

The complaint

Miss B complains that Aviva Insurance Limited (Aviva) partly declined a claim made under her commercial property insurance policy.

Where I've referred to Aviva, this also includes any agents acting on their behalf.

What happened

Miss B owns a property which she rents out to tenants, and she insures the property under a commercial property insurance policy underwritten by Aviva.

In September 2024, during heavy rainfall, water entered the property through the roof causing damage internally, so a claim was made to Aviva.

Aviva inspected the property and accepted the claim for internal damage. However, they declined the claim for external damage to the roof as they said the roof was in a poor condition and there was no evidence of storm damage, they also referred to exclusions in the policy.

As Miss B remained unhappy, she approached the Financial Ombudsman Service.

One of our investigators looked into things and upheld the complaint. He said Aviva couldn't rely on the exclusions they had as they weren't applicable to storm damage claims. He also thought there was some storm damage to the roof, but some of the repairs carried out were betterment. So, the investigator said Aviva should contribute towards the repairs, and Miss B could make a new complaint if she disagreed with whatever contribution Aviva ultimately made. He also said Aviva should pay Miss B £200 compensation.

Aviva didn't agree so the case was passed to me for a final decision.

I was minded to reach a different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I’m minded to reach a different outcome to our investigator, so I’m issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.

As Aviva has covered the internal damage under accidental damage, I won’t comment on this further and instead, I’ll focus on the claim for external damage to the roof that was declined. Aviva declined this part of the claim on the basis of exclusions, along with there being no evidence of storm related damage.

However, I don’t think Aviva can fairly rely on the exclusions they’ve referred to:

“14.2.2.2 gradual deterioration, wear and tear, atmospheric or climatic conditions, normal settlement or shrinkage, domestic pets, subsidence, heave or landslip, pollution or contamination

14.2.2.4 faulty workmanship, defective design or the use of defective materials”

This is because these exclusions aren’t under the storm section of Miss B’s policy, and instead are attached to the accidental damage section. As the claim for the roof is a storm damage claim, rather than accidental damage, these exclusions wouldn’t apply. But I’m minded to conclude that it was fair and reasonable for Aviva to decline the storm damage claim for the roof. I’ll explain why.

When we consider complaints about storm damage claims, we take into account the following three questions, and if any of the answers are no then it’s likely a claim won’t succeed:

- Were there storm conditions?*
- Is the damage consistent with storm type damage?*
- Was the storm the main or dominant cause of the damage?*

Miss B’s policy doesn’t define what Aviva consider to be storm conditions. And in the absence of a definition of a storm in policy terms, then we’d apply what we would consider to be storm conditions in order to decide whether the insured event of a storm occurred – that is windspeeds in excess of 47mph, often accompanied by very heavy rain.

I’ve looked at weather records in the month leading up to the date of loss. The maximum windspeeds recorded were 31mph and I don’t consider this storm force winds. But I’ve also looked at rainfall over this period too. And there were very high levels of rainfall on the date of loss. Whilst there weren’t storm force winds, there was a significant volume of rain, which arguably could be considered a ‘rainstorm’.

However, to say Aviva needs to deal with Miss B’s claim, I’d also need to be satisfied both questions two and three above could be answered ‘yes’. But I’m not minded to conclude that’s the case, and I’ll explain why.

For a storm damage claim to be covered, the damage would need to be consistent with storm type damage. And the storm would need to be the dominant or main cause of damage occurring too. If there had been storm force winds, which then, for example, caused tiles to be displaced and water to subsequently enter causing further damage, I'd likely be persuaded this was consistent with storm type damage and that the storm was the dominant or main cause.

However, here, there has been an ingress of water during heavy rainfall, but no storm wind conditions. There also hasn't been any evidence to show any external damage has actually been caused to the roof by the heavy rainfall. The images taken by Aviva shortly after the loss was reported don't show any storm damage to the roof. And Miss B, and/or her contractor, haven't provided any images or reports outlining any storm damage to the roof either.

In the absence of storm winds, I wouldn't expect a roof to allow water to enter a property, given its purpose is to protect and weatherproof the home, even in the heaviest of rainfall, unless there was an existing issue with it. And whilst rain has entered causing internal damage (which Aviva has accepted a claim for), in the absence of any actual visible storm damage to the roof itself, I'm persuaded, on balance, it's most likely that the heavy rainfall has highlighted a pre-existing issue with the roof.

I think this is supported by the images taken by Aviva, which clearly show there have been multiple separate historic patch repairs to the roof, and this is evident by various different coloured tiles in different areas of the roof. And the leadwork also appears to be old and worn.

In my view, the invoice outlining the roof works Miss B paid in excess of £8,500 to have completed also supports the roof was suffering pre-existing issues and needed replacing as it had come to the end of its life. I say this because, alongside the fact it's already been visibly patch repaired numerous times, the invoice and works carried out (a full roof replacement) include:

- *Removing – and disposing of – slates, felt, battens and the window*
- *Application of wood preservative on all rafters*
- *New ridges and mortar*
- *Rendering over the flashing*
- *New lead flashing*
- *Coating all lead flashing*
- *Installation of coping stones*
- *15 year new roof warranty*

And I wouldn't expect a roof to need replacing, or these types of works, even if there was exceptionally heavy rainfall on a one-off occasion.

I recognise Miss B says that the roof hadn't leaked prior to the very heavy rain that day, however, it may be the case that the rain was of the volume on that day that meant it actually penetrated the ceiling so became visible inside the property. I think, on balance, it's likely water had been entering prior to the heavy rain on that day, because I wouldn't expect battens, felt, flashing, mortar, a window or tiles to need replacing after an isolated one-off rainfall event.

Whilst I accept there was a 'rainstorm' on the day, Miss B's policy covers damage caused by a one-off event of storm. There has been no evidence, visible or otherwise, provided to show any rainstorm damage has been caused to the roof which meant it then required the works that were carried out. As that's not been shown, on balance, I think the roof needed replacing because it's met the end of its life, after having been patch repaired on a number of occasions previously. Consequently, I don't think Aviva acted unfairly by declining this part of Miss B's claim."

So, I wasn't minded to uphold the complaint.

The responses to my provisional decision

Aviva didn't respond to the provisional decision.

Miss B responded to the provisional decision (via her representative) and didn't agree. In summary, she said:

- She was astonished that I'd chosen to rely on what this service considers to be a storm in the absence of a definition in Aviva's policy. And said she didn't understand where this definition came from.
- That there were storm conditions and this evidence had been ignored.
- It is ludicrous to suggest there wasn't a storm and there is no justification to apply an arbitrary definition.
- In the absence of a storm definition, it should be in the favour of the policyholder.
- She is puzzled by the significance of the age of the roof given it's a new for old policy.
- It is accepted there is some betterment in the roof replacement, but the age of the roof is not a reason to reject the whole claim.
- The fact there has been previous maintenance to the roof shouldn't be a reason to decline the claim.
- There is nothing to suggest the roof wasn't fit for purpose and it is speculation that there was a pre-existing issue.
- That the storm only needs to be the proximate cause, not the dominant cause, and it was the proximate cause of the damage.
- It is ludicrous to suggest the damage is due to anything other than the extreme storm conditions.
- The roofing contractor hadn't provided a report previously, and she'd again asked for this.

A new report from the roofer was then provided to this service.

Following this, the investigator also shared Aviva's original response to his assessment with Miss B, and Miss B (via her representative) said the roofer report she had now obtained contradicted Aviva's original reasoning, and the claim should be settled. She also said that if I didn't agree with the investigator's assessment, I should have sought an objective opinion from the roofing contractor.

I asked the investigator to share the new report from Miss B's roofer with Aviva for their comments. This is because it was new information which Aviva hadn't had the opportunity to comment on. Aviva responded and said the report didn't change their view. I asked the investigator to share Aviva's response with Miss B, and to let her know that I agreed with this alongside what I said in my provisional decision.

Miss B was asked to provide any further comments she wanted to make, which she then did. This included that she assumed investigators were appropriately qualified to investigate complaints and form logical conclusions, and that she was bewildered that the provisional decision was completely different to the outcome reached by the investigator. She also said Aviva's agent wasn't independent and reiterated a number of points previously made.

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.

And I've thought carefully about the provisional decision I reached and the various responses to it. Whilst I appreciate it'll come as a disappointment to Miss B, my final decision remains the same as my provisional decision.

Firstly, I'll explain here that I don't intend on commenting on every individual point or argument Miss B (via her representative) has provided. Instead, I'll focus on what I think is key when reaching a final decision. I don't mean this as a courtesy to either party, instead, this reflects the informal nature of this service and my role in it. I'll also clarify that I took into account all the information provided previously, and I was satisfied that the evidence was sufficient in order for me to reach my provisional decision. Whilst I recognise Miss B says I should've sought new evidence and opinion from her contactor if I was reaching a different view to our investigator, I'd taken into account all the information already provided, and this was sufficient for me to be satisfied with reaching the provisional conclusions I did.

From the responses to the provisional decision it does seem that Miss B is under the impression that I've said there wasn't a storm at all. However, in my provisional decision, I've said that whilst there were only 31mph windspeeds - which I wouldn't consider storm force (and still don't) - the volume of rain could be considered a 'rainstorm'. So, I didn't say there wasn't a storm.

Miss B has also said that she doesn't think I should arbitrarily be deciding what is storm conditions in the absence of a definition in the policy. And in the absence of a definition, she said it should also be in the policyholder's favour.

However, many insurance policies do define a storm, and frequently, terms outline windspeeds need to be in excess of 55mph to be considered storm force winds. The Association of British Insurers also consider the same windspeeds storm, as outlined on their website. In the absence of a definition, considering 47mph windspeeds as storm force as I said I had is actually lower than is frequently found in many insurance policy terms. But in any event, the windspeeds at the time only reached 31mph, and my view remains that this isn't storm force winds. But, as outlined in my provisional decision, there was a volume of rainfall which I'd consider a 'rainstorm'. So, I went on to consider the other two questions I did as outlined. And our website outlines the Financial Ombudsman Service's long held approach to storm cases.

Miss B provided a new report from the roofer who carried out repairs (I already commented on their invoice and works carried out in my provisional decision). The roofer, in summary, said:

- The roof repairs were carried out to ensure it was restored to good repair
- Due to the extreme weather, they were inundated with requests for assistance, and carried out numerous repairs to roofs which had previously proved watertight
- There are many houses in the area with narrow box style guttering which couldn't cope with the volume of rain, and the insured property was one of them

- There was no evidence of previous leaks or water damage, despite patch repairs previously, and it was a case of the roof, especially the guttering, proving unable to stand the weather
- Due to the rain, the guttering overflowed dislodging roof slates, washing out mortar flashing from the verges and compromising seals and joints meaning it was no longer weatherproof
- It was possible to carry out repairs to weatherproof the roof, but due to the age and predicted weather in the future, Miss B was advised to consider improvements which would be more resilient in the long term
- There was no evidence of longstanding water penetration or prior damage or defects, and the works were similar to those carried out at other properties
- As the subject property had already undergone repairs historically a partial re-roof was advised, with a 15-year warranty provided

When asked for their comments on the new roofer report, Aviva said, in summary:

- They were still of the view there was no external damage caused by the peril of storm
- They agree the box guttering has been overwhelmed and caused internal damage, which they've already accepted under accidental damage on the policy
- There is no external damage that can be attributed to a one-off event of storm, so they maintain the original decision to decline that part of the claim

Miss B says the roof was watertight and there is no evidence of damage occurring previously. And the roofer's report says the guttering was overwhelmed and overflowed. But it needs to be taken into account here that Aviva has covered the internal damage already, rather than saying it was longstanding. And that type of damage, which Aviva has accepted is covered, is consistent with a one-off event of 'rainstorm' and water ingress internally following the overflowing guttering, so that's not in dispute and I won't comment on the internal damage further. But my view remains that Aviva hasn't acted unfairly by declining the external damage, and Miss B's roofer's report doesn't change my thoughts on this.

As outlined in my provisional decision, there is no visible displaced or dislodged tiles in the images taken. I accept there was heavy rainfall at the time, and the purpose of tiles on a roof is to protect it from the elements such as rain. But I wouldn't expect rain to displace tiles on a well-maintained roof, especially in the absence of storm winds. Otherwise by that logic, any time there was heavy rain without any accompanying storm winds, a roof would need to be repaired, whereas the purpose of the roof tiles is to protect against the elements including rainfall. And like I say, there are no visibly displaced tiles in any event.

I outlined in my provisional decision the works that were carried out to the roof and I won't relist those again here. And it is important to keep in mind that the policy is there to provide cover for one-off events of damage caused by an insured event. As outlined in my provisional decision, I'm not persuaded that the works carried out are consistent with the type you'd expect to be required following a one-off event of heavy rain, especially in the absence of storm winds. And my view on that remains the same.

The report outlines that repairs were needed to the mortar, verges and seals due to the guttering overflowing, but it's also worth noting that the guttering is in a specific part of the roof, whereas the works included removing, disposing of and replacing slates, felt, battens and the window, ridges and mortar replacement and treating of all the timber. And again, I wouldn't expect this type of damage or works to be required following a one-off event of heavy rain, especially in the absence of any storm force winds.

I still think the rainfall entering has, on balance, likely highlighted an existing issue with the roof, which has also been patch repaired, visibly, many times previously. And the leadwork also appears to be old and worn along with the brickwork and mortar. The roofer's report also outlines that due to the age of the roof and as it had undergone historic repairs, a partial re-roof was advised to Miss B. I think that supports my view that the roof needed replacing because it's at the end of its life, having been patch repaired numerous times, and the works carried out support that too, rather than needing to be carried out as a result of one-off heavy rainfall.

Miss B has argued the storm was the proximate cause of damage, and doesn't need to be the dominant cause, and thinks this is the wrong approach. But proximate or dominant, I'm not persuaded there is damage consistent with a one-off event of rainstorm either way, and I don't think the repairs or works carried out are consistent with that either as explained.

I also note Miss B has referred to 'new for old' cover, so says the age of the roof shouldn't be a consideration. However, new for old would be in relation to how an accepted claim is settled i.e. replacing something old with something new. New for old doesn't mean an insurer replaces items which have simply deteriorated or become old, in the absence of a claim being made, accepted as covered under the terms, and settled under the policy.

Miss B has also said numerous other properties have needed repairs completed as a result of the rainfall and questions if I'm suggesting they all had a defective roof too. However, I've looked at Miss B's complaint and claim in isolation, and I've considered all the information and evidence relevant to her case – as is my role. Miss B has also questioned why the investigator reached a different conclusion and how it can be overturned. However, again, as is my role, I've reviewed all the information and evidence afresh and independently of the investigator, to decide what I think is fair and reasonable in all the circumstances of the case.

For the reasons outlined in my provisional decision and above, I don't think Aviva unfairly declined the external damage claim for the reasons explained.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 16 December 2025.

Callum Milne
Ombudsman