

The complaint

Miss C complain about HCC International Insurance Company Plc trading as Tokio Marine HCC (Tokio) declining a claim under her home insurance policy for damage to her property in bad weather.

Tokio use agents to administer the policy and to assess claims. Reference to Tokio includes these agents.

What happened

The following is a summary of the key events and timeline of this case, the details of which are known to Miss C and Tokio.

In June 2023 Miss C's rental property suffered damage to a roof during a period of bad weather, with rain entering the property and damaging the kitchen ceiling and walls. Miss C was abroad at the time, but her property was being occupied by a friend. Miss C returned to the UK to tell Tokio about the damage in July 2023 and lodge a claim. Miss C told Tokio she needed to return abroad to help a family member, so she wanted her claim dealt with quickly. Miss C also made them aware of her disability and reasonable adjustments she thought appropriate to her circumstances.

Tokio said they could arrange for quotes to repair the damage, but it might take time so it would be preferable for Miss C to do this. She was able to obtain two quotes (for £9,875 and £9,465) and send them to Tokio at the end of July 2023. Given the size of the quotes, Tokio said they would need to assess them. Tokio also said they would need to send a loss adjuster (GB) to inspect the property and validate the quotes.

GB visited the property at the beginning of August 2023 and took photographs from the outside of the property and the interior. Miss C said GB indicated the damage to the interior of the property would be covered. Given the damage to the roof, Miss C arranged for temporary repairs by one of the builders who'd provided the quotes. Unfortunately, Miss C was taken ill and had to be treated in hospital. Not having heard back from Tokio about her claim, she chased them for an update. Tokio said they needed to send a second assessor to inspect the property. Given her circumstances, Miss C was reluctant to agree to this request.

Unhappy at the time being taken to assess the claim and the actions of Tokio and BG, Miss C complained to Tokio towards the end of August 2023. Her key issues were: poor service from Tokio and GB; the time being taken to assess the claim; the decision (as she understood it) to decline her claim; breach of contract; and no reasonable adjustments for her disability under the Equality Act 2010 and a lack of understanding of her personal circumstances. She wanted a copy of GB's report and a new loss adjuster appointed, and an expediated claim process to – as she saw it – get to the right decision. She also wanted compensation of £10,000 for what had happened (and £1,000 for her builder).

Tokio didn't uphold the complaint. In their final response issued at the end of September 2023, they didn't think there was a delay in the progression of the claim, saying GB had responded to emails sent by Miss C and acted appropriately in dealing with the claim. Based

on photographs of the damage provided by Miss C's builder, GB had raised concerns about the condition of the roof prior to the incident, evidence of poor workmanship and a lack of evidence of the damage being due to an insured peril (such as storm).

To fairly assess the claim, Tokio said they needed to investigate the cause of damage and so needed to carry out an inspection of the roof. GB had contacted Miss C to ask her for approval for them to access the property for a further inspection. Given concerns raised by Miss C about the loss adjuster that visited the property and engaged with Miss C, Tokio said they would arrange for a new loss adjuster to take over assessment of the claim.

After issuing their final response, Tokio then told Miss C they were declining her claim (October 2023). By that point, Miss C had returned overseas to help a family member.

Miss C then complained to this Service, saying Tokio had unfairly declined her claim. She didn't accept there was past faulty workmanship at her property. She'd sent Tokio evidence of storm damage and didn't understand why they continued to ask her questions. The time she'd spent dealing with the claim meant she'd lost business and sales. What happened also had a significant impact on her health. She was at risk of domestic abuse at the property, which meant she was unhappy at strangers coming to her property. She wanted Tokio to accept her claim, on the basis of the two repair quotes she'd provided.

Our investigator didn't uphold the complaint, concluding Tokio didn't need to take any action. Given the cost of the two quotes, it wasn't unreasonable for Tokio to appoint a loss adjuster and for them to visit the property. It was also reasonable for the loss adjuster to ask Miss C to confirm the date the damage occurred and provide photographs taken by the builder when he inspected the property. The investigator didn't think there were unreasonable delays to the point Miss C complained to Tokio. It was also reasonable for a new loss adjuster to request a further inspection of the property by a roofing specialist and for a report of the damage (quoted for by Miss C's builders). On the internal damage, as Miss C's policy didn't include accidental damage cover, it would have to be dealt with under the claim for damage to the roof (if it was accepted).

Miss C disagreed with the investigator's conclusions and asked that an ombudsman review the complaint. In disagreeing, she raised a number of points. For completeness, they are listed below:

- The investigator hadn't considered all the points raised in her complaint and hadn't reached what she considered to be a correct view.
- She didn't agree Tokio's response time in assessing her claim was reasonable, in the context of her difficult circumstances. She referred to a separate claim she'd made under a travel insurance policy which had been settled within 24 hours.
- Tokio's claims process was vague and unhelpful. Nor was it concise. And she wasn't a roofing expert so it was unreasonable for GB to ask her detailed questions – when they should have spoken to her builder(s).
- She hadn't been provided with a copy of GB's report from their visit, to which she thought she should be entitled.
- She'd received poor service from Tokio, which the investigator hadn't considered, and she'd had to chase Tokio (while in hospital). She was also unhappy at how Tokio had investigated and responded to her complaint.
- She'd provided what she considered proof the damage was caused by a storm, which Tokio hadn't considered, to the roof as well as the garage, fence and garden of the property.
- The investigator hadn't considered that Tokio had declined her claim (subsequent to their final response).

- Tokio had breached data confidentiality, something she would be raising with the Information Commissioner's Office.
- She questioned whether all the information and evidence, including correspondence and photographs had been provided and considered as part of investigation of her complaint by this Service.
- Tokio hadn't complied with the Consumer Duty requirements introduced in July 2023.
- The investigator should have spoken to her builder (who she said would support her view of poor treatment by Tokio and GB).
- Tokio and GB hadn't complied with the requirements of the Equality Act 2010, specifically the duty to make reasonable adjustments for disabled people.

Miss C thought she should receive compensation for what had happened and the way she'd been treated. She thought £10,000 based on the time she'd had to spend dealing with Tokio and GB, arranging for quotes from her builders, as well as the distress and inconvenience she'd suffered. She also wanted £1,000 compensation for her builder.

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.

In doing so, I'd want to reassure Miss C, picking up some of her specific points made in response to the investigator's view, I've considered all the evidence and information provided as part of this case, including that provided by Miss C (as well as that provided by Tokio). In particular, this includes the correspondence and exchanges between Miss C, Tokio and GB. I've also looked at the photographs provided by Miss C taken by her builder. I've also considered all the points raised in her complaint, including the formal decision made by Tokio to decline her claim subsequent to their final response.

In considering the complaint, I've also had regard to the new Consumer Duty on insurers (and other financial services businesses). Given my findings and conclusions that follow, I've concluded Tokio haven't breached the Consumer Duty.

I've also considered those points where I feel they don't fall within the remit of this Service when investigating complaints. In this regard, I would include what Miss C says are breaches of data protection legislation in the handling of her personal data by Tokio. The terms of Tokio's policy set out how they will handle personal information, including a privacy notice which states:

"We may disclose your personal information to:

Our group companies;

Third party service providers."

This wording would include Tokio's agents such as GB and other contractors for the purposes of assessing claims. This is standard practice in the insurance industry and in insurance policies. GB's communication with Miss C includes a similar statement:

"Your personal information may be used for the purposes of insurance administration and claims handling by us and insurers. We or the insurers may share this with other third parties in relation to claims handling."

I think this is reasonable, but if Miss C feels Tokio (or GB as their agent) haven't complied with data protection legislation, that would be for her to raise with the appropriate authority,

which in this case would be the Information Commissioner's office (ICO). I note that Miss C has indicated she is considering this course of action.

Turning to the issues in Miss C's complaint I can consider, I'd first want to say I appreciate what she has told us about her circumstances, including her disability and health issues. I also recognise her very difficult personal circumstances as a victim of domestic abuse and being at risk of further abuse, as well as the serious issues with her daughter overseas, which I know are very worrying for her. I sympathise with her position and how this has affected her when making her claim and dealing with it subsequently. I've borne this in mind when deciding, as is my role here, whether Tokio have acted fairly towards Miss C.

The main element of Miss C's complaint is that Tokio unfairly declined her claim because the damage wasn't caused primarily by a storm (or heavy rain) but was due to wear and tear or normal maintenance. This wouldn't be covered under the policy. Miss C maintains (supported by comments from her builders) the damage was the result of a storm.

While this is the main issue, there are several other issues, including – but not confined to – the way Tokio and GB handled the claim and the time taken to assess the claim. Miss C also raised concerns about the extent to which Tokio and GB recognised her disability and her personal circumstances as a victim of domestic abuse. There are also the specific issues, as set out above, raised by Miss C when responding to our investigator's view.

Given the main issue is Tokio's [ultimate] decline of the claim, I've looked at this issue following the approach we adopt, in cases of claims for storm damage. This involves three key questions we consider:

- Do we agree that storm conditions occurred on or around the date the damage is said to have happened?
- Is the damage claimed for consistent with damage that a storm typically causes?
- Were the storm conditions the main (or dominant) cause of the damage?

On the first question, Miss C reported the damage to Tokio on her return to the UK in mid-July 2023. There was some initial uncertainty over the date the damage (the storm) occurred. But from what I've seen, based on what Miss C was told by the person in the property at the time, the date of the incident was 12 June 2023. Miss C subsequently provided local media coverage of a thunderstorm in the area on that date.

While Tokio haven't provided a view on whether there were storm conditions on that date - they've said the damage set out in the quotes and from the subsequent photographs indicate it was due to wear and tear and normal maintenance issues - I've looked at the data available from the weather firm used by this service for the date the damage is said to have occurred. Using data from the nearest weather station to Miss C's property, it doesn't indicate storm conditions on that date, or the days shortly before or after. There is indication of heavy rain on the 12th. Taking the data as a whole, it doesn't indicate storm conditions involving high winds, but significant rainfall.

Having reached that view, I've then considered the second question. Looking at the description of the damage from the quotes and the photographs taken by the builder, I'm not persuaded – in the absence of data showing storm (high winds) on or around the date the damage is said to have occurred – the damage would be the result of a one-off period of heavy rain. I wouldn't expect that to dislodge or break tiles or to dislodge mortar to the extent of requiring re-pointing. Nor to cause the cracks visible in the mortar and brickwork. While the internal damage would be consistent with rainwater entering the property, the most likely cause of the rainwater entering would be pre-existing issues with the property, particularly the roof.

Taking these points together, I'm not persuaded the damage described in the quotes and observed in the photographs is consistent with that to be expected in a storm, particularly one involving heavy rain.

Given these conclusions regarding the first and second questions, I've also considered the third question. As I'm not persuaded there were storm conditions – at least involving high winds – nor that the damage is consistent with that to be expected from a storm (or heavy rain) then I'm not persuaded the storm conditions (the heavy rain) were the main or dominant cause of the damage. I'm more persuaded by the view (which Tokio and GB take) the damage is consistent with that caused by wear and tear and what would be considered to be normal maintenance. Both these things are excluded from cover under the policy terms and conditions (as they are in most home insurance policies).

In coming to this conclusion, I've also considered Miss C's point she considers she's provided proof the damage was caused by a storm. However, from the points and conclusions I've reached above, I don't agree. While the builder quotes include statements to the effect the damage was storm damage – the first (totalling £9,875) includes reference to "*Report on damage caused by storm/rain*" – there's no further detail or evidence to support these statement(s). Nor does a schedule of work of itself constitute 'proof'.

So, I don't consider Miss C has provided 'proof', as she's stated. For that to be considered, a comprehensive 'cause of damage' report would have been required. But I've not seen such a report. And while I haven't seen any indication GB have spoken to the builder(s), from my conclusions above, I don't think this would have been likely to change Tokio's conclusion.

While I've reached this conclusion on the specific question of whether Tokio acted fairly in declining the claim, I've considered the way Tokio (and GB, as their loss adjuster) handled and assessed the claim. In doing so I've considered the timeline and sequence of events, initially to the point of Miss C's complaint to Tokio, through to Tokio's final response.

As I've set out above, Miss C reported the damage on her return to the UK in mid-July 2023, having become aware of the damage from the friend staying in the property while she was overseas. Tokio initially asked Miss C to obtain two quotes for repairing the damage, as they said this would be quicker than Tokio obtaining their own quotes.

While I appreciate what Miss C has said about this placing the onus on her to obtain quotes, I don't think Tokio's approach unreasonable, and it's consistent with what I've seen in other home insurance cases. It also seems Miss C was able to provide two quotes within a couple of weeks, sending them to Tokio at the end of July 2023.

At that point, Tokio appointed GB as the loss adjuster to assess the claim and the quotes provided. Given the value of the quotes (and the work included in them) I don't think this unreasonable and again is common practice when assessing home insurance claims.

GB then visited the property to assess the damage initially. The visit took place some four days after Miss C sent the quotes, which is a reasonable timescale. I'd expect GB's visit to lead to a report on their findings and conclusions, together with any further steps or actions to be taken. Having seen BG's report, I think it's appropriate to refer to the key findings and conclusions, which are as follows:

"...The damage described within the estimates is consistent with general wear and tear and yet the insured maintains that this is storm damage, with the contractors also suggesting as much within their estimates.."

We are making further enquiries with the insured and her contractors before commenting on policy liability, but the damage described within the estimates is mostly consistent with normal maintenance, e.g. chimney re-pointing and, as such, it is likely the claim will be repudiated as we note there is no Accidental Damage cover available under which we could potentially have considered internal damage.”

The report doesn't include any photographs of the roof, just two photographs of internal damage and front and rear external views of the property. But it's clear the findings and conclusions are also based on the quotes from the two builders. While I appreciate what Miss C has told us about GB not going up to inspect the roof, I don't think it unreasonable for GB to have produced a report based on their visit and the work included in the two quotes, which implicitly set out the damage they consider needed repair.

At this point, having referred to GB's report and its findings and conclusions, I've considered Miss C's point that the report hasn't been provided to her. In their final response, Tokio say it is commercially confidential, so they aren't able to supply it to Miss C. I don't think this unreasonable. But I'd want to assure Miss C I've considered it alongside the other evidence and information, including the quotes/reports from Miss C's two builders, and I've included above what I think are the key findings and conclusions relevant to my consideration of the complaint.

It's also reasonable for GB to have followed up their visit with a request to Miss C for any photographs of the damage the builders took when assessing the repair work needed, as that would provide them with further evidence about the nature of the damage. So, even though GB didn't go onto the roof and take photographs, asking for photographs from Miss C's builder(s) was reasonable to enable GB (and Tokio) to assess the damage and claim.

Miss C provided the photographs in mid-August, but they weren't initially able to be accessed by GB. At that point the loss adjuster was on holiday. Shortly afterwards Miss C raised her complaint. I appreciate Miss C being concerned about the length of time being taken to assess the claim, particularly given her personal circumstances, but I don't think the above timeline and sequence of events is unreasonable.

I've then considered the two quotes from the builders along with the photographs from one of them, which Miss C provided to Tokio. Looking at the quotes, the first (totalling £9,875) includes reference to *“Report on damage caused by storm/rain”*. It then lists a series of works to the roof, interior, garage roof and fencing. The second quote also includes a statement that reads: *“Summary: Storm damage and heavy rain”*. It also then lists the recommended repair work, under a further statement that reads: *“...these are the issues I observed that have been associated with the damage done”*.

Looking at the descriptions of the work, I think it reasonable of GB to conclude they appeared to include ones consistent with wear and tear and normal maintenance, rather than ones expected in a storm and/or heavy rain.

Looking at the photographs Miss C supplied, I think they confirm this view, for example the need for re-pointing and renewing fascias and guttering. So, I'm not persuaded the damage was likely to have been the result of a one-off storm event, involving heavy rain. The damage is consistent with damage occurring gradually over time.

At this point, given the doubts Tokio and GB had about whether the damage was the result of a one-off storm, I don't think it unreasonable for Tokio to have requested access to the property for a roofing contractor to independently assess the damage, to confirm (or otherwise) the initial findings and conclusions from GB. I appreciate what Miss C has said about her circumstances and concern about those visiting her property. But I think it should have been possible to reach an understanding with her about the need for a visit and to

make appropriate arrangements that would reassure her. I've seen correspondence between GB and Miss C to this effect.

I've also noted Tokio (GB) changed the loss adjuster in response to concerns she'd raised about the first loss adjuster in her complaint to Tokio. Given her concerns, I think it was reasonable for Tokio to appoint a new loss adjuster to handle the claim, as part of their response to Miss C's complaint. But this would necessarily have added some time to the assessment of the complaint, allowing for the new loss adjuster to become familiar with the claim and determine the next steps.

I can see it was the new loss adjuster that contacted Miss C in September 2023, saying that Tokio had requested a separate inspection report from nominated contractors to consider the claim further. The email asks Miss C permission to access the property to carry out the inspection, and that the nominated contractor may contact her to arrange an appointment. I think this reasonable, given Miss C's circumstances and expressed concern about allowing access to her property.

Miss C didn't specifically respond to the request when she replied in mid-October 2023 but did state concerns about what she considered to be harassment, and that she had returned overseas, but unfortunately been taken ill and was in hospital. Given the response and the circumstances, Tokio thought it unlikely they would be able to carry out a further inspection as they had requested, and concluded they had sufficient evidence to decline the claim based on the evidence and information they had. In the circumstances, I don't think it was unreasonable for them to reach this conclusion and to decide to decline the claim.

Having reached these conclusions, I've considered the overall timeline of events and the actions of Tokio (and GB as their agents). I don't think the timeline is unreasonable, given the need to assess the claim and reach a fair and reasonable decision on whether to accept the claim (or not, in this case). Insurers need to validate claims to conclude whether they are covered under the terms and conditions of the policy, and that an insured peril has been demonstrated. It's reasonable for them to appoint loss adjusters to carry out the detailed assessment and handling of a claim, including assessment of the evidence available and asking for further information and evidence where it's felt necessary and appropriate.

Based on this, I don't think the timeline in this case is unreasonable, notwithstanding Miss C's circumstances and understandable desire for the claim to be assessed quickly. Miss C refers to a separate claim she made under a different [travel insurance] policy being settled in 24 hours. But my role here is to decide whether Tokio have acted fairly and reasonably in their handling of Miss C's claim under her home insurance policy, the circumstances of which are likely to be very different to the other claim to which Miss C refers. It doesn't of itself have any bearing on whether Tokio acted fairly and reasonably in how they handled and assessed Miss C's claim, particularly bearing in mind what I've concluded were their reasonable doubts about whether the damage was caused by a storm and whether it was covered under the policy.

I've also considered Miss C's point about Tokio's claims process being vague and unhelpful, nor concise. And she wasn't a roofing expert so it was unreasonable for GB to ask her detailed questions – when they should have spoken to her builder(s). I've considered this carefully, looking at the correspondence between Miss C and Tokio (including with GB). Necessarily, insurers and their agents have to ask for information about the circumstances of a claim, to enable them to assess a claim fairly and reasonably. From what I've seen, while I appreciate Miss C isn't a roofing expert (and her circumstances) I don't think Tokio and GB have acted unreasonably in their contacts with Miss C, the ones I've seen are professional and courteous.

And while I appreciate Miss C's circumstances, both health and personal, would have added to what is inherently a stressful process in making a claim and having it assessed, it was reasonable for Tokio to seek to progress the claim, given Miss C's stated desire for it to be dealt with expeditiously. As I've noted above, given these circumstances, I think it was reasonable for Tokio not to pursue their request for access to the property to arrange a second inspection by their nominated contractor, but to decide on the claim on the information and evidence they had available.

Taking these points together, I also don't think there have been any significant shortcomings in the way Tokio assessed and handled the claim, and so the service they've provided to Miss C. So, I won't be asking them to take any further action in this regard.

The final point raised by Miss C is what she considers to be that Tokio and GB haven't complied with the requirements of the Equality Act 2010, specifically the duty to make reasonable adjustments for disabled people. While Miss C hasn't set out specifically what reasonable adjustments she feels haven't been made, I've taken the Act into account, as it is relevant law. But my role here is to decide the complaint on whether Tokio have acted fairly and reasonably towards Miss C. It's not for me to make a legal finding about whether Tokio have breached the Act. That would be for a court to decide, should Miss C wish to pursue the point.

But from what I've seen, Tokio (and GB as their agent) haven't treated Miss C any differently than they would any other policyholder in the circumstances of the case. I don't think Tokio would have acted any differently in appointing a loss adjuster, inspecting the property, considering the evidence and information from Miss C (including from her builders) and requesting access for a further inspection by their nominated contractor. They've communicated with Miss C primarily through email as she has similarly communicated with them through the same media. And the communications I've seen, as noted above, have been professional and courteous.

My final decision

For the reasons set out above, it's my final decision not to uphold Miss C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 27 February 2024.

Paul King
Ombudsman