

The complaint

Mr B complains that Covea Insurance plc (Covea) has partially declined a claim made under his landlord property insurance policy.

What happened

Mr B owns adjoining properties which are let out to tenants, and both properties are insured, separately, by Covea.

Mr B made a claim for water ingress which caused internal damage to both properties. One property was also found to have damaged windows, so Mr B made a claim for these too. The claim for the property with only internal damage was accepted and settled. The other claim for the property with internal damage and damaged windows was declined in full.

Mr B complained to Covea about the claim declination, as part of the claim was identical to the claim that had been accepted. Covea revisited things and accepted the internal damage part of the claim, but they maintained the windows wouldn't be covered.

As Mr B remained unhappy with Covea's partial claim decline decision, he approached the Financial Ombudsman Service. Mr B says he doesn't think the gradual damage exclusion should be applied as he says he wasn't aware of the damage and did something as soon as he was.

One of our investigators looked into things but she didn't uphold the complaint. She said that there wasn't a storm at the time of the claim, and there wasn't any other insured event that had occurred either. The investigator said that an insured event occurring was the starting point before considering whether the gradual damage exclusion applied, and in the absence of an insured event, she said there wasn't a valid claim.

Mr B didn't agree and the case was passed to me to decide.

I reached the same overall outcome as our investigator, but for different reasons. 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 issuing a provisional decision. I’ve reached the same overall outcome as our investigator, that Covea don’t need to do anything further, but for different reasons. 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 the internal damage is no longer in dispute and has now been accepted and covered by Covea, I won’t comment on this part of the claim further. Instead, I’ll focus on the damaged windows which Covea has declined to cover.

Our investigator said that Mr B’s insurance policy covered a number of insured events. She said that the only insured event under Mr B’s policy that potentially might have covered the damage to the windows was storm related damage. But she said there wasn’t a storm at the time the claim was reported. She therefore said that in the absence of an insured event, the claim wasn’t covered by the policy, and she didn’t need to look at the policy exclusions such as gradual damage.

Whilst I’m minded to agree that Covea hasn’t acted unfairly by declining the claim, I don’t agree with the approach our investigator took here or the reasoning, as I think they misunderstood the type of policy Mr B has.

The most common type of insurance policy is known as an ‘insured perils’ policy. These cover a specific list of insured events, such as fire, flood, theft and storm. For a claim to be covered under this type of policy, the starting point is that an insured event needs to have occurred. And if an insured event has occurred, then the next consideration is whether there is an exclusion which means the claim isn’t then covered. This is how the investigator looked at things, but this isn’t the type of policy Mr B holds.

Mr B actually holds what is known as an ‘all-risks’ policy. These cover the wider event of ‘damage’. And all ‘damage’ is covered, unless specifically excluded. So, the difference here is that the damage being claimed for doesn’t need to be caused by a specific insured event such as a storm, but instead, damage is covered unless it’s otherwise specifically excluded.

Damage is defined in Mr B’s policy as:

“Accidental loss destruction or damage unless otherwise excluded.”

Mr B has shown damage has been caused to his windows, and that’s not in dispute. So, this would then be covered, unless there is an exclusion in the policy which defeats the damage claim.

On inspection of the windows, the agent appointed by Covea concluded:

“Externally we can see that the windows in areas have been filled/patched and painted over. Albeit when you push on areas of the window timber they are soft and rotten.

We note the windows have damage both internally and externally and in our opinion is not consistent with a one off. The windows are softwood grained, but a sudden one off ingress would not be enough, in our opinion to cause the windows to rot and fall apart. We would suggest that the ingress has either been ongoing over a long period of time which does not seem overly consistent with the staining and damage to the walls/ceilings around the windows or the damage is due to age/wear and tear with the windows being softwood, poor quality and has merely been exasperated by the ingress.”

So damage is evident and that’s not in dispute. But the cause of damage is believed to be due to ingress over time, and/or wear and tear, rather than a one-off incident which has resulted in them becoming rotten causing them to fall apart. And I think the images taken support those conclusions, and there hasn’t been anything else provided which shows the damage was caused by an identifiable one-off incident instead.

Mr B’s policy has exclusions for:

“Damage caused by or arising from or consisting of:

...

(c) gradually operating causes, including but not limited to atmospheric or climatic conditions, wet or dry rot, fungus, rust, corrosion, woodworm, moths, insects, vermin or pests”

And:

“Damage caused by or consisting of:

...

(b) wear, tear or depreciation or diminution in value”

Therefore, as the damage has been caused gradually, and/or by wear and tear, and I’m persuaded by the conclusions reached by Covea’s agent, I don’t think they have acted unfairly by declining the claim on the basis of the exclusions in the policy outlined above.

However, Mr B doesn’t appear to dispute the damage has occurred over time. But Mr B has referred to our website and how we may approach a complaint about a business applying a gradual damage exclusion and when we may say this is unfair. And Mr B has argued that he wasn’t aware of the damage occurring and did something about it as soon as he was.

However, firstly, we don’t take the same approach to wear and tear. This is because everything will wear out eventually and an insurance policy isn’t there to protect a consumer against that. And wear and tear was a part of the conclusions reached by Covea’s agent on the cause of damage, which I’m persuaded by.

Furthermore, the approach Mr B has referred to is where a policy is an insured perils policy (which Mr B's policy isn't, as I've explained above). The information Mr B has referred to on our website has a separate section which is relevant for all-risks policies, and these are considered differently. This is relevant as Mr B has an all-risks policy.

In summary, when considering all-risks policies, and gradual damage exclusions, we'd consider whether the damage was caused by something that would have been an insured event under an insured perils policy. So, for example, a one-off event of storm damage or a burst pipe that caused damage. And if the damage wasn't caused by what would have been an insured event under an insured perils policy, we'd instead just consider whether the damage was gradual or not.

Here there hasn't been a single one-off event that caused the damage, such as a single one-off event of storm, or a burst pipe. So, there wouldn't have been an insured event under an insured perils policy (which is how the investigator (incorrectly) considered things). Instead, the damage has been caused gradually and over time. So as the damage hasn't been caused by a one-off event, I don't think Covea has acted unfairly by relying on the wear and tear and gradual damage exclusions to decline the claim.

Whilst I appreciate it'll come as a disappointment to Mr B, unless anything changes as a result of the responses to my provisional decision, I won't be directing Covea to do anything further."

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

The responses to my provisional decision

Covea responded and said they had nothing to add.

Mr B also responded and said he had nothing further to add.

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. As neither party has provided anything in response to my provisional decision that would lead me to reach a different conclusion, my final decision remains the same as my provisional decision, and for the same reasons.

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 Mr B to accept or reject my decision before 3 October 2024.

Callum Milne
Ombudsman