

The complaint

Miss S has complained about the refusal of a claim under her home insurance policy with Aviva Insurance Limited.

What happened

In June 2023, Miss S contacted Aviva to make a claim for water damage to her property after her plumber found there were rotten joists and other damage from a water leak in her bathroom.

Aviva says that Miss S first told it that she had smelt damp in the bathroom and kitchen and noticed a damp patch on the wall. She said she had arranged a contractor to come out and remove wall tiles. Aviva says it asked Miss S to take photos of the bathroom before the tiles were removed, so it could assess how the damage occurred. Miss S did not provide any such photos. Aviva says that a report from Miss S's contractor said they'd been asked to attend by Miss S to investigate possible rising damp and that when they removed plasterboard they found rotten joists and rotting fungi as a result of an historic leak. Miss S said the contractor told her it was an old leak from the shower.

Aviva refused the claim, as it said that without photos of the condition of the bathroom before it was stripped out, it can't determine the cause of the damage was an insured event. Aviva also says that if it was due to damage to the grout and seals around the shower, which is what Miss S has said was likely the cause, then this would be wear and tear or lack of maintenance, which is excluded from cover.

Miss S is very unhappy with this. When she brought the complaint to us she said she was having her bathroom renovated for cosmetic reasons and because she has mobility issues, so wanted to make it more accessible and when the contractor removed the wall tiles, he found the water damage. She says she could not therefore have taken photos before this, as she was not aware there was a problem. Miss S also says that Aviva failed to attend her property and properly assess the damage, instead it has simply looked at photographs.

One of our Investigators looked into the matter. He did not think that Aviva had acted unfairly in refusing the claim, as he thought there was not enough evidence that the damage was caused by an insured event.

As the Investigator has been unable to resolve the complaint, it has been passed to me.

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.

Miss S's policy provides cover for various events that might cause damage to her home. The policy does not provide cover for every eventuality and the cover that is provided is subject to various terms and conditions. The policy says:

“In return for your premium, we will provide the cover shown in your schedule on the terms and conditions of this policy booklet for events happening during the period of insurance”.

One of the events that are covered in the policy is:

“water escaping from water tanks, pipes, equipment or fixed heating systems.”

The policy cover is also subject to the following general exclusion:

“Your duty to prevent loss or damage

You and any other person this insurance applies to must take all reasonable precautions to prevent accidents, loss or damage. You must keep property that is insured under your policy in good condition. Your policy is intended to cover you against unforeseen events like fire or theft. It does not cover wear and tear or damage which happens gradually over a period of time.”

It is for Miss S, as the claimant to establish that she has a valid claim under the policy. If she is able to establish, on the balance of probabilities, that an insured event happened, so in this case that there was an escape of water within the policy period which caused the damage she is claiming for, then Aviva must meet the claim unless it can establish, again on the balance of probabilities, that there is an exclusion that applies.

Miss S disputes that she got the contractor out to investigate a damp smell. She says she was having her bathroom renovated anyway and when the contractor removed some wall tiles he found the damage. However, I note Aviva’s record of the initial call made by Miss S in June 2023, states:

“I have a smell in the bathroom/kitchen and a damp stain on the wall. I have asked the plumber to have a look he has taken the tiles off to find a leak and when he took the tiles he noticed the plasterboard and the timber is all rotted. I wasn’t aware of this until the plumber investigated this. The plumber has taken tiles off on the flooring and noticed water leak. In the hallway the laminated flooring is lifting the water must have leaked from bathroom into the hallway. The plumber said the water is leaking from the shower. The plumber has isolated the water leak as much as he can. This water might be leaking from somewhere else.”

Miss S also said the shower had been fitted four years earlier. This is a contemporaneous note of the matters discussed in that call. Given this, I think it is likely Miss S did state she was aware of the damp smell and damp stain.

I also note that Miss S’s contractor’s report says they were called out in June 2023 to investigate possible rising damp in the bathroom and the kitchen. The report says they found there had been a leak in the past which had caused an outbreak of wood rotting fungi to attack partition walls and timbers. The contractor also said that when everything has been stripped out it would look for leaking pipework that might have caused this.

Miss S told Aviva that the contractor later confirmed there’d been a leak from failed sealant and grouting around the shower.

Aviva says that failed grout or sealant would be normal wear and tear and lack of maintenance, and that the damage has been caused gradually over time, neither of which are covered under the policy. Aviva also says that there are no photos to show the condition of the shower and bathroom before it was stripped out, that would help establish that the

damage was a result of a one-off escape of water. Aviva therefore says the exclusion set out above applies and there is no cover under the policy.

I agree with Aviva. The damage is extensive and has clearly in my opinion been happening gradually over time. And the only explanation of the source of the leak is failed grouting and sealant which would be a gradual deterioration from wear and tear and not a sudden event as required by the policy. So while the damage has been caused by a leak and Miss S may not have known the extent of the damage or the cause of it beforehand, the evidence suggests that this was a gradual damage caused by wear and tear. I do not therefore think there is cover under the escape of water section of the policy.

I've also considered whether there would be cover under the accidental damage section of the policy. However, even if the damage to Miss S's property was considered to be accidental, this section of cover has the following exclusion:

"we will not cover...

- *damage by wet or dry rot arising from any cause, except as a direct result of a claim we have already paid, and where repair or preventative action was carried out by a tradesperson we have approved.*
- *Wear and tear".*

As the damage is from wet rot and also likely caused by wear and tear of the grout and sealant, I do not consider that there is cover under this section of the policy either.

Having considered everything provided to me, I do not consider that Miss S has established that she has a valid claim under the policy and I think Aviva is entitled to refuse the claim, based on the exclusion above.

Miss S is also unhappy that Aviva has not attended to inspect the damage. I can see from the photos Miss S has provided that the damage is extensive but the extent of the damage is not in dispute. It is the cause of this damage that determines whether there is cover under the policy or not. And, as the shower and tiles have already been removed, I do not think it was unreasonable of Aviva to decide it did not need to attend the property, as I do not consider it would assist in establishing that the cause of the leak was an insured event.

Having considered everything provided to me, I do not consider that Aviva has acted unfairly or unreasonably in refusing Miss S's claim.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 7 December 2023.

Harriet McCarthy
Ombudsman