

## **complaint**

Mr W complains that Sterling Insurance Company Limited hasn't paid him enough to repair the damage to his roof and the interior of his house, after he claimed for storm damage.

## **background**

Mr W previously complained to the ombudsman service that Sterling wouldn't pay to repair damage to his roof that he said happened in a storm in November 2013.

Sterling sent a surveyor to inspect the property. That surveyor said that the external damage was a result of wear and tear, and the internal damage had happened because water had entered the property over a period of time. The surveyor also noted that the doors to the first floor balcony weren't closing properly so they weren't weather-tight. He said they hadn't been installed properly. At the time that Mr W first told Sterling about his claim, he said that there had always been a problem with water getting in when it rains, as he lives by the sea. Sterling decided not to pay Mr W's claim.

Mr W complained about this decision to the ombudsman service. That complaint wasn't upheld. The adjudicator dealing with that complaint accepted that there was a storm. But she thought that the damage wasn't consistent with a storm. She thought it was more likely to be wear and tear.

That adjudicator agreed with Mr W that he could get his own expert evidence about whether the damage was caused by a storm and ask Sterling to reconsider whether it would do the repairs. She said if Mr W and Sterling didn't agree after that, he could bring a new complaint to the service.

Mr W has now obtained his own expert report, and sent this to Sterling. Sterling still didn't agree that the damage to Mr W's house was caused by a storm, and it had recently realised that Mr W's policy was cancelled in August 2013. But it paid him £7,000 anyway. It says this was an *ex gratia* payment. And also says this was a full and final settlement.

Sterling at first said Mr W shouldn't be able to complain to us about this payment, because he had accepted the payment on the basis that he wouldn't complain. But Sterling now accepts he can complain to us.

Our adjudicator didn't uphold this complaint. He thought that the damage hadn't been caused by a storm.

Mr W said that he didn't want to just settle for the amount Sterling had paid him. It wasn't enough to do the repairs. He still wanted the amount of the original estimate, which was £10,000 plus VAT.

As Mr W didn't agree with our adjudicator, the case was passed to me for a final decision.

## **my findings**

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

### *the policy*

Mr W had a buildings insurance policy with Sterling. It covered him for damage to his home caused by storm. There is a general exclusion for any loss or damage caused by a gradually operating cause, or by wear and tear. There is also a general exclusion for faulty workmanship, poor design, or defective or inherently unsuitable materials.

*cancelled policy*

Sterling says that before it made the *ex gratia* payment, it had just realised that Mr W had no policy in force at the time that he says a storm hit his house. Sterling said that there had been a problem with the direct debit, and Mr W hadn't paid the premium. Because of that the policy was cancelled with effect from 30 August 2013, but this wasn't done until 15 January 2014. The policy says that if direct debit payments aren't received the policy will be cancelled with effect from the date it is paid up to. But Sterling hasn't tried to rely on this to say that it didn't need to pay Mr W. For the avoidance of any doubt, I don't think it would be fair or reasonable for Sterling to cancel a policy some months after a claim has been made but backdate that cancellation so that it takes effect before the claim went in. So I will treat this complaint as if the policy was in force at the time of the claim.

I do think it would be reasonable for Sterling to deduct any outstanding premium from any payment in settlement of a claim, and I will bear this in mind when considering what Sterling might need to do to deal with Mr W's claim.

*the new report*

Mr W got an architect to provide an expert report about the damage to his house. That report said no repairs were needed to the decking or to his roof. The expert said that he thought extremely bad weather had breached the weather seal on the French doors to the upper floor of Mr W's house. That let water in, which caused damage inside. The French doors opened inwards, which meant that they would be vulnerable in a storm.

Sterling asked for an estimate to cover the damage caused by water coming in through the French doors. Mr W provided a brief quote for works required to his house. The quote was for £10,000 plus VAT, and it included repairs to the decking and flat roof. After some discussion, Sterling paid Mr W a settlement of £7,000.

The correspondence about this settlement isn't very clear. And it's complicated at this point by Sterling realising that Mr W didn't have a policy in force at the time. But it seems to me that Sterling was refusing to pay for damage to the roof or decking, because it still thinks that wasn't storm damage. Sterling said the new report showed that the problem was caused by the French doors. It said that Mr W's expert had explained that the French doors weren't appropriate for the site. They opened inwards, and doors installed at a high level facing the sea ought to open outwards. When the wind blows, inward-opening doors would be blown open, breaking the weather seal and letting water in. Sterling said "*We do not think this is storm damage but a different dynamic involved that does not fall within our policy cover*".

I would normally expect an insurer to provide more precise reasons for turning down a claim, but in this case I need to bear in mind that Sterling hasn't had the opportunity to provide a formal response to Mr W on this complaint. I think Sterling would be entitled to refuse to pay this claim for the following reasons:

- Sterling's surveyor said that any damage to the roof was caused by wear and tear. Mr W's expert said that the roof didn't need any repair. So I don't think Sterling has to pay for any damage to the roof, because Mr W hasn't shown that there was any storm damage to the roof.
- Mr W claimed for damage caused by a storm. But he initially said that the problem of water getting into his house when it rains was something that had been happening for a long time. And Sterling's surveyor also thought this was a longstanding problem. So, even though Mr W's expert said he thought the damage had been caused by a one-off event, I think it would be reasonable for Sterling to prefer the evidence of its own surveyor on this, particularly because that's supported by what Mr W himself has said about the problem. So I think Sterling could say that the damage wasn't caused by one particular storm. It might have been caused over time by a few episodes of bad weather, but Mr W's policy doesn't cover any loss or damage caused by a gradually operating cause. I think that means Sterling could refuse to pay for damage to the interior of the house.
- Mr W's surveyor said that the doors that let water in weren't suitable for the place they were installed. Mr W's policy has an exception for faulty workmanship, poor design, or defective or inherently unsuitable materials. I think that it would also be reasonable for Sterling to rely on this exclusion, and refuse to pay for the damage to the interior of the house.

Sterling didn't refuse to pay for the damage to Mr W's house. It said it wasn't convinced he had a valid claim, but that it would offer him an *ex gratia* payment. Sterling paid Mr W £7,000. I've explained I don't think Sterling needed to pay Mr W anything at all under the policy. So I don't think Sterling needs to do any more than it's done already.

I know Mr W will be disappointed, but I don't uphold this complaint.

### **my final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W to accept or reject my decision before 9 November 2015.

Esther Absalom-Gough  
**ombudsman**