

The complaint

Mr B has complained about Zurich Insurance Company Ltd. Zurich provides the buildings policy for a block of flats, one of which is owned by Mr B. Mr B claimed for some damaged decking on a balcony and Zurich declined the claim.

What happened

Mr B owns a flat and lets it to tenants. In September 2023 the tenants advised Mr B that some of the decking on the flat's balcony was lifting. Mr B obtained a quote for repair. The letting agent said it thought the damage had likely been caused by poor weather. Mr B, aware of several named storms occurring in 2023, including in August just before the problem was notified to him by the tenants, made a claim to Zurich.

Zurich's agents handling the claim didn't think it could succeed. They didn't think the decking, protected by the structure of the balcony, would have been damaged by a one-off incident of storm. The agent thought the damage – loose fixings and warped decking boards – was more indicative of damage which occurred over time. The claim was declined.

Mr B wasn't happy and complained. Zurich issued a final response to Mr B's complaint. It said it did not think the damage had likely been caused by a one-off incident of storm. It noted that the policy also offered wider cover for "All Other Damage". But it noted that this cover contained an exclusion for anything occurring gradually. So Zurich maintained that its decline had been made in line with the policy and so was fair. Mr B complained to the Financial Ombudsman Service.

Our Investigator didn't think there had been a storm. He also wasn't persuaded that the dominant cause of the damage had been storm. So he felt Zurich's decline had been fair and didn't uphold the complaint.

Mr B was unhappy. He said the definition of gradual is something happening slowly. He explained that whilst he'd referred to a 'series of storms' having caused the damage, the two in August had occurred in very quick succession. Mr B felt there had only been a desk-based opinion formed whilst his builder's opinion, who had seen the damage, had been ignored.

Mr B's complaint was referred to me for an Ombudsman's decision. Having reviewed matters, I found, like our Investigator, that I didn't think that there had been a storm. But my reasoning was different to that expressed by our Investigator. And I also needed to consider Zurich's decline under the cover for "All Other Damage". So I issued a provisional decision to share my views and give both parties the chance to respond to what I'd said. My provisional findings were:

"The policy

The policy in place gives cover for damage caused by certain perils, including that of storm but also for "All Other Damage" specified as 'accidental damage'. It would be for Mr B to show that he likely had damage caused by something covered under the policy. If he can do

that, even just on the face of it, it becomes up to Zurich to show that it fairly and reasonably has cause to decline liability for that loss. Zurich may do that by either showing its most likely the damage was not caused in that way, and/or that a relevant exclusion exists which it can reasonably rely on to defeat the claim.

Storm

Our Investigator explained that, when we are considering complaints about declined storm claims, we'll usually ask three questions. If the answer to any one of those questions is 'no' we'll often find that the insurer's decline was fair and reasonable. The first of those questions is, was there a storm?

Mr B referenced some named storms occurring just prior to the damage being noted by his tenants. But the fact a named storm is said to have occurred in the county or region of the country in which the property is located does not necessarily mean that a storm occurred at the specific location of the property.

To decide if there was a storm at the location of the property, we usually reference weather records from nearby weather stations. Those stations may not be that close to the property – but the detail gives a more locally specific idea of what was likely occurring at the property, than would relying, for example, on a weather report that said; “storm X” was “affecting the north-west”. We don't need to see for definite that a storm occurred at the location of the property, rather we need to know that its most likely that it did.

It's also worth noting that a storm for insurance purposes is usually expected to have certain traits. A storm is not just ‘inclement weather’, and heavy rain or even strong winds on their own would not usually be classed as a storm. Typically a storm would be strong wind and rain, hail or snow. But if particularly high winds or very heavy rain, hail or snow occurred on their own that could be considered a storm.

There were instances of wind and rain recorded by weather stations near Mr B's property before the damage was noted by the tenants. But, despite the named storm reportedly affecting some parts of the country during that period, the winds recorded near Mr B's property were not very strong at all, nothing occurring above 34 miles per hour. So, based on wind data, I wouldn't consider that that had been a storm.

As I said above, there was rain. And very heavy rain, even if there weren't strong winds, might equate to a storm. For heavy rain to be considered a storm we would usually expect there to have been rainfall of more than 30mm in one day (24 hours period). But we'll also look at hourly rainfall. If 10mm or more falls in an hour, that would be considered to be a storm.

The weather data from August 2023, from stations near to Mr B's property, did not show that more than 30mm of rain fell in one day. However, the records did show that on 2 August 2023, 9.6mm of rain fell in one hour. That was the greatest hourly rainfall. I'm mindful that 9.6mm is close to 10mm, but it is not 10mm or more. The rainfall actually at Mr B's property may have been more – but the 9.6mm per hour recorded came from a weather station only a mile and a half away from Mr B's property. So I think it's fair to say it's likely that the conditions seen at the weather station were most likely the same as those which occurred at Mr B's property. So whilst it's possible there was a storm at Mr B's property, I'm not currently minded to think it's most likely that there was.

As I said, there are two other storm questions often asked when we consider a storm complaint. However, as I explained above, if any one of the three storm questions asked

returns an answer of 'no' then it's likely the insurer's decline will be fair and reasonable. At this point, having found that there was no storm at Mr B's property in August 2023 before the damage was noticed in September 2023, I'm not going to consider the other questions. As there was no storm it seems fair and reasonable to me that Zurich declined the claim under cover for damage caused by storm.

All Other Damage

However, Zurich did reference that the policy also offers cover for "All Other Damage". Zurich also referred to two exclusions which relate specifically to this part of the cover – they do not feature under the cover for storm and are not included as part of the general exclusions which apply to the whole policy.

The two exclusions are:

- i) inherent vice, latent defect, gradual deterioration, wear and tear, its own faulty or defective design or materials.*
- ii) faulty or defective workmanship, operational error or omission on the part of the Insured or any of their employees.*

If it's most likely that the damage at Mr B's flat was caused by, or occurred as a consequence of, one of the factors listed in these exclusions, then I'll likely view Zurich's decline as fair and reasonable. So I've looked at the evidence available about what happened to consider whether it was most likely the damage occurred due to one of these excluded factors.

In the course of this claim no surveyors or expert loss adjusters were instructed to give a view on the damage. Zurich's agent's claims handler applied their experience and knowledge to give a view on what they thought had likely happened. Mr B received an opinion from his letting agent. I'd rank those two sources of opinion as carrying roughly the same weight – they are people working in the property industry who likely have some expertise of buildings and insurance issues. Mr B's builder, having produced an initial invoice, then reproduced it with the following comment added "suspected storm damage". There is, of course, also a photo of the decking and Mr B attests that it wasn't showing any sign of damage in June 2023 when the property was inspected before tenants moved in.

Zurich's agent's claim handler said the fittings had likely become loose or deteriorated, perhaps as a result of the wood around them having itself deteriorated, perhaps because it has gotten wet. All of this meaning the screws have loosened allowing the decking to lift. The agent said that is something which happens gradually over time. The letting agent said the decking had warped and lifted due to weather conditions.

My take on these two views is that they actually both suggest damage has occurred over time. Zurich's agent refers to the boards having got wet allowing fittings to become loose, letting the boards lift and the letting agent says boards have lifted due to weather conditions. For the boards to deteriorate such as to allow the fixings to loosen takes time. Not least as the boards are designed to be weatherproof – meaning that one instance of rain, even heavy or prolonged rain, would not be expected to cause a situation where the boards could lift. Further, where boards like this warp, it is often because they have repeatedly become wet and then dried. That repeated process, over time, causes the shape of the boards to change as the wood they are made from dries at different speeds.

The builder's comment as I said was "suspected storm damage". The builder didn't explain that any further. Notably he did not suggest this had happened suddenly. I also bear in mind that that brief comment was only added to the invoice after the fact. As such I don't find his

comment reasonably gives me cause to doubt the views of Zurich's agent or the letting agent.

The photo of the decking I have seen doesn't assist me in deciding whether it was likely damaged gradually or not. It just shows one lifted decking board. But I do bear in mind that the builder's invoice did record that some other boards had failed fixings and had started to lift. So they were damaged in a similar way but not to such a degree. To me that also suggests on-going, or gradual, damage.

I haven't seen the inspection report from June 2023. But I don't doubt that would show that the decking had not lifted at that time. However, an inspection report for change of tenancy would only usually record the general condition of the property along with any obvious damage or need for repair. It is quite possible – given the mechanism of damage described above – that the decking could have looked in decent order in June 2023 but then deteriorated further during July and August until the damage was noted in September.

Having considered the available evidence, I'm satisfied that its most likely that the decking at Mr B's flat was damaged gradually. The policy, under all other damage, excludes damage caused by or which occurs as a consequence of gradual deterioration and/or wear and tear. I'm satisfied that Zurich's decline of the claim under this section of cover was fair and reasonable.

Summary

Mr B's property suffered damage potentially covered by two sections of the policy provided by Zurich but Zurich declined the claim made. Having considered the circumstances, available evidence and policy cover in place, I'm satisfied that Zurich's decline was fair and reasonable. As such I don't intend to uphold this complaint."

Zurich did not reply to my decision. Mr B said he was disappointed with it – that he feels like all of his evidence has been ignored, whilst everything Zurich has said has just been accepted. Mr B said that his builder visited the sight, so the builder's view, that the damage was not gradual, should be given most weight. It wasn't fair, Mr B said, to assume the weather was the same at his property as at the weather station, or that the change of tenancy inspection was just cursory. He said this had not been a truly balanced 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.

I'm sorry Mr B feels that his evidence has not been fully considered. I can certainly assure him that is not the case. I appreciate that Mr B holds a different view on what the evidence shows to what I've concluded – but that does not mean I've disregarded or unfairly weighted the evidence he has provided. Rather, I set out my view on all the evidence provided, to explain why I found Zurich's decline was fair. I can't reasonably add to that.

To assist Mr B though it may help if I also explain that when I assess a complaint, when I can't know something 'for sure', it is part of my role to decide what is 'most likely' the case. In short, I apply my judgement and knowledge to determine what is most likely to have happened. So when I say that it's unlikely the weather was any different at Mr B's property, or that the inspection report was unlikely to have spotted the damage with the deck – I am

not making mere assumptions. In those cases, I've looked at the available evidence, as well as having applied my judgement and knowledge, to decide what was most likely the case.

Having reviewed the complaint in light of Mr B's comments in reply to my provisional decision, my view has not changed. As such, my provisional findings, along with my comments here, are now the findings of this my final decision.

My final decision

I don't uphold this complaint. I don't make any award against Zurich Insurance Company Ltd.

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

Fiona Robinson
Ombudsman