

complaint

Mrs J is unhappy that her claim for damage to an outbuilding at her property was declined by Legal & General Insurance Limited (L&G).

background

An outbuilding at Mrs J's home was damaged during a storm. She made a claim for the damage, which was declined by L&G, as it considered that the cause was the condition of the building; not the storm.

L&G had the property inspected and its surveyor concluded that the building was not in a good state of repair. He stated that the rafter feet and wall plates were affected by woodworm and wet rot. L&G said that the damage was caused because of:

'wear and tear, coupled with poor maintenance of the structure and the lack of a closing door on the exposed elevation of the stables allowing the wind to enter and vortex around the underside of the roof structure. ... recent weather has merely highlighted pre-existing maintenance related issues and has been the occasion, but not the cause of damage viewed.'

Mrs J provided evidence that approximately six years before the damage happened, she had arranged for works to be completed to the roof of the building. This had involved replacing the asbestos roof sheets with new metal ones. The contractor who completed the works also confirmed that some roof timbers were replaced and the tie-down points for the roof were upgraded.

In relation to the comments about the lack of a door, Mrs J confirmed that in the 24 years that she had owned the building it never had a door.

I issued my provisional decision on this complaint on 14 May 2015. I initially noted that both parties had accepted that there was a storm on the night that Mrs J's outbuilding was damaged. Indeed the weather records indicated that the winds in the area were at times violent. I also noted that L&G's representative commented that Mrs J's home was very exposed.

Having reviewed the policy that Mrs J holds, I noted that 'storm' is one of the things that L&G insured her home and outbuildings against. As such, I explained that in order for L&G not to pay for the damage to Mrs J's outbuilding, it would need to show that one of the exclusions in the policy defeated the claim or that the storm was not the dominant cause of the damage.

L&G had not sought to defeat the claim by using either a general exclusion or one specific to storm. Rather, L&G had stated that the cause of the damage was not the storm, but rather the condition of the outbuilding. It said that the walls were in poor condition and that the roof plates and rafter feet were rotten and infested with woodworm.

Mrs J said that the building was in good condition and provided evidence that the roof had been overhauled approximately six years earlier. This overhaul involved replacing roof timbers, wall ties and a completely new roof covering and gable end.

I looked at the report from L&G's representative and the associated photographs. I pointed out that L&G would be aware that when it is claiming that there is pre-existing damage to a

building or item, we expect it to provide clear evidence to support its findings. In this case, if its representative had discovered woodworm and rot in the roof timbers and wall plates, I would have expected photographs to have been taken. Of the ten photographs that were taken, two did show decay to some of the roof timbers. However, there were no close-up photographs of the rotten timbers and it was not possible to see any woodworm. I also noted that many of the roof timbers appeared to be in good condition, as did the roof covering.

I believed that the evidence indicated that the outbuilding may have been in need of some maintenance. I, therefore, considered whether this maintenance need was the *dominant* reason for the damage happening.

It was clear from the weather data that there was a storm on the night of the damage. Given L&G's representative's comments about the property being very exposed, I also considered it likely that the property took the full brunt of the high winds. In light of the nature of the structure, with effectively an open side, I thought it plausible that the high winds could have caused damage to the building even if it was not in need of some maintenance.

In light of this, I didn't think it was possible to determine with any degree of certainty which was the dominant cause of the damage to the outbuilding. Indeed, I believed it likely that if it were not for a combination of the storm and the maintenance needs, it was entirely plausible that the damage would not have occurred or would have been less severe.

Overall, I considered that it would be a fair and reasonable outcome for L&G to pay a 50% of the cost of the repairs.

Our adjudicator considered that L&G had not handled this claim well and that it had caused Mrs J undue concern and stress. Having carefully considered this matter, I agreed and found that £150 was the appropriate amount to compensate Mrs J.

Although Mrs J confirmed receiving my provisional decision, she did not make any further comment.

L&G accepted my provisional decision.

my findings

I have considered all of the available evidence and arguments from the outset, the decide what is fair and reasonable in the circumstances of this complaint.

As neither party has disagreed with my findings, I see no reason to alter them.

my final decision

My final decision is that I uphold this complaint. In settlement I require Legal & General Insurance Limited to:

- Pay 50% of the cost of repairing Mrs J's outbuilding; and
- Pay Mrs J £150 for its poor handling of the claim.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs J to accept or reject my decision before 27 July 2015.

Derry Baxter
ombudsman