

## **The complaint**

Mrs B complains Aviva Insurance Limited has provided an unfair settlement offer following a claim she's made on her buildings insurance policy for damage to her conservatory.

## **What happened**

The background to this complaint is well known to the parties so I've provided a summary here.

Aviva is the underwriter of this policy, i.e. it's the insurer. Part of this complaint concerns the actions of the agents for which Aviva has accepted responsibility. Any reference to Aviva includes the actions of its agents.

- Mrs B says her conservatory was damaged in a storm and allowed water in, causing various areas of damage. She reported this to Aviva to make a claim on her buildings insurance policy. Aviva appointed an agent to investigate the claim and undertake a site visit to survey the damage. The report it provided said the roof had damage consistent with a storm but other areas of damage related to wear and tear and poor workmanship and were excluded under the policy.
- Because of this, Aviva only agreed to pay for the replacement of the conservatory roof and offered around £7,500 to do this. Mrs B was unhappy with this and made a complaint to Aviva.
- Aviva reiterated the survey findings, acknowledging the damage to the roof was likely caused by a storm but it said much of the other damage related to poor workmanship and damage occurring over time, both of which were excluded under the policy terms. It maintained its settlement offer.
- Mrs B raised a complaint with this Service. Our Investigator considered the evidence but didn't uphold the complaint. He said Aviva had accepted there was a storm and the damage to the conservatory roof was consistent with damage caused by a storm.
- He went on to highlight the survey findings relating to wear and tear and lack of maintenance and concluded Aviva's offer to cash settle the claim for around £7,500 was reasonable given the likely challenges with fitting a new roof to the damaged conservatory. He also considered a new expert report commissioned by Mrs B but this didn't change his mind.

Mrs B was unhappy with this outcome and asked an Ombudsman to reach a decision.

## **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.

When a policyholder wishes to make a claim on a policy the onus is on them to show the

claim is covered under the policy terms. And when an insurer relies on a policy exclusion to decline a claim, the onus is on it to show the exclusion applies. I'll be keeping this principle in mind when considering this complaint together with what I consider to be fair and reasonable.

In reaching my decision, I've taken into account relevant industry rules and guidance that insurers must deal with claims promptly and fairly and support customers using their policy.

#### *The policy*

- Mrs B's policy provides cover for damage to buildings, caused by a storm.
- In common with many insurance policies, the policy contains certain exclusions. Relevant in this case are the General Conditions listed in the policy terms which include exclusions for damage caused by wear and tear, faulty design and poor workmanship. These are what Aviva relied on to decline part of the claim.

#### *The damage*

- Aviva accepts a storm has taken place and that it's caused some damage to Mrs B's property. What lies at the heart of this complaint though is the extent of the damage caused by the storm and then the damage due to other causes.
- I've carefully considered the reports provided by experts commissioned by Mrs B and Aviva.

#### *Aviva's expert report*

- Aviva's expert attributes the damage to a number of causes, storm related and wear and tear and faulty workmanship. It says all the sheets making up the conservatory roof were damaged by hail stones and were beyond repair. And it confirmed this was covered under the policy terms and agreed to settle the claim for £7,451 to cover the cost of the replacement of the roof.
- The report attributes the damage to the door leading to the garden, the timber door and the door to the garage to a combination of wear and tear and lack of maintenance.
- It also said the guttering to the conservatory roof hadn't been installed in line with best practice and the associated leading had failed and was letting in water. And the doors from the house to the conservatory had a 4mm gap between the door and the conservatory floor tiles which had never been grouted. So, this damage was attributed to faulty design and/or installation.

#### *Mrs B's expert report*

- This identified the damage to the roof of the conservatory previously detailed in Aviva's expert report.
- The report identified flashing which was poorly installed and inadequately specified. And the guttering and flashing hadn't been installed in line with conservatory manufacturer's guidelines and this was the likely cause of the water ingress damages seen. It said it wasn't possible to say if these had failed as a result of storm damage.
- It also said it wasn't possible to attribute damage to floor tiles or the conservatory

doors specifically to the storm incident, even though it said it was a possibility it may have contributed to the water ingress.

#### *Is Aviva's cash settlement fair?*

- Having considered the reports very carefully, I'm satisfied, they're broadly in agreement that the roof area was the only area of damage that could be confidently attributable to the storm incident.
- I'm not persuaded there's enough evidence to show the remainder of the damage was as a result of the storm incident and am satisfied, on balance this is more likely to be as a result of wear and tear and poor workmanship/installation and therefore excluded under the policy terms. It follows Aviva has fairly declined to pay for the cost of the damage which isn't storm related.
- Aviva has offered to pay Mrs B the sum of £7,541 including VAT to pay for the replacement of the conservatory roof which it accepts was caused by storm damage and was therefore covered under the policy.
- The expert reports explain that it wouldn't be possible to replace the roof due to the lack of availability of key replacement components and contractors willing to undertake the work without replacing the entire conservatory frame.
- Taking into account the general poor condition of the conservatory and cause of the rest of the damage, I'm not satisfied it would be fair or reasonable to direct Aviva to pay for more than the cost of the roof replacement. And so, I'm satisfied a cash settlement is an appropriate way for the claim to be settled.
- Overall, I'm satisfied Aviva's cash settlement offer was fair and I won't be asking it to do anymore.

#### **My final decision**

Aviva Insurance Limited has already made an offer to pay £7,541.63 including VAT to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that Aviva Insurance Limited should pay Mrs B £7,541.63 including VAT if it hasn't done so already.

Aviva Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mrs B 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 14 February 2025.

Paul Phillips  
**Ombudsman**