

The complaint

Mr D has complained about XL Insurance Company SE. It is the insurer for the building which comprises his flat. Internal window frames of Mr D's flat were damaged by water ingress from the balcony. XL declined the claim made for the damaged frames and Mr D feels that was unfair of it.

I know Mr D has some concerns about a broker. I understand the broker contacted him in May 2018 following an approach he had made to the property management company which holds the insurance for the building. The broker and Mr D then corresponded again in 2023 when Mr D sought to progress the claim. I'm satisfied that the broker was not acting as the agent of XL. Which means that I cannot consider any allegations of wrongdoing by the broker in this complaint against XL.

What happened

Mr D owns a flat (arranged over two levels) in a block. In April 2018 contractors visited Mr D's flat to complete some investigations because a neighbouring flat had reported water ingress. During the visit Mr D showed the contractors some water damage to his wooden window frames. The contractor tested the drainage on Mr D's balcony, simulating heavy rain to see what would happen with the water. It was found that water, unable to be taken away by the drain, leaked into the window below the balcony, where Mr D had found the water damage. The contractor drew up a report about the cause of damage, which included photos. Remedial work to the balcony's drainage was subsequently completed by the property management company. No further ingress of water occurred to Mr D's flat.

In May 2018 Mr D was contacted by a broker, acting for the company which manages the building. Mr D and the broker discussed making a claim for the water damage.

In 2023, the broker and Mr D spoke again. It transpired the claim had not been made in 2018. It was then made, and XL sent a loss adjuster to view the property. The loss adjuster also viewed the contractor's report from 2018. The loss adjuster felt the damage had been on-going over a sustained period, likely long before the policy had last renewed (in December 2017) before the contractor's visit. The adjuster also concluded that as buildings are meant to be built to withstand weather, this building must have been built defectively. Having regards to the policy wording, the loss adjuster declined the claim on XL's behalf.

Mr D was unhappy with that. Across two further letters XL maintained its position on the decline. Mr D complained to the Financial Ombudsman Service.

Our Investigator felt XL had acted in line with the policy's terms and conditions. So she did not uphold the complaint.

Mr D said he disagreed with that outcome. He asked for an Ombudsman's decision and the complaint was referred to me. Having considered matters, like our Investigator, I found I wasn't minded to uphold the complaint – but my reasons differed to those set out by our Investigator. So I issued a provisional decision, my findings of which were:

“Mr D had what is known as an “all-risks” policy. That means that all damage is covered unless excluded. It is up to the insurer to show that an exclusion reasonably applies to limit or remove its liability for loss.

When XL declined the claim, it referenced the following exclusion:

“inherent vice, latent defect, gradual deterioration, wear and tear, frost, change in water table level, faulty or defective design or materials or any gradually occurring loss or any loss which commenced prior to the inception of the Policy;”.

From considering everything XL has said, it thought the damage had been on-going for a long while, possibly since before the policy renewed in December 2017 – that would be the gradual deterioration or gradually occurring loss parts of the exclusion. It also felt the damage had likely resulted from a defect in the build – the latent defect part of the exclusion.

Taking the second point first, I’m not persuaded XL has shown it can reasonably rely on the damage having been caused by a defect in the build in order to defeat the claim. In short to show such reasonably applied XL would have to show there had been a breach in building regulations or similar. It hasn’t done that.

Turning to the gradual deterioration/occurrence argument though, I think XL has provided enough to show its decline for this reason was reasonable. I’ve explained this further below.

This Service has a set approach to complaints which involve claims declined due to an allegation of on-going damage by the insurer. In short, we look at what happened, taking into account the policy, including its type, whether we think it’s fair to say damage was on-going and, if we think it was, whether the complainant reasonable knew, or should reasonably have known, damage was on-going.

As this is an “all-risks” policy, for the purpose of our approach, I need to think about whether something occurred to cause the damage which might ordinarily fall for reference as “an insured peril”. The expert report on the cause of loss here showed that, during heavy rain (simulated), water would escape the balcony’s drainage and ingress the property. So, I think it’s fair to say that the internal water damage was likely caused by something usually deemed to be an insured peril – water escaping fixed water apparatus.

I’ve then noted that Mr D seems to have only become aware of the damage/leak in April 2018. Seemingly a contractor was dispatched to his property by the building management company on 17 April 2018. But not to assess damage in Mr D’s flat – rather it was to investigate, by assessing the balcony of Mr D’s flat, what was causing damage to a neighbouring flat. The report says it was during that assessment that Mr D identified the damage to his windows. Mr D has said it was around the time of this visit that he first noticed damage on the windows and that it occurred suddenly.

The contractor report doesn’t offer any comment about how long the problem may have been going on for, or how long the damage may have been present. However, I think that the cause of the damage identified by the expert suggests the problem had existed for a long time. Essentially, during any instance of heavy rain, when the drain could not cope, water would escape the drain and leak into the property. That is indicative of a problem which causes damage over time.

When a problem like this occurs, it may not cause damage straightaway. It may take time for materials to be affected to the point they are damaged. It may also be that, for a while, damage might be being caused in such a way as it can’t be noticed by the home-owner – a simple, general example of this being where a leak occurs in a wall behind tiles. But damage

like this is generally progressive in nature and there will often come a point when damage is evident. At that point action should be taken to remedy the cause of damage. If it is not and damage continues to progress, this Service will often find an insurer's decline, on the basis that the damage occurred gradually, to be reasonable.

XL didn't view the property until 2023. But it viewed the photos taken by the contractor and included within its report from April 2018. The area in question was the internal wooden window frames – but mostly the upper sections. The expert view of XL's loss adjuster was that the damage visible in the 2018 photos was advanced such that it had been occurring for a prolonged period, likely over a year.

I know Mr D has challenged some of XL's comments about these photos. XL says they show mould, Mr D says the discoloration is not mould, and even if it was, mould can appear in a few days. However, mould aside, XL notes the photos show the wood is split, also a sign of deterioration due to water damage. I think its comments in this respect are reasonable and I'm mindful that damage like that does take place over time. That's because the wood splits as a result of repeatedly getting wet and then drying. I'm satisfied it's fair to say that damage like this can be noticeable in its early stages before it becomes as advanced as is seen in the 2018 photos.

I think XL's comments, alongside the photos from 2018, are sufficient on this occasion to show the damage was most likely occurring and noticeable for a time before Mr D drew it to the attention of the contractor in April 2018 (subsequently notifying insurers). I'm also mindful that Mr D hasn't presented any expert evidence to challenge XL's view that this damage – potentially visible given its location – had arisen as the result of a one-off leak from the drain in April 2018.

So Mr D had damage at his home which was potentially covered by the policy provided by XL. However, XL declined the claim for the damage on the basis the damage had occurred gradually over time. There was a relevant exclusion for that in the policy. Having considered the circumstances and the policy wording in light of our approach to complaints about gradually occurring damage, I'm satisfied XL acted fairly and reasonably in declining the claim."

Mr D and XL both replied to my provisional findings. Part of Mr D's response was a report he had commissioned following receipt of my provisional findings. The report, dated 21 January 2025, was shared with XL. Having considered Mr D's comments about what the report showed, what XL had said about it and what the report itself said, I issued some further findings to both parties:

"To briefly re-cap, the issue at hand is that XL has declined liability for damaged wood framing around windows in Mr D's flat. My provisional decision focussed on XL's argument that the damage was gradually occurring and so excluded. In my provisional decision I considered whether, given this Service's approach to that type of damage, it was fair for XL to rely on that exclusion to defeat the claim. But I said I was also mindful that:

"Mr D hasn't presented any expert evidence to challenge XL's view [such as to show] that this damage – potentially visible given its location – had arisen as the result of a one-off leak from the drain in April 2018."

Turning to Mr D's report. The report says:

- The wooden frames are damaged and rotted in the corners.
- Damage to the outer face of the frames occurred because water was pooling behind.

- *It wasn't possible to identify the leak before damage occurred.*
- *The occurring damage couldn't be seen.*
- *Rot has occurred but deterioration was likely accelerated.*

XL has responded. It says the report:

- *Doesn't confirm when damage began.*
- *Notes that rot has occurred.*
- *Suggests that water has been getting into the voids over a significant period.*
- *Supports its view that damage occurred gradually.*

Having considered the report, and XL's response to it, I'm not persuaded it supports Mr D's position that the frames were damaged during a one-off incident in 2018.

I think Mr D's report acknowledges that the cause of loss was likely on-going, because it agrees it fits the pattern as identified in the leak report from 2018. As I said provisionally, the 2018 report effectively showed that every time there was heavy rain, the balcony drain would overflow with water escaping into the void behind the frames. The report does not dispute that mechanism or suggest that this escape of water only happened once, in April 2018.

The report, as XL notes, identifies rot to the frames. Rot is not immediate, it occurs over time. The report does say damage would have been "accelerated". But that is still an acknowledgement of damage occurring over time. The report explains how damage, to the reverse/hidden side of the wood, would have been occurring first – again an acknowledgement that damage occurred over time.

It may well be that an intense downpour of rain in April 2018 highlighted the issue with the balcony drain – such that other flat owners took action, causing a contractor to be appointed which found the cause of water ingress to several properties, including Mr D's. But I'm still not persuaded, even having considered Mr D's report, that this was the first and only instance of water escaping the drain and causing damage to the window frames."

XL said it had nothing further to say. Mr D provided further comment, including clarifications from his expert, following its January 2025 report, which said that the damage had likely first occurred in April 2018, certainly after December 2017. And that the photos from 2018 show no rot. The expert said rot had occurred by 2025 but only because the windows had never been replaced.

I set out here a summary of Mr D's responses to my provisional and interim findings:

- The building was continuously insured by XL since 2013.
- He notified XL of the damage, in April 2018, within a reasonable and practical time of the damage being noticed which is what the policy requires.
- There's been confusion because these are internal window frames so the wood is not waterproofed as an external material would be.
- The 'storm' test undertaken in April 2018 was not intended to show an ongoing problem and the expert which completed that test and report has confirmed that a test like that can only demonstrate the cause at that particular point of testing. The expert also confirmed they'd not been called to address any leak prior to April 2018.
- The loss adjuster in 2023 found the window frames to be largely dry suggesting the leak/damage was not progressive, so the evidence does not suggest the damage has been going on for a long time.
- The leak in April 2018 was a large scale event affecting multiple apartments, with the loss adjuster (reviewing matters in 2023) having overlooked this fact.

- Water pooled and was trapped behind the frames.
- Water did not get in repeatedly, rather water got in, in one instance, could not escape, and damage was caused as a result.
- The area of damage was concealed behind black-out blinds in a spare bedroom, with the neighbours noting the damage in their flat first because they use the area affected as a living room with access to the balcony.
- The photos from 2018 show superficial damage only, really there was “little/no actual cracking of wood”. This is shown by comparative photos taken after the ‘surface’ of the wood was cleaned.
- A warranty company has confirmed that water ingress like this would void its warranty for wooden frames and where damage is visible on the outward face of the frames it would recommend replacement.
- XL has not proven damage was gradual, there is zero evidence that a leak had occurred before or during a prior storm. His evidence shows the damage was not gradual, that the leak had not occurred before.
- The damage, occurring internally which could not be noticed, impacted the frames such that they need replacing, meaning that any ‘gradual damage’ occurring thereafter had zero impact on the loss which resulted. And he is claiming for the ‘internal’ damage. And not ‘rot’.
- In any event, the necessary repair would have been the same whether the leak/damage were noted on the first day it occurred or later.
- A case study from this Service’s website is very similar to his own situation, which he has shown by setting out his own circumstances as a comparative case study.

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 note the replies provided by both parties. I haven’t captured the response initially provided by XL to my provisional findings. I mean no discourtesy by this. Rather, in keeping with the informal nature of our Service, I haven’t detailed XL’s comments because they aren’t material to my findings on this complaint. XL’s response to Mr D’s expert report was captured and taken into account in my interim findings which I’ve included above.

I’ve summarised Mr D’s responses to my provisional and interim findings. I haven’t included everything he’s said in that summary or referenced every piece of evidence he’s provided. That’s for the same reason – the informal nature of our Service.

I’ll be keeping the informal nature of our Service in mind as I progress with my findings here. By which I mean I don’t intend to directly answer or comment on each of the bullets I’ve set out above. Instead, whilst I’ll keep everything said in mind, my findings will focus on the points which, for me, are key to the outcome I’ve reached on this complaint.

I can assure Mr D that there is no confusion about the nature of the window frames in question. I set out at the start of my provisional decision that *“Internal window frames of Mr D’s flat were damaged by water ingress from the balcony”*.

In my provisional decision I also explained this Service’s approach to claims declined on the grounds of gradual loss. I appreciate that Mr D thinks his loss is one which, following our approach, should be covered. However, Mr D’s window frames were not concealed from his view. They were located in a spare bedroom and behind some blackout blinds – but that is not the same scenario as where damage occurs behind a wall or above a ceiling.

There was concealed damage occurring to the reverse of the frames. And once Mr D noticed damage on the front facing part of the frames, he notified XL of the loss within a reasonable time. The key issue of concern for me though, when taking into account our approach, is should Mr D have reasonably noticed earlier that damage was occurring, allowing him to make the claim earlier and affording XL a chance to consider the claim before the damage became as advanced as it was in April 2018?

In saying that, I know Mr D has recently maintained a view that the damage was not ongoing, prior to his discovery and notification of it in April 2018. But I do still think the frames were most likely damaged by water getting in on more than one occasion.

The expert from 2018 has said their test could only show what happened that day in April 2018. But I have to think about what the result of that test suggests is most likely. The test simulated heavy rainfall. The result was the drain could not carry all of the water produced by the simulated heavy rain event away. It seems fair to me then to say its most likely that whenever heavy rain occurred the same outcome would result – the drain would be unable to take the water away. With the 2018 test also showing that the water, which was not taken away by the drain, overflowed into the property. I'm satisfied then that its most likely that whenever heavy rain occurred water most likely overflowed into the property.

I've considered all of the available photos. I remain of the view, as stated provisionally that the wood had suffered some splitting in 2018. In 2023 the loss adjuster said damage did not seem to have progressed since 2018. But Mr D's expert says there is now rot present which was not there in 2018 and is only present currently in 2025 because the frames have not been replaced. I bear in mind that was clarification from the 2025 expert – his initial finding about the frames was: "deterioration of the wood was likely accelerated and set in rapidly, such as swelling, splitting, wet rot and fungus". I also bear in mind that the 2025 expert had seen the 2018 report, including photos of the frames, when compiling the January 2025 report. Overall I find I'm not persuaded by the 2025 expert's most recent comments.

Which leaves me in a position of having acknowledged that water was likely getting in any time there was heavy rain and that, by April 2018, the outer face of Mr D's window frames were certainly splitting and likely rotten. The area was certainly significantly discoloured.

From everything I've seen, I'm also satisfied that the damage, which Mr D drew to the expert's attention in 2018, or the earlier stages of it, had likely been evident for quite some time. Even taking into account the nature of the room which acted as a 'spare' bedroom and that the blinds were drawn, I'm satisfied that this is damage which Mr D ought to have noticed earlier.

Having reviewed the complaint, I remain satisfied that XL, on this occasion, acted fairly and reasonably to decline Mr D's claim. I'm not going to make it do anything more.

My final decision

I don't uphold this complaint. I don't make any award against XL Insurance Company SE.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 23 April 2025.

Fiona Robinson
Ombudsman