

The complaint

Mr C complains about Protector Insurance UK's handling of his buildings insurance claim.

He feels Protector have unfairly declined the claim.

All references to Protector also include its appointed agents.

What happened

The details of this complaint are well known to both parties, so I won't repeat them in full again here. Instead, I'll provide a summary of the key events forming this complaint – it therefore does not contain a full timeline or list every point that has been made.

- Mr C is the leaseholder of a rental property. In September 2023 his tenants reported rainwater entering the property.
- Mr C reported matters to the freeholder who is the policyholder ("P"). P confirmed they would arrange for a contractor to attend.
- However, Mr C despite chasing P he received no further contact from P or their contractors.
- Mr C's tenants were unhappy with the situation and deterioration of the property and so Mr C said he hired his own contractor to investigate.
- The issues were found to be caused by a defective box gutter and Mr C instructed a contractor to carry out repairs.
- Mr C contacted Protector in November 2023 to make a claim.
- Protector asked Mr C to provide quotes for repair work in the property. Mr C has done so and has a report from a surveyor who attended to provide commentary on these quotes.
- In their report the surveyor said it noted rainwater ingress due to a defective gutter has caused mould and damp in the property.
- In receipt of the quotes, Protector appointed an adjuster to validate the costs and works required.
- Following further investigation of the information available, Protector declined Mr C's claim. It said the damage to the property had been as a result of a gradually operating cause – which is excluded from cover.
- Mr C is unhappy with Protector's decision to decline the claim and its subsequent responses. So he has brought the complaint to our service.

Our investigator's view

Our investigator recommended the complaint be upheld.

He said he hadn't seen any evidence that supported the damage occurred due to a gradually operating cause. He said if the damage had occurred gradually, he would have expected the damage to be more substantial. He said he had seen no evidence to support the quotes provided by Mr C for repairs were unreasonable.

He said Mr C had been caused significant inconvenience by Protector's actions and handling of the complaint, including the length of time it took to validate the claim.

To put things right, he recommended:

- Protector accept the claim and pay the most reasonable quote to repair the damage.
- Include 8% simple interest on this payment from the date Mr C made payment to the date it pays the settlement.
- Pay Mr C £400 compensation for the distress and inconvenience caused by its actions.

Mr C accepted our investigator's view of the complaint.

Protector disagreed with our investigator's view and asked for an ombudsman to review the complaint.

It provided further comments, in summary it said:

- Based on the timeline of events and based on its inspection of available videos and photos of the internal damage, it would appear the damp and mould growth occurred gradually.
- The extent of the damage could have been greatly reduced had the repairs to the box gutter been carried out in a timely fashion. Mr C notified P but they failed to act and mitigate the loss. It said while Mr C chased P, he hadn't mitigated matters himself in the interim (it did also separately note as Mr C was waiting for contact the matter was out of his hands).
- It said Mr C was attempting to receive reimbursement of the costs for the box gutter repair but has not provided an invoice to validate costs.
- Protector wanted to ascertain the cause of damage, but as work had already been carried out this couldn't be investigated. So Mr C had prejudiced its position.
- It added it had been unable to be given access to the property to carry out its own inspections – so therefore carried out as desktop assessment based on the information available.

My provisional decision

I issued a provisional decision on 15 November 2024. In my provisional findings, I said:

"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'm intending to uphold the complaint for these reasons:

While it's possible the extent of the damage could have been mitigated, I haven't seen any evidence that persuades this is specifically due to negligence on Mr C's part.

It doesn't appear to be in dispute the defective box gutter was the proximate cause of the damage - and I've not seen any evidence that persuades me of an alternate cause. The box gutter is part of the external area of the property, which is not Mr C's responsibility or liability to maintain.

Mr C had reported the issue to P and unfortunately says this issue doesn't appear to have been resolved, so therefore he had to arrange for the box gutter to be repaired. In doing so,

he incurred costs which ordinarily he would not be liable for.

The policy is an all-risks policy and I consider Protector would have always been liable for the repairing the damage caused by the ingress of water. While it did take some time for Mr C to engage Protector, I can see he reported the issues to the party seemingly responsible in a timely fashion.

I consider while mould and damp are something that can occur gradually, Mr C has provided photos of the internal condition of the property he says were taken around 5 months before the damage occurred. These show the property to have been in a reasonably well maintained condition and it's feasible the damage could've occurred during the period of time between the issues first being reported by the tenant and them being reported to Protector. And in any event, I've not seen any evidence that persuades me the damage was present before.

If Protector feel another party has failed to mitigate the damage caused by the defective box gutter, it will be for it to decide and pursue separately if it feels it is liable to contribute to the costs it will now incur to repair the damage.

So, I'm not persuaded Protector has demonstrated it can reasonably apply the exclusion in these circumstances to decline Mr C's claim.

I understand Mr C has provided detail of the difficulties in providing access for Protector to attend the property due to personal reasons regarding his tenants. But I don't think it is unreasonable for Protector to have asked to do so to assess the claim and validate costs - or to carry out a desktop assessment if it couldn't. However, I've not seen any evidence that persuades me Mr C's quotes were unreasonable.

Protector had asked Mr C to obtain quotes and due to concerns with some of the work detailed, it appointed its own adjuster. There's nothing wrong with this, but I do consider it took a considerable time before concluding it was declining the claim, and as I've set out above, I don't think Protector has acted fairly in declining the claim for the reasons it has. In recognition of this, and the inconvenience caused to Mr C I think our investigator's recommendation of £400 compensation is in the region of what I would recommend and fairly reflects the inconvenience caused to Mr C by Protector. So, I don't intend to change this award.

Mr C has asked Protector to reimburse him the cost of repairing the box gutter itself. This appears to be a maintenance issue which insurance policies do not generally provide cover for. While I appreciate Mr C took the action, he did to mitigate further damage to the property this doesn't automatically mean it then becomes the responsibility of the insurer to cover.

Having considered the policy terms, presently it doesn't appear Protector need to cover this cost. Mr C will therefore need to seek independent advice as to whether he has recourse to recover these funds from another party.

Putting things right

To put things right I intend to direct Protector to:

- Accept the claim for the internal damage and pay the most reasonable quote to repair the damage.*
- If any work has been completed, Protector will need to include 8% simple interest on this payment from the date Mr C made payment to the date it pays the settlement.*

- *Pay Mr C £400 compensation for the distress and inconvenience caused by its actions.”*

Responses to my provisional decision

Protector didn't respond to my provisional decision.

In response to my provisional decision, Mr C has provided further comments. In summary he has raised the following points:

- He provided Protector with an invoice for Box Gutter repairs in December 2023.
- He took steps to carry out repairs as he had to stop the water damage - and P had done nothing.
- Protector deliberately misinterpreted reports to decline the claim. Mr C provided further comments about Protector's conduct.
- He feels the compensation offered isn't enough and should be around £2,500 given the amount of time and energy he has spent on the claim.
- Mr C is concerned he will have to chase Protector to fulfil a settlement. He has suggested a firm time frame of 5 working days be set for Protector to make any payments - with penalties to apply if it doesn't.
- When he made a formal complaint to Protector the advisor appeared to be handling a complaint about themselves.

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've reconsidered all the available information along with Mr C's additional comments, but it doesn't change my decision – or my reasoning.

In considering this complaint I'm reviewing the actions of Protector and not of any other party.

I understand why Mr C may have taken the steps he did to mitigate the damage and I've set out above why I don't think Protector has acted fairly in declining the claim for the reasons it has.

I appreciate Protector's actions have caused Mr C inconvenience. But as I set out in my provisional findings, I think our investigator's recommendation of £400 compensation is in the region of what I would recommend and fairly reflects the inconvenience caused to Mr C by Protector. So, I provide no further award.

I understand Mr C has concerns about settlement. Our service is not a regulator, so we can't fine or punish financial business. However, Protector should be aware of our service's expectation that in carrying out a direction from my decision, it should do so within 28 days if or when Mr C accepts my final decision.

There are a number of factors that determine whether or not we can consider a complaint, ranging from where the activity took place (our territorial jurisdiction) to whether the activity complained about is something we can investigate. DISP 2.3.1R sets out a list of the activities we can consider. I won't repeat the full list here as it contains a large number of activities. But having considered that list it doesn't include complaint handling. So I've not

considered what Mr C has said about Protector's advisor investigating their own complaint as part of this decision.

Putting things right

To put things right, I direct Protector to:

- Accept the claim for the internal damage and pay the most reasonable quote to repair the damage.
- If any work has been completed, Protector will need to include 8% simple interest on this payment from the date Mr C made payment to the date it pays the settlement.
- Pay Mr C £400 compensation for the distress and inconvenience caused by its actions. Protector must pay the compensation within 28 days of the date on which we tell it Mr C accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple

My final decision

My final decision is that I uphold Mr C's complaint.

To put things right I direct Protector Insurance UK to do as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 27 December 2024.

Michael Baronti
Ombudsman