

The complaint

A partnership, which I'll refer to as 'S', complains about Aviva Insurance Limited's decline of their commercial property insurance claim.

Aviva are the underwriters of this insurance policy. Part of S' complaint is about the actions of agents appointed by Aviva. As Aviva have accepted responsibility for their agent's actions, any reference to Aviva should also be interpreted as referring to the actions of their agents.

S brought this claim and complaint using a third-party representative. In my decision, I'll only refer to S.

What happened

The background to this complaint is well known to S and Aviva. Rather than repeat what is already known to both parties, in my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

S made a claim for damage to their commercial premises in July 2023, following a period of very heavy, localised rain. Aviva accepted the claim for internal damage to the premises, but declined the rest of the claim. S raised a complaint about the claim decline and as they remained unhappy, they referred the complaint to our Service for an independent review.

One of our Investigators initially recommended that the complaint be upheld and Aviva reconsider the claim in line with the remaining policy terms and pay S £150 for any trouble or upset caused by their claim response. Aviva didn't accept the recommendations and another Investigator then considered the complaint and they didn't recommend that the complaint be upheld.

As S didn't accept the recommendations, the complaint has now been referred to me for a final 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

The scope of my decision

My decision will only focus on the damage to the roof and guttering - not the internal damage.

Although the policy doesn't specifically list storm as an insured peril (as this is an all risks policy), given that both parties generally accept there were exceptional levels of rain (a wet storm), I've kept our well established approach to storm claims in mind when considering this

complaint: <https://www.financial-ombudsman.org.uk/consumers/complaints-can-help/insurance/home-insurance/storm-damage>

My decision will primarily consider whether the decision by Aviva to decline this claim was fair and reasonable.

My key findings

The policy S had was an 'all risks' commercial insurance policy. This means the policy covers risks - unless specifically excluded under the policy terms and limitations. But first, the policy holder must sufficiently demonstrate that a fortuitous loss event has occurred.

In summary, S say heavy rain overwhelmed the guttering, water couldn't drain away fast enough and water was able to enter their premises. They also say the torrential nature of the rainfall damaged the roof, allowing additional water to ingress.

Aviva on the other hand, say that the heavy rainfall didn't cause the damage being claimed for - rather it simply highlighted the inability of the guttering to cope with the heavy rainfall and pre-existing damage to the roof caused over time allowed water to enter the premises.

Aviva chose to rely on the following exclusion to decline this claim:

"All Risks and Theft and Subsidence

We will not provide cover for

(1) Damage to the Property Insured caused by or consisting of

(a) an existing or hidden defect

(b) gradual deterioration or wear and tear...."

Having carefully considered all of the evidence, I find that Aviva can fairly rely on the above exclusion to decline this claim. I also find that Aviva can fairly decline the claim for the replacement/upgrading of drainage/guttering - as this policy is not intended to place the policy holder in a better overall position, or act to prevent future losses. The policy is intended to respond after damage has occurred, not before it occurs.

I've noted S' reference to more extreme weather in recent years in the UK - meaning the guttering system may not have been intended to ever deal with such rainfall intensity. But as above, it's not the intention of this policy to respond to any upgrades or landlord maintenance issues.

An important part of the evidence here is a report dated September 2022. That report was carried out by a third party, at the request of S. I will draw out below some of the key points from the report:

*"The roof sheets are now showing **some signs of deterioration with small hairline cracks** [bold added for emphasis by Ombudsman] in places and in areas **there are some repairs that have been carried out.**" [bold added for emphasis by Ombudsman]*

This supports that around one year prior to the loss event, a deterioration of the roof condition had already been noted. In response to our Investigator's assessment, S said:

"It was suggested that the damage could be attributed to 'hairline cracks' in the roof.

However as demonstrated by the roofing report from [redacted by Ombudsman, dated after the loss event] the damage was the direct result of the storm....The report confirms that the storm's intensity caused cracks in both the asbestos panels and the roof lights, leading to water ingress and significant damage...The storm conditions, not gradual wear, are the clear cause of the damage".

I disagree with S' position here, as the earlier report clearly referred to hairline cracks, pre-loss event.

*"Roof fixings are of metal construction with protective washers, **these should be good for several years to come.**" [bold added for emphasis by Ombudsman]*

I've interpreted the distinction here between the main surface area/material of the roof (the roof sheets) and the roof fixings (screws etc that keep the roof sheets in place).

*"The roof **should be good for several years to come,** [bold added for emphasis by Ombudsman] but I would recommend a further survey to be completed within five years. **As requested I enclose a quotation to replace** [bold added for emphasis by Ombudsman] both the..... roofs"*

The reference to 'several years' is important, in my opinion. As is the 'requested' quote provided for a new roof. It seems reasonable to assume that unless a responsible commercial landlord was aware of any issues with the roof or considering a replacement, they generally wouldn't ask for a quote to replace a roof.

I've also carefully noted that the report provided by the same third-party company after the loss event refers to: *"....before the storm, with continued maintenance the roof had a lifespan of 10 to 15 years dealing with minor ingress of water as and when it occurred."* Whilst I have to acknowledge that the third-party company may not have meant to place emphasis on the use of 'several' (in the earlier report) - I do find that it's a departure to go from a roof with a life span of 'several years' pre-loss, to 10-15 years after the loss event. Generally, several is understood to mean more than two - but not many. However, the use of this word isn't the sole reason I've found Aviva can fairly decline this claim.

When considered alongside the recommendation from the pre-loss report that a survey be carried out within five years, I find that Aviva's position that this roof may have been nearing the end of its lifespan of reliability to be fair. I've also noted the post-loss report refers to *'dealing with minor ingress of water as and when it occurred'*, again - this doesn't strongly support a roof that has no issues.

Aviva have also referred to the age of the roof and the materials used which they say would deteriorate over time following exposure to various weather conditions. I find this to be reasonable having cross referenced against the available photos of the roof.

It's also important that even in a scenario where water was unable to drain away fast enough, the key issue here appears to be the roof (as a result of its condition) allowing water to ingress into the building. I make this point as the proximate cause is the *dominant* cause in a chain of events that lead to a loss.

Overall, I find that Aviva have fairly considered the claim before declining it.

The service provided when considering the complaint

I'm satisfied that S were afforded a fair opportunity to present the details of their loss and Aviva made them aware that a drone survey may be useful given the costs of a normal roof

survey. They also invited S to provide photos taken of the damage to the roof prior to works commencing.

Summary

I find Aviva's position that the proximate cause here was the roof condition having deteriorated as a result of wear and tear, allowing water to ingress following heavy rain and it not being able to drain away fast enough, to be reasonable - and they can fairly rely on the policy exclusions around wear and tear/gradual causes to decline the claim.

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 S to accept or reject my decision before 19 February 2025.

Daniel O'Shea
Ombudsman