

The complaint

M complains that Allianz Insurance Plc has unfairly considered a claim made on its commercial property insurance.

M doesn't think the decision made on a malicious damage and loss of rent claim, has been handled fairly and it would like Allianz to cover the losses claimed for.

What happened

A claim was made in 2019 for damage to a property owned by M, resulting from water ingress. Allianz didn't think the weather conditions at the time indicated a storm was the likely cause of the water ingress, but it accepted a claim for the internal damage under the accidental damage section of the policy.

M explained it had received a subrogated claim from its tenants insurer, looking to recover around £80,000 of losses from M which had been incurred by the tenant as a result of damage to the business unit they'd been renting out.

M said the necessary repair works were completed as well as planned additional works to the upper storey. As the tenants insurer had said alternative accommodation should be provided, M had also agreed to offer the use of another unit for 6 months, starting from November 2019. M says following this, the tenant used government legislation in place at the time with the pandemic, to prevent eviction action and they squatted in the property until February 2021 with rent not being paid.

M says it was after this; it became apparent the tenant had instructed a roofer to make two cuts to the roof above the tenanted property. One in 2018 and a second in 2019. This was without notice to or the consent of M. Once aware of this, M notified Allianz and kept it informed of the action taken, included that it had reported this to the police.

M says when it presented the information about the actions of the tenant to the tenants insurer, it stopped pursuing him for the costs previously claimed. M then made a claim for additional costs to Allianz for over £155,000. This comprised of the costs M said it incurred when completing the necessary repairs to the property as well as the loss of rent claim. Allianz declined to consider the additional costs and M brought a complaint to this Service about the claim decision.

Our investigator looked at this complaint and initially said they didn't think Allianz had considered the claim for malicious damage and loss of rent specifically. Allianz provided details of a survey carried out at the insured property in October 2019 and clarified the property was not insured with it when the first cut to the roof was made by the tenant.

Our investigator reviewed the complaint and didn't think Allianz had acted unfairly when it declined to provide cover for the malicious damage or loss of rent. They said the information provided demonstrated the general condition of the roof was poor with several other leaks identified over the years. So, while there may have been damage caused by the previous tenant and this could have played a role in the water damage observed to the parapet wall,

they didn't think Allianz was unfair to decline the claim.

The policy excluded damage for gradual wear and tear and the roof was around 40 years old. M had explained work was intended to be completed which would cover over the flat roof and this meant it hadn't been replaced.

Based on this, the investigator was persuaded the flat roof was likely at the end of its useful life and the number of leaks and patch repairs supported this. Water would naturally pool to the lowest points and when this was near to the flank or parapet wall, the wall would be the first point of contact for the water. With repairs underway when Allianz carried out its inspection, the existing condition of the wall couldn't be confirmed. But our investigator was satisfied Allianz had fairly relied on the exclusion for wear and tear when the claim was declined.

M didn't agree and said regular repairs were made to the roof to maintain it. So, this demonstrated it was in a good state of repair over being poor. They said, but for the malicious damage of the tenant, the water ingress would not have occurred and it maintained that Allianz should cover the cost of this damage.

Our investigators said their opinion remained unchanged and the complaint was referred for 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've decided not to uphold this complaint. I appreciate M will be disappointed with this outcome, but I'll explain why I think Allianz has fairly relied on its policy exclusion when declining to provide cover for the damage claimed for by M.

M's policy with Allianz was inception with it on 1 January 2019, so any damage caused prior to this is not something Allianz would be responsible for. It follows that any damage caused by the tenants in 2018, regardless of when M became aware of this, would not be something Allianz would be liable for.

M's policy provides cover for malicious damage and does so with a number of conditions applied, which relate to actions needing to be taken by M when a claim is made. Allianz has said it thinks the proximate cause of the damage claimed for by M is the general condition of the roof and not any damage caused by the tenant maliciously. It feels there is signs of wear and tear and it's fair to rely on the policy exclusion for any damage caused as a result of this.

In October 2019, after a claim was made for damage from water ingress, Allianz had a Risk Assessment Report (RAR) completed at the property. The report provided the following summary as to the condition of the roof when inspected:

"The flat roof which is currently being built on is in a poor condition with several areas noticed to be patched up where water ingress has occurred. The flat roof is constructed of 9 inch concrete slabs and overlaid with a vinyl layer which has deteriorated over the years, water ingress noted in the office below this flat roof. It was raining at the time of my visit and there were noted to be several areas where buckets were catching drips."

M disputes the roof had leaked previously and said prior to May 2019, there had been no previous claims made. But I am not persuaded the expert here should not be relied upon. In July 2019, Allianz issued a mid-term adjustment to the policy and removed wet perils from

the cover and from 1 January 2020, the policy was renewed with damage caused or arising from storm, flood or the escape of water being specifically excluded.

A further report was completed on 20 January 2020, where the report notes the comments of the insured and says:

“The insured admits that there have been ongoing intermittent but minor leaks for many years (he estimates since 2005) but he is certain that these did not lead to actual damage and merely consisted of the Claimant being inconvenienced by needing to have a bucket or two on the desks or on the floor during periods of heavy rain”

This is supported by pictures of the property with buckets visible in different locations at the time of the 2019 RAR. Overall, I am not persuaded the roof was in a good state of repair previously.

M's policy excludes damage caused or consisting of gradual deterioration and wear and tear. The full wording has been provided previously so I've not set this all out again here. But with the evidence provided, I am satisfied Allianz has acted fairly when applying this exclusion when considering the claim made for malicious damage.

While damage may have been caused by M's previous tenant and this may have been caused with the intention of causing harm to M. I am not persuaded this was the main and dominant cause of the water ingress and damage to the property. Different reports completed at different points highlight similar issues with the roof and its condition and while M has said it disagrees with the opinion of these reports, I think it is fair to rely in the information provided. It follows that I don't think Allianz has acted unfairly when declining M's claim for malicious damage and the loss of rent claimed alongside this.

My final decision

For the reasons I've set out above, I am not upholding M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 6 January 2026.

Thomas Brissenden
Ombudsman