

## The complaint

Mr K, Miss S, Ms S and Miss S ('the complainants') complain about Hiscox Insurance Company Limited's decision to turn down their commercial insurance claim.

## What happened

The complainants hold a commercial property insurance policy with Hiscox. They made a claim after the floor collapsed in their property. Hiscox turned down the claim, as it said the damage had been caused by rot, which was excluded under the policy. Unhappy with this, the complainants brought a complaint to this Service about Hiscox's decision.

Our investigator didn't recommend the complaint be upheld. She agreed with Hiscox the evidence supported that the main cause of damage was rot. As the policy excluded this, she thought it had been reasonable for Hiscox to turn down the claim.

I issued a provisional decision on 14 November 2023. Here's what I said:

*'The policy covers damage to the insured property, which is known as an 'all-risks' policy. There's no dispute there's damage to the property, so for Hiscox to turn down the claim, it would need to show that an exclusion applies. The exclusion it has relied upon says that it will not make any payment for damage caused by rot.'*

*The usual approach of this Service is that if an insured couldn't have been reasonably aware of damage caused by rot, a fair outcome would be to say the insurer can't rely on the exclusion. However, this approach is only taken for standard insurance policies which cover specific insured perils (such as escape of water, fire etc).*

*We have a slightly different approach when an all-risks policy is held. We say an insured shouldn't be worse off than someone with a standard perils policy if they were both in the same situation. In other words, it wouldn't be fair for an insurer to turn down a claim for rot, if the damage caused by rot was unknown by the insured, and it would have been covered under a standard perils policy.*

*I've read the reports by both surveyors. They were both in agreement that the main cause of damage was a lack of ventilation in the subfloor void which had led to the timbers becoming rotten and the floor collapsing. So although I'm satisfied the complainants wouldn't have been aware of the damage happening, a lack of ventilation isn't an insured peril under a standard perils policy.*

*The complainants' surveyor also thought the dampness in the floor void may have been exacerbated by any potential leaks from the nearby gully and drain, as well as an unpaved yard which had water pooling in it. However, although the drain was found to be cracked, the drainage survey found no evidence of leaking and the water company said there was no internal flooding to the property. So there's no evidence to support that the rot was caused by any water leaking from the cracked drain.*

*Although the complainants maintain the cause of damage is an escape of water from the*

*courtyard of a neighbouring property, this isn't supported by the evidence from the two surveyors.*

*That means the complainants aren't any worse off than someone with a standard perils policy in the same situation, as damage by a lack of ventilation wouldn't be covered. So I find that it was fair for Hiscox to rely on the rot exclusion and turn down the claim.'*

I asked both parties if they had any further evidence or comments they wanted to make before I made a final decision.

Hiscox responded but had nothing further to add.

The complainants responded with the following main points:

- Their surveyor has carried out another inspection, and they've provided me with his report.
- They've provided photos of the neighbouring courtyard and say water escapes from this into their property's subfloor. They've also provided a photo of a wet skirting as evidence of this.
- They said the water company's report found there were no issues with the pipework because the pipes had been cleared by that time.

### **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.

The complainants maintain that water is escaping from the neighbouring courtyard into the subfloor of their property, and that this is the main cause of the collapsed floor.

The complainants' surveyor revisited the property on 23 November 2023. The surveyor made the following points:

- The rear wall within the floor void had been exposed, and this showed the whole of the wall to be damp.
- The dampness in the wall had transferred to the floor timbers resulting in extensive decay and collapse of the floor.
- The water was entering from the soil beneath the rear courtyard and was the principal cause of the decay and collapse of the floor. The lack of paving to the courtyard would allow a greater volume of water into the soil than would occur if the ground were paved with a runoff to a drain. And any leak in the drain serving the gully would also increase the amount of water entering the void.
- There had been no rainfall for several days, but the surveyor suspected a greater level of water entry during heavy and prolonged rainfall.
- The complainants have improved the ventilation to the floor void by clearing the two rear vents and providing new vents at the front, but this hadn't been sufficient to dry the void or the timbers. The surveyor said unless water was prevented from entering at the rear, conditions within the void were unlikely to improve.

It's not clear why the complainants' surveyor changed their mind about the primary cause of the damp in the subfloor. In their report of November 2022, they said the primary cause was the lack of ventilation to the floor void, and thought the floor had been deteriorating for many years because of the lack of ventilation. However, in their report of November 2023, they said the principal cause was water entering the soil beneath a neighbouring courtyard.

I appreciate a year had passed between the surveyor's inspections. And at the second inspection, the rear wall within the floor void was still damp, despite the ventilation being improved. Though given the level of excessive damp in the timbers and floor void observed at the first inspection, it seems unlikely that opening up some small vents alone would be enough to dry out the existing damp.

Nonetheless, I have considered whether the surveyor's new findings would change the outcome.

I've already explained this Service's usual approach to these cases in my provisional decision, so I won't repeat this in full here. But essentially, given that I'm satisfied the complainants were unaware of the rot before the floor collapsed, I would likely require Hiscox to pay the claim if this would have been covered under a standard perils policy.

The complainants say there's been an escape of water. But under a standard perils policy, an escape of water would usually need to come from a fixed heating system or water installation in the property. There's no evidence of that here.

Standard perils policies often cover accidental damage to underground drains and pipes. I noted previously that a nearby drain was found to be cracked, but the available evidence doesn't support that this drain was leaking and causing the damage.

Finally, standard perils policies also cover flood. But excessive water in the soil causing the wall and skirting to be damp wouldn't be considered a flood, even if I accepted that this was the main cause of the dampness rather than lack of ventilation.

I therefore remain satisfied that this claim wouldn't be covered if the complainants held a standard perils policy, and that it was reasonable for Hiscox to turn down the claim.

### **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 Mr K, Miss S, Ms S and Miss S to accept or reject my decision before 1 January 2024.

Chantelle Hurn-Ryan  
**Ombudsman**