

The complaint

Mr C and Mr W are unhappy Ageas Insurance Limited (Ageas) has declined a claim made under their landlord let property insurance policy.

Where I've referred to Ageas below, this also includes any actions or communication by the agent handling the claim on Ageas' behalf.

What happened

In February 2022 Mr C and Mr W reported a claim for storm damage to their let property to Ageas, their insurance provider. The tenant had made Mr C and Mr W aware of an ingress of water from the roof which had caused damage internally to the property.

There was a delay in Ageas inspecting the property and damage. Following the inspection, Ageas declined the claim for external damage to the roof as they said the cause was likely to be wear and tear. However, Ageas ultimately accepted the internal damage under the accidental damage cover on the policy.

Mr C and Mr W provided comments from their own roofer who said it was storm damage externally. But Ageas' claim decision remained the same. However, they accepted the claim had been delayed and the service had fallen short, and they paid £150 compensation.

Mr C and Mr W have since had their roof repaired at a cost of £5,520 and they want Ageas to cover the cost of this. As Mr C and Mr W remained unhappy with Ageas' position, they approached this service.

One of our investigators looked into things and upheld the complaint. She said that if Ageas was relying on a wear and tear exclusion to decline the claim, they needed to demonstrate the exclusion applied. But she didn't think they had, so she said they couldn't rely on the wear and tear exclusion to decline the claim. Therefore, she said Mr C and Mr W's claim should be covered, and Ageas should reimburse the costs they incurred in carrying out the roof repairs, with 8% simple interest added.

Additionally, the investigator said that as she was satisfied there was a valid storm damage claim for the external damage, the internal damage should also be dealt with as storm damage, rather than accidental damage.

The investigator also said she recognised the service fell short, but the impact of the damage would have been to the tenants rather than Mr C and Mr W. But for the inconvenience Mr C and Mr W had been caused, she thought the £150 compensation already paid by Ageas was fair, so she didn't recommend this be increased.

Ageas said they accepted that there was insufficient information to demonstrate wear and tear or that the exclusion applied, so they agreed they shouldn't have declined the claim on this basis.

However, Ageas also said the claim should still have been declined, but on the basis there was no evidence of storm damage externally, so Mr C and Mr W hadn't shown an insured event had occurred. So, they said the claim for the roof repairs wouldn't be covered in any event.

Our investigator maintained the claim should be covered. And as an agreement couldn't be reached, the case was passed to me to decide.

I was minded to reach a different outcome to our investigator, 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.

As I've reached a different outcome to our investigator, I'm issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.

Where a policy covers insured events such as fire, flood, or in this case storm damage, the onus is on the policyholder to show an insured event has occurred. If the policyholder shows an insured event has occurred, and the insurer wishes to decline the claim, the onus is then on the insurer to show an exclusion in the policy applies.

The investigator was persuaded an insured event had occurred, so they said the onus was then on Ageas to show the exclusion of wear and tear applied. Whilst this general principle is correct, I don't agree with the investigators conclusions that Ageas needs to show the exclusion to decline Mr C and Mr W's claim in these specific circumstances. I'll explain why.

I've considered the terms and conditions of Mr C and Mr W's policy. And it does cover storm damage. However, whilst Ageas declined the claim as they said it was likely wear and tear over time, there isn't actually an exclusion in the policy for wear and tear, either against the specific covered event of storm (only loss or damage caused by freezing or to fences, gates and hedges is) or in the general exclusions, which apply to the whole policy.

So, in principle if Mr C and Mr W had shown there was an insured event of storm damage, Ageas would need to deal with the claim, unless they could demonstrate an exclusion which was actually in the policy terms applied. However, I don't think Ageas needs to do anything further at this stage. I'll explain why.

When we consider complaints about storm damage claims, we take into account the following questions, and if any of the answers are no then it's likely a claim won't succeed:

- Were there storm conditions?*
- Is the damage consistent with storm type damage?*
- Was the storm the main or dominant cause of the damage?*

Our investigator said the answer to all three questions was 'yes' so she said the claim should be covered. However, I'm not minded to agree.

It isn't disputed that storm conditions occurred on or around the date of loss, so question one is satisfied. But I don't think question two or three can be answered 'yes' based on all the information and evidence provided by both parties.

Ageas inspected the roof and concluded:

"No storm damage noted to the roof above so wear and tear appears to be the cause"

This was the extent of the findings, so in itself isn't particularly persuasive as there is no detail or explanation. Ageas recognised this too, so asked for further information from the surveyor who carried out the inspection. And they explained:

"The property has a flat-top roof comprising of felt stuck down with bitumen and covered in chippings. On inspection it's clear that water is ingressing through the roof covering. A camera on a pole inspection did not reveal any signs of storm damage. The likely cause is a split in the felt (most likely under the chippings, but it was not possible to see this) allowing water to ingress into the bedroom underneath. The policyholder has had someone up to attempt to resolve it, they have stuck down further felt on top of the existing felt but this hasn't stopped the water ingress. The roof covering appears much older than the 10 years that most felt roofs are guaranteed for and we suspect a split in the felt is the cause of the damage. This is caused by expansion and contraction of the roof covering over a long period of time."

This again isn't overly persuasive, as they have said what could cause a possible water ingress, but it wasn't something they had seen specifically here. So, they have said more generally what could happen with a flat roof rather demonstrated what has actually happened.

However, I also don't think this demonstrates there is damage to the roof caused by a one-off event of storm – and that's the insured event being claimed for under the policy by Mr C and Mr W.

Ageas haven't been able to identify any damage as none was visible, hence why they have considered what may have happened instead. And the photos taken by Ageas at the time also don't show any storm related damage from what I've seen. I do note that a temporary repair to the edges of the roof was undertaken by Mr C and Mr W prior to this inspection, but there aren't other images of any one-off storm related damage.

After Ageas declined the claim, Mr C and Mr W provided comments from their own contractor who said:

“After looking at the roof on (the insured property address) the overall roof is in good condition for its age and I can see that there is extensive damage from a storm, and a large section of the roof area needs to be fixed. Please see my attached quote for the cost to repair but this may not fully cure the leak. So really it needs an extensive area to be repaired in order to fix the issue with the roof been (sic) flat.”

And their quote to repair said:

“Undertake extensive repairs to stop leak and improve condition of roof to prevent any future potential leaks.

Cost: £5600+VAT @ 20%”

Whilst this does say extensive storm damage, they haven’t said what damage, how it was damaged by a one-off storm, or any other information. And as I say, the only images I’ve seen don’t show any visible (or extensive) storm damage either. Instead, it says an extensive area needs to be repaired, and needs work to improve the condition and prevent future water ingress. This indicates that there is potentially a wider issue with the roof rather than being damaged by a single one-off storm – which is what the insurance policy covers.

When Mr C and Mr W first reported the claim, they also said:

“Can someone check it is the roof I think it must be as its old and coming up in places but better to be sure as I have no idea on roofs?”

So, this would also indicate that the roof is potentially suffering a longer-term historic issue, rather than a single one-off event of damage, caused by a single event of storm – which there needs to be for an insured event to have occurred.

Therefore, whilst it would be for Ageas to demonstrate an exclusion applied to decline a storm damage claim, this would only be relevant after it had been shown by Mr C and Mr W that there had been a one-off event of storm damage – as that’s the claimable insured event under their policy. But based on what I’ve seen, I don’t think that’s been shown, so an insured event hasn’t been demonstrated, and it isn’t for Ageas to show an exclusion applies in the absence of an insured event in the first place.

With this in mind, unless anything changes as a result of the response to my provisional decision, I’m minded to conclude Ageas has acted fairly by declining the claim for external damage.

Ageas has accepted the internal damage under the wider policy cover of accidental damage. Mr C and Mr W have said they think Ageas should be paying for this rather than being dealt with as a claim under their policy. They say this because there was a delay in Ageas’ handling of things, and they say damage occurred during this time.

However, I do need to take into account that the reason Mr C and Mr W first reported the claim was due to the tenant making them aware of an ingress of water from the roof causing damage internally. So, this wasn’t due to Ageas. And Mr C and Mr W carried out a temporary repair, which didn’t resolve the issue either.

With this in mind, I'm satisfied Ageas isn't solely responsible for the internal damage. A claim would have always been needed to be made as the water entering the property causing damage was what originally brought an issue with the roof to the attention of Mr C and Mr W. And in the absence of any external damage as a result of a one-off insured event of storm, I don't think Ageas is unreasonable in dealing with the internal damage as an accidental damage claim under the policy. And the cost of repairs has been covered by Ageas under this part of the policy.

Ageas recognised the service provided overall fell short. And I can see there were some delays in the initial inspection, claim progression and Mr C and Mr W had to regularly chase for updates on the claim. But I think the compensation Ageas has already paid for this is fair and reasonable, so I don't intend on directing them to increase this.

Mr C and Mr W also say that they were told the claim would be covered and the decision was changed several times. But from what I've seen, it appears the internal damage was declined and later accepted, but the external damage was declined and that decision was maintained. And instead, Ageas said what information would need to be provided in order for them to re-review things, rather than saying it would accept the claim regardless as long as a report was provided."

Therefore, I wasn't minded to uphold the complaint or to direct Ageas to do anything further.

The responses to my provisional decision

Ageas responded to the provisional decision and said they had nothing further to add.

Mr C and Mr W responded and said they were disappointed with the provisional decision. They said that the claim decision changed and question why Ageas had passed the claim to a third party to handle. They said Ageas didn't go onto the roof to inspect it, and instead relied on a camera on a pole, whereas their roofer actually went onto the roof. They also said that everyone accepts there was a storm, so surely this must be storm damage.

Mr C and Mr W said they had to carry out a temporary repair due to the time things were taking, and they wasted a lot of time contacting Ageas and don't think £150 compensation is sufficient. They also said there are differing opinions between Ageas and their own roofer, and as there were storm conditions, they should at least receive a percentage of the repair costs.

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 and the responses to it. Having done so, and whilst I appreciate it will come as a disappointment to Mr C and Mr W, my final decision remains the same as my provisional decision, and for the same reasons.

I explained our approach to storm damage claims and complaints in my provisional decision. We ask three questions, and if all answers are 'yes', then it's likely a claim will succeed. But if any are 'no', then unfortunately it won't.

I agree there were storm conditions (as does Ageas). However, for storm damage to be covered, the damage would need to be consistent with storm type damage, and the storm would need to be the dominant cause of the damage being claimed for. So just because a storm occurred, it doesn't mean that any damage discovered around that time is covered regardless.

I considered how the inspections were carried out and the comments provided by both Ageas' contractor and Mr C and Mr W's roofer and took this into account when reaching my provisional decision. And I explained why I didn't think all three storm questions could be answered 'yes', and my thoughts on this remain the same and for the same reasons, so I won't repeat that again in full here. For the reasons outlined in my provisional decision, having considered everything both parties provided, I'm satisfied that Ageas has acted fairly by declining the claim.

Mr C and Mr W have questioned why a third party handled matters on Ageas' behalf. This is fairly common practice across the insurance industry, insurers will often appoint experts to act on their behalf in assessing damage and validating a claim.

I do recognise the service Mr C and Mr W received from Ageas during the claim fell short, and whilst I acknowledge Mr C and Mr W don't think £150 compensation is sufficient, I'm still of the view this is fair and reasonable in all the circumstances, so I won't be directing Ageas to increase the amount.

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 C and Mr W to accept or reject my decision before 26 September 2023.

Callum Milne
Ombudsman