about the roof.

It's accepted it took IGIC longer than it should have to tell Mr D and Mrs D their claim wasn't covered by the warranty. They've apologised and offered £75 compensation in respect of this, which I consider is appropriate in the circumstances.

Mr D also says the repairs will cost more the longer they have to wait to carry them out (and they'd prefer not to have their roof replaced over the winter – meaning the repairs will be delayed further). However, I've not seen anything that persuades me they have been financially disadvantaged by the delay in declining the claim. Based on the information presented, I'm of the view that £75 is fair compensation for the impact caused by the delay.

Mr D has said he'd like to be reimbursed for repairs he's carried out on snagging issues the developer failed to carry out. He says receipts are available. At this point, I haven't seen any evidence to show the snagging repairs are covered by the warranty. But more importantly, I haven't seen he's made a claim to IGIC or complained to it that such claim has been declined. In the first instance, Mr D needs to contact IGIC about the snagging repairs before our service can become involved.

In summary, I accept it's very upsetting for Mr D and Mrs D that their new build home isn't free from defect. However, under the policy terms I don't consider IGIC needs to do anything more in respect of the roof of their home.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 6 January 2025.

Emma Hawkins

Ombudsman