

The complaint

A charity, that I will refer to as K, complains about Aviva Insurance Limited's decision to decline its commercial property damage insurance claim. K also complains about the handling of this claim.

What happened

The following is intended only as a brief summary of events. Additionally, even though other parties have been involved on both sides, for the sake of simplicity, I have largely just referred to K and Aviva.

K held a commercial insurance policy underwritten by Aviva. In November 2023, K's building suffered damage and part of its roof was blown off. K contacted Aviva to claim for the cost of repairing this damage, as well as some parts of the interior of the building that had suffered water damage.

Aviva instructed an expert third party to inspect the property. However, this was not scheduled until January 2024. And by the time the inspection took place, K had already carried out temporary repairs. No photos of the damage were taken prior to these repairs.

Aviva declined the claim for the external damage, on the basis that the policy excluded damage caused by

- “(a) an existing or hidden defect
- (b) gradual deterioration or wear and tear...”

Aviva said that a previous claim had been made in 2022 relating to damage to a different area of the roof, and that this had been declined for similar reasons. Aviva said that K would have been aware that the roof was in poor condition and in need of repair. Aviva also said that it has not been provided with evidence that it had requested relating to the internal damage, and whether this had occurred in November 2023.

K didn't agree with this outcome and brought its complaint to the Financial Ombudsman Service. However, our Investigator did not recommend the complaint be upheld. He thought that the repairs that had taken place, and the lack of any photos of the damage prior to this, had prejudiced Aviva's ability to fully assess the claim. Our Investigator did think Aviva could have handled the claim better though, so he recommended it pay K £150 compensation.

Aviva accepted this outcome, but K did not. As our Investigator was unable to resolve this complaint, it has been passed to me for a decision.

Since then, Aviva has been provided with some photos of the internal damage and a report. The report was provided by its own agent, and it isn't clear why this was not made available to Aviva prior to now.

However, Aviva has said that these showed the damage was not the result of a single event, and instead had occurred over a long period of time. So, it did not consider this part of the

claim ought to be met either. K commented on this outcome, saying that although there may have been pre-existing damage, the storm even had added to this.

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.

Having done so, I have come to largely the same outcome as our Investigator. I'll explain why.

In setting out my reasoning, I will focus on what I consider to be the key issues. So, whilst I have considered all of the evidence provided, I will not comment on each individual point. This is not intended as a discourtesy, but rather reflects the informal nature of the Ombudsman Service.

Before setting out my reasoning, it is necessary to clarify a couple of points. Both Aviva and our Investigator have referred to the need for there to have been a storm. Whilst it is accepted that there was a storm at the relevant time, this is not actually something that is necessary in order for K to be able to claim. The policy K holds provides cover on an "All Risks" basis. This essentially means that damage is covered, regardless of its cause, unless specifically excluded by the policy. Whilst "storm" is a defined contingency within the policy, none of the specific clauses relating to this claim refer to defined contingencies.

It is not therefore necessary to demonstrate that there was a storm – although, as I say, this is not disputed anyway. All that is required is to show that there was damage and that none of the exclusions in the policy apply to the circumstances.

In this case, it seems to be accepted that there was damage to the roof. However, Aviva has effectively said that the proximate cause of this was the fact the roof was in poor condition. That there was a storm, and that damage followed on from this does not appear to be in dispute. The question is whether this merely highlighted an existing issue, and whether the dominant cause of the damage is the condition of the roof.

There is some disagreement over the process leading to K carrying out repairs. K has though said that, as well as being dissatisfied with the timeline leading up to this, it contacted Aviva's agent and was advised to make the building watertight. This would indicate that Aviva, via its agent, actually agreed to these temporary repairs taking place and, if so, it would be unreasonable for it then to decline the claim on the basis that the repairs had been carried out prior to an inspection.

It does however seem that Aviva requested images/photos of the damage. And that these were not taken. Due to the involvement of a number of intermediaries, it is possible that this message was not passed onto K directly – although I would say that if this was the result of K's agent, this isn't something that could be held against Aviva.

However, even if K was not specifically advised of the need to provide photos of the damage, given it had a previous claim declined the year before due to the condition of the roof, I consider it a reasonable expectation that K would have obtained relevant photos relating to its current claim. I appreciate that K itself would not have been able to access the roof. However, its repairer did obviously access the roof and the explanation that its contractor "just forgot" to take any pictures is not satisfactory in the circumstances.

Without these pictures of the damage prior to the repair, I do agree that Aviva's ability to assess the claim fully has been prejudiced.

I do though need to consider whether Aviva's decision to decline the claim was fair and reasonable based on the evidence that it had available. I do not consider that it is automatically appropriate for a claim to be declined just because an insurer's ability to fully assess the claim has been prejudiced. The insurer will usually still need to make a fair and reasonable decision based on what it has.

In this case, Aviva has close-up photos of another section of the roof taken a year or so previously. It also has photos taken by a drone following the repairs in January 2024. These clearly show that the roof shows signs of deterioration in a number of areas. There are, for example, visible cracks to the membrane covering this flat roof. As the area of roof relevant to this claim has been repaired, and no images taken, it isn't possible to know whether the area that was repaired showed similar signs. However, I need to consider whether Aviva came to a fair and reasonable outcome when considering the evidence it was presented with. Ultimately, I consider that it did.

It does seem likely that there was a storm event, and that this blew a section of the roof membrane off. However, given the evidence provided to Aviva, I consider it acted appropriately by concluding this event merely highlighted an existing issue with the roof. And that the proximate cause of this damage was one of the excluded causes above. It follows that I consider Aviva acted fairly and reasonably when relying on the exclusion to decline the claim for the roof damage.

In terms of the internal damage K's building suffered, this has essentially now been declined on the basis that it is the result of gradual deterioration. This is one of the exclusions listed above that appears in the policy.

Aviva has pointed to the photos and report it has showing areas of damp, warping of materials, and rot and mould. And has said these are not consistent with a one-off event. It does not seem that K disagrees that there were issues with the interior of the property prior to the storm event. But has said that it would be fair for Aviva to contribute to cost of repairing this, given the water from the storm event will have contributed to this damage.

I do appreciate K's comments. However, even if the fresh water has added to the level of damage, I consider this would still fall under the exclusion relating to gradual deterioration. There does not appear to be any specific damage which has been caused by this event. The event has merely continued the existing deterioration.

So, I consider Aviva has acted fairly and reasonably by declining this element of the claim also.

I appreciate K has said that Aviva inspected the property at the time it was put on risk. But I do not consider this means Aviva ought to be responsible for the cost of repairing damage that is not covered by the policy.

K is also unhappy with the claim handling process. It does seem that the process was somewhat convoluted and this was not helped by the involvement of several third parties. For example, whilst K appears to have reported the claim event as soon as it happened, it doesn't seem notification of this actually reached Aviva for around two weeks. It is not clear that this was an issue Aviva ought to be held responsible for.

However, there were issues with the progression of the claim that Aviva can be held responsible for. And these have caused K a level of inconvenience that ought to have been avoided. Taking into account the timeline of the claim progression, I consider that compensation of £150 is warranted in the circumstances.

Putting things right

Aviva Insurance Limited should put things right by paying K £150 compensation, if it has not already done so.

My final decision

My final decision is that I uphold this complaint in part. Aviva Insurance Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 6 January 2024.

Sam Thomas
Ombudsman