

## **The complaint**

A limited company (that I'll call 'R') complains about Aviva Insurance Limited's decision to turn down a claim made under their property owners insurance policy.

R is represented in this complaint by Mr C.

Any reference to Aviva includes the actions of its agents.

## **What happened**

R held a property owners policy with Aviva that covered several flats. In late December 2022, two of the flats were affected by rainwater coming through the roof. The roof was inspected, and one of the dormer zinc roofs was found to have peeled back.

A claim was made for storm damage, but Aviva turned this down. It said there had been no storm conditions present on or around the date of damage. It also thought there was a maintenance issue with the roof, and that this was the main cause of damage. Unhappy with this, R brought a complaint to the Financial Ombudsman Service.

Our investigator recommended the complaint be partly upheld. He agreed there were no storm conditions present on or around the date the damage happened. Though even if there had been, he didn't think the damage claimed for was consistent with damage a storm would cause. He also thought the roof had signs of wear and tear, and the wind had merely highlighted this. So he thought it had been reasonable for Aviva to turn down the claim for damage to the roof. However, our investigator noticed the policy included accidental damage cover. He recommended Aviva reconsider the internal damage to both flats under this section of cover.

Neither party accepted our investigator's findings. R then provided more information which persuaded our investigator there were storm conditions present. However, he remained of the view that the wind speed recorded wouldn't have damaged a roof in good condition. He also still thought there was wear and tear to the roof, and that the wind had highlighted this.

After further discussions with both parties, our investigator thought that Aviva ought to cover the internal damage to flat four, as he considered R had shown the flat had previously been in good condition with no ongoing water ingress. As R had further evidence that they wanted to provide to show that flat three was in good condition previously, he thought Aviva should review this and reconsider the claim for damage to flat three.

As the parties couldn't reach an agreement, the matter has been passed to me for a 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.

## Storm damage

As our investigator has explained, in considering this type of complaint, there are three questions we ask. If the answer to any of them is no, then we say it's reasonable for an insurer to turn down a claim for storm damage.

The first question - was there a storm?

I've checked the weather records, and there were no storm conditions present on or around the date of loss at the nearest weather stations. However, Mr C has provided evidence taken from very nearby wind monitors which confirms there were gusts of wind at 47mph on 19 December 2022. On balance, I agree with our investigator this supports there was storm force winds shortly before the date the damage was discovered.

The second question – is the damage claimed for typical of storm damage?

The damage was to one of four dormer roofs. The zinc sheet roof was torn from its fixing nails at one edge and peeled back.

This isn't the sort of damage I'd usually expect for the reported wind speed. Though I take Mr C's point on board that it is a high building which could have increased the speed of the wind. I think the damage could be typical of storm damage where there were very high winds.

The third question – is the storm the main cause of damage?

Aviva arranged for its agent to carry out an inspection on 25 January 2023. The agent carried out a drone survey of the roof, and it was noted the zinc roof covering had distorted and rippled. Crucially though, the agent said the edge was deteriorated and splitting around the dormer, and that there had been several previous repairs using a flash band tape, which they said should only be a temporary measure. They thought the temporary repairs had been in place for some time, highlighting that the condition of the roof covering was known.

Taking this into account, I think it was reasonable for Aviva to conclude there was wear and tear to the roof, and that the storm highlighted this. That's not to say that any roof which has had repairs wouldn't be covered for storm damage, as Mr C has questioned. I appreciate the roof was regularly inspected. But here, the evidence supports that the previous repairs carried out ought to have only been a temporary measure. So I don't think the storm was the main cause of damage.

I'm therefore satisfied it was reasonable for Aviva to turn down the claim for damage to the roof.

## Internal damage

The policy covers accidental damage. The policy doesn't specifically define accidental, so I think the ordinary meaning would apply, so damage that is *unforeseen and unintentional*.

Aviva says the internal damage to both flats wouldn't be covered because the rainwater ingress wasn't a one-off event.

When Aviva's agent inspected the roof, they said they could see some timber deck boards rotting, which they thought suggested the water ingress had been affecting the structure of the property for some time. However, Mr C has provided evidence from the roofing firm that carried out the repair to the dormer roof. They said when they removed the zinc covering, they inspected the decking boards and they were all in good order, with no rot. They said the boards were of a very dark colour, and thought they had been treated at some stage with creosote or a similar product.

Given that the roofing firm actually inspected the timber boards (whereas Aviva's agent based their opinion on a drone survey), I find that greater weight should be given to the roofing firm's evidence here. As the timbers were in good condition, this supports there hadn't been ongoing water ingress through the roof.

Two of the flats were affected by rainwater ingress (flats three and four). In flat three, the living room ceiling, walls and light fitting had been damaged by rainwater. In flat four, the living ceiling and walls had been damaged by rainwater, and there was some damp staining to a bedroom ceiling and wall.

In flat three, Aviva's agent said there was some historic cracking to the woodwork in the living room, but they thought this was due to historic ingress from previous events. In flat four, the agent said there was an area of damage in the bedroom which had previously been painted/stain blocked, which they thought evidenced there had been previous incidents of water ingress from the roof.

I don't know why flat four's bedroom had previously needed an area to be painted/stain blocked, or what had caused the historic cracking to the woodwork in flat three. There may well have been some previous water ingress, which could have led to the previous repairs to the roof. However, it doesn't seem as though there was ongoing or long-term water ingress taking place (if that were the case, then I'd agree the damage couldn't be said to be unforeseen).

Aviva also makes the point that in flat four, there was significant cracking to the plaster, and some of the water staining was dark. It thinks this supports that water ingress had taken place over some time. However, R (not unreasonably) says that the level of staining could be down to the materials used in the property, given its age.

The main area of damage in flat four was to the living room. I've seen a video taken of this area in early December 2022 and it appears to be in good decorative condition with no cracks or staining present. This supports that the damage caused by the water ingress at the end of December 2022 was likely a one-off event.

So I agree with our investigator that Aviva should deal with the claim for the internal damage to flat four. I understand the internal repairs may have been carried out, and if that's the case, Aviva should reimburse R for this and pay interest on the settlement.

R says that flat three was partially decorated in 2019. They also said they can provide Aviva with more information (such as invoices and photos) to show the condition of the walls and ceilings before the rainwater ingress. That seems reasonable to me. Aviva should then reconsider the claim for internal damage to flat three.

### **My final decision**

My final decision is that I require Aviva Insurance Limited to do the following:

- Deal with the claim for internal damage to flat four in line with the policy terms. If repairs have been carried out, Aviva should reimburse R and interest should be added at the rate of 8% simple per annum from the date the invoice(s) was paid to the date of settlement\*.
- Reconsider the claim for internal damage to flat three after R provides more information.

\* If Aviva considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell R how much it's taken off. It should also give R a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 29 March 2024.

Chantelle Hurn-Ryan  
**Ombudsman**