

The complaint

Mr and Mrs D have complained about the insurer American International Group UK Limited (AIG)'s decision to decline a claim they made for water damage under their home and buildings insurance policy.

Mr and Mrs D are being represented by a third party Loss Adjuster (LA) Mr E in their complaint.

What happened

In February 2021 Mr and Mrs D made a claim for damage to their property which they said was caused by a named storm in January 2021. AIG instructed a surveyor to attend their property to carry out an inspection. Having done so, the surveyor said the damage had been caused gradually. So AIG declined Mr and Mrs D's claim.

Mr E on behalf of Mr and Mrs D challenged the surveyor's findings. In summary he says that the surveyor hasn't provided evidence to show that the exclusion for gradual damage under the policy applies. Mr E says the evidence shows that the damage was caused by a storm.

Our investigator thought AIG's decision to decline the claim was reasonable.

Mr E didn't agree and wants an ombudsman to decide.

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.

Both the surveyor and Mr E have provided substantive responses to support their opposing opinions as to whether the damage Mr and Mrs D are claiming for was caused gradually or by a storm.

Mr and Mrs D's policy with AIG says that it will provide cover for loss or damage to their home and building, but it excludes cover for the following:

“loss or damage caused by gradually operating causes such as wear and tear, deterioration, inherent vice, latent defect, mould, presence of mould or fungus, mechanical or electrical breakdown, warping or shrinkage, rust or other corrosion, wet or dry rot, aridity, dampness or temperature extremes;

Based on the surveyor's findings, AIG declined Mr and Mrs D's claim as it said the damage was caused gradually. The surveyor reported historical defects within traditional heavily embossed wallcoverings on the staircase where Mr and Mrs D noticed damp. He said Mrs D had eluded to the damage being there for some time. Mr and Mrs D deny saying this.

The surveyor said the growth of fungi supported his view that the damage had been ongoing for some time. He highlighted defects in the roof and said there was no evidence of damage caused by a one off storm event. He did however state that the several missing and cracked roof tiles didn't appear to be contributing to the water ingress, but was in need of immediate repair. The surveyor used a pole camera to obtain photos of the roof.

The surveyor reported elevated moisture readings in the area. And he found that the wallcovering had de-bonded in multiple areas. He said cracking would occur when the paper becomes wet and then dries, making it crumbly to touch.

In response, Mr E was instructed to act on behalf of Mr and Mrs D and in March 2021 attended their property along with a contractor to assess the water damage and moisture levels to the affected area.

The contractor reported that an ingress of water had ran down the rafters and tracked into the masonry below, resulting in the plaster work blowing. They said rain water had continued to track down through and behind the panelling which has resulted in the panelling warping and distorting. They reported water marks to the cloakroom situated under the stairs directly below. They found mould had formed on the wallpaper in the cloakroom and water had dissipated into the surrounding area. The contractor wrote:

“Judging on the extent of the water damage I would have thought the damage has occurred at the same point as the rain storm. If this wasn’t the case then the water ingress would have been visible for quite some time.”

Mr E said that although the surveyor had reported cracked and missing roof tiles and debris within the lead valleys, he’d acknowledged that this didn’t appear to contribute toward the water ingress.

Mr E said all that was clear was that neither the surveyor nor the contractor could identify the actual point of ingress.

Mr E said Mr and Mrs D said they had a general discussion with the surveyor about the traditional wallcovering in the property – but had only confirmed carrying out minor repairs in the past in a completely different area and not in relation to any external water damage.

Mr E said that the only area where the plaster had blown was due to the recent ingress of water and not gradually over time. He says high moisture readings identified by the contractor in the downstairs cloakroom show the water travelled downward but there were no outward signs in the cloakroom to have made Mr and Mrs D aware of the ingress.

Clearly there’s a dispute as to whether Mr and Mrs D discussed whether the damage being claimed for had been known to them for some time before the surveyor visited. I’m unable to make a finding that the surveyor’s report was fraudulent and so I haven’t disregarded this part of the surveyor’s report.

Mr E says that moisture readings elsewhere in the property , including the area of damage, showed they were dry. This was approximately six weeks after Mr and Mrs D say the damage occurred when they contacted AIG.

In relation to the plaster being blown, Mr E said there were two reasons why there would be visible signs of water damage due to its robust construction: these being:

- i) there had been a steady ingress of water for a considerable period of time or*
- ii) there had been a considerable amount of water ingress over a relatively short period of time.*

Mr E arranged to visit the property again later in March 2021 after scaffolding had been erected and a builder had accessed the roof to the property. Mr E provided photos to show that there was a hole in the roof. He found that the surveyor had incidentally taken a photo of the same area but it wasn’t as clear. He wrote:

“To be clear, there is no evidence of water ingress via cracked, or missing tiles, from the debris in the valley, from dilapidated ridge tiles, or from ridge gutter failure. The water ingress was via a large hole, where a single tile has recently moved, adjacent to the valley. You can see (surveyor’s name inserted here) photograph, Roof Dormer 3, and today’s photograph of the same area, showing the same tile, in the same

position. It is not apparent from (surveyor's name inserted here) photograph, but the dark shape on the photo, above the tile, is a large hole which has recently allowed significant water ingress in a short period of time. The hole is of such a size that it must be recent as, if it had been present for some time, then the damage would have occurred some time ago, from any earlier, significant rainfall. Most likely is that the tile has been moved by Storm (name of storm inserted here), 18th Jan to 20th Jan. With further heavy rain the week following, 26th to 29th Jan, even the most resilient Edwardian plaster finish has buckled with the large amount of water, which has entered via the slipped tile. You can also see on both photographs that the tile above has been lifted, again most likely by Storm (named). Further evidence that this is recent damage, caused by a significant water ingress over a short period of time, is that despite (surveyor's name) view, there are no signs of timber rot. On the contrary, the timber is dry. See photo attached where the flashing and tiles have been removed adjacent to the internal damage. To be clear, the fungus that was evident after the damage appeared internally, was most likely Peziza, commonly known as 'plaster fungus'. This is often mistaken for dry, or wet, rot, and is not harmful to timber. It is regularly found in areas suffering from water ingress.

Finally, it should be noted that (contractor's name inserted here) came to the same conclusion, (that this was a significant amount of water ingress in a short period of time)..."

Mr E concluded that the surveyor failed to identify the cause of damage where a tile had recently moved as a result of a storm. He said that where an insurer applies an exclusion, the onus is on the insurer to demonstrate how the exclusion applies and that the customer was aware. Mr E says in this case AIG hasn't shown either of these and it is therefore unfair to apply the exclusion.

In September 2021 Mr E provided further comments on the surveyor's report. In summary he says the photos of the missing tiles on the roof by the surveyor show that one of the tiles had been lifted by the application of a force.

Mr E provided photos of the rafters to show there was no evidence of rot as suggested by the surveyor where fungi had grown.

He said the type of fungi in Mr and Mrs D's property can grow as quickly as overnight and therefore was possible it was caused by the recent ingress of water and not gradually.

Mr E said that once a roofer was appointed and the area stripped, the area of where the water was leaking through was identified. Photos show there was no long term fungi growth and no rot. He concluded that the surveyor had provided no evidence to support AIG's decision to apply the exclusion that the damage had happened gradually.

The investigator asked AIG for their comments – and the surveyor responded on behalf of AIG.

In summary he maintained his view that fungi required certain conditions to grow. He said the robust construction of the wallcovering only meant that it would take longer for the water ingress to come through and would have saturated for a longer period.

The surveyor wrote:

"With reference to the rainfall mentioned within my report, I highlighted this to demonstrate a defect with the roof covering. The fact that we are seeing an ingress of water highlights a defect with the roof covering, it does not apportion this to be the proximate cause. At no point have I denied water ingressed the property at the presented occurrence date. I am in agreeance that water ingressed on this date. However, I am of the opinion this is not the first time the ingress occurred and therefore I refer back to gradually operative cause. Failing to combat the external

defects has resulted in extensive debonding of plaster and deterioration of the woodwork. The damage is not indicative of a single event.

Photographic evidence of the roof demonstrate frost damage to the tile façade, slipped tiles and a complete lack of maintenance. The deterioration evident on the tile would suggest possible nail fatigue. Not only this, the debris evident in the valley demonstrates a lack of maintenance. I maintain my stance that there is no evidence of a one off storm event.

I further wish to comment of the reference to “Peziza Domiciliana”, this is common in traditional buildings of a certain age and is often contributed from ventilation issues that often leads to decay. The proximate cause is often associated with the evidence of damp or rot.”

I remain of the opinion that most of the damage has resulted from an ongoing ingress opposed to a one off event. In my opinion, insurers may only consider the decoration of the damaged areas as part of accidental damage cover. However, it remains my opinion that the incident has occurred on multiple occasions, contributing to an overall loss.”

The surveyor said that heavy rainfall without storm strong winds would not be enough to dislodge tiles unless there was an already gradual deterioration of the tiles/facade. Photos of the roof show it wasn't in a good state of maintenance.

The LA has pointed out that Mr and Mrs D's policy with AIG is an 'all risks' policy and so it doesn't provide cover for only insured perils. The policy wording says:

“We will insure the property shown in your schedule against all risks of physical loss or physical damage which happens during the policy period unless an exclusion applies”

Therefore, the claim should only fail if AIG can show an exclusion applies for the loss or damage being claimed for. In this case, the exclusion is being applied for a gradually operating cause.

However, I don't think the evidence is persuasive that the hole in the roof was caused by the force of a storm and therefore suddenly and not gradually – looking at the overall condition of the roof and the travel of the water to the downstairs cloakroom. I appreciate that the LA says the tile revealing the hole was most likely dislodged by the storm. But I think the surveyor's testimony as to the existing condition of the roof and tiles – along with the weather conditions of heavy rainfall but not heavy winds constituting storm – is more persuasive that bad weather highlighted an existing problem due to wear and tear. I also note that the existence of the named fungi here can also be found in areas of significant damp.

I'm sorry to disappoint Mr and Mrs D. But I think AIG has reasonably applied the exclusion of a gradually operating cause when deciding to decline their claim for damage. I think there is enough evidence to say the dislodged tile causing the hole in the roof was more likely due to an existing maintenance issue – and a gradually operating cause.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 15 February 2022.

Geraldine Newbold
Ombudsman