

Fact Sheet

Natural disasters: Flood and storm insurance claims



Home and contents insurance policies – flood and storm claims

Not all home and contents insurance policies cover damage caused by flooding created as a result of a significant storm. This is primarily because some policies cover 'rain' water but not 'flood' water. Rain water damage and flood water damage are not the same.

Disputes about whether a home and contents insurance policy covers the insured for loss or damage caused by water entering a home after a storm raise some common issues that the Financial Ombudsman Service (FOS) must assess.

Policy wording

The first question we consider is: What words are used to create any exclusion for flood or storm damage in the policy?

We look at:

- the certificate of insurance, and
- the policy document/product disclosure statement.

If an exclusion for flood or storm water damage exists, it should be set out in these documents.

Storm damage

Although there is no standard definition of 'storm', we generally take the view that a home flooded by rain water would normally be regarded as storm damaged.

If the policy covers 'storm' damage and the dispute is clearly about damage caused to a home flooded by rain water, we will then consider the extent of the cover for storm damage.

Flood damage

There is no standard definition of 'flood' damage in home and contents insurance policies.

Sometimes flood damage caused by rain water is included in the policy definition but other forms of flood water are excluded. The source of the water which flooded the home and caused the damage may become a critical factor as to whether or not the damage is covered under the policy.

Did the insurer (the financial services provider, or FSP) 'clearly inform' the insured that the policy does not provide flood cover?

Where a policy does not provide cover for flood damage, we will assess whether the FSP clearly informed the applicant that the policy did not extend to flood cover. This is because a general insurer is under a legal obligation to 'clearly inform' their customers of an exclusion in the insurance policy relating to flood damage.

When an FSP fails to comply with this requirement, the insurance contract (ie policy) becomes a legislatively 'prescribed contract'. That means certain terms become a part of the policy cover even though they were not in the policy itself. Flood damage is covered under a 'prescribed contract', therefore an FSP may be come liable for flood damage suffered notwithstanding the policy was not intended to cover flood damage.

In most cases an FSP will fulfil its responsibility to clearly inform the insured of the exclusion if it:

- provided the policy outlining the exclusion to the insured prior to the insured suffering the loss as a result of flood damage, and
- the policy exclusion for flood damage is clear and unambiguous.

What caused the damage?

If 'flood' water damage is excluded under the policy, then FOS will assess information about the cause of the damage.

We will ask was the water that entered the home and caused all of the damage:

- 'rain' water and therefore the damage may be covered by storm damage provisions of the policy, or
- 'flood' water and therefore the damage may not be covered by the policy because of the flood damage exclusion,

or did a mixture of both 'rain' and 'flood' water cause the damage? In this situation, we would assess:

- was it 'rain' water that *first* entered the home and caused all of the damage in which case all of the damage may be covered by the policy, or,
- was it 'rain' water that *first* entered the home and caused part of the damage followed by 'flood' water which caused further damage, in which case part of the damage may be covered by the policy and part may not.

When the damage is effectively caused by two concurrent causes, and one cause is covered under the policy (eg rain water damage) and the other cause is excluded (eg flood water damage), the courts have held that the FSP is entitled to deny liability.

However, where rain water first floods a home, followed by flood water at some later stage, the damage caused by the initial rain water will be covered provided this damage can be separated from the subsequent flood water damage. It is a question of what is the dominant or proximate cause of the damage.

Example

The storm damage to the home was caused by a mixture of flood water and rain water. The information available established that the flood water formed about 5% of the water in the house. This was partly because the flood water was too low to enter the home and could not have caused damage on its own.

Result

We found that rain water was the proximate or dominant cause of the damage because the flood water had a minimal or insignificant contribution to the loss.

Who has to prove how the damage was caused?

The insured has the onus of establishing, on the balance of probabilities, that they suffered damage caused by an event which was within the policy. This could be that the damage was caused by a storm (rather than a flood).

If the insured establishes that, on the face of the facts, the damage was caused by an event which was within the policy, the onus shifts to the FSP to prove, on the balance of probabilities, the claim falls within a policy exclusion. This could be that the damage was caused by a flood (rather than a storm).

Hydrologist's report

In some cases, the cause of the damage is clear, such as when water from a fast flowing river breaks its banks and enters a home built on the bank. The subsequent damage is most likely flood damage, not storm or rain water damage.

However, where the cause is less clear because of a combination of events, an expert report, normally provided by a hydrologist, may assist to establish whether the origin of the water is flood water or rain water, and therefore whether or not the damage is covered by the policy.

FOS takes into account a hydrologist's report to assess issues such as:

- the amount of rainfall that fell prior to the time when a creek or river broke its banks,
- where the creek/river broke its banks, and
- the path the flood water took from the time it broke its banks until it reached the home.

In some cases FOS, with the agreement of the parties, will appoint an independent hydrologist to report on the damage.

Often it is necessary for FOS to attend the location with the parties and hydrologists to gain a complete picture of the events leading to the claim.

Other information

Other information FOS would consider in assessing the source of the water depends on the facts of a case but could include:

- photo or video footage establishing that rain water entered the home, or
- eye witness accounts.

It is up to both parties to provide information about the source of the flooding so an assessment can be made by FOS based on all of the available information.

FOS may make additional inquiries of both the FSP and the insured in order to satisfy itself as to whether the events fall within the policy or within one of the exclusions of the policy.

Only when FOS is satisfied it is in a position to make a determination will a written determination be made.