

The complaint

Ms C complains about Aviva Insurance Limited declining her buildings insurance claim for water ingress.

Aviva are the underwriters (insurers) of this policy. Part of this complaint concerns the actions of their appointed agents. Aviva have accepted they are accountable for the actions of their agents here, so for the purposes of my decision, any reference to Aviva should be interpreted as including the actions of their agents.

What happened

The background to this complaint is well known to both Ms C and Aviva. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

Ms C had a buildings insurance policy with Aviva for a number of years. Ms C has said that the damage to her property (water ingress) occurred as a result of a named storm in February 2022 which impacted her neighbour's property.

Ms C has told us Environmental Health concluded that her property was unfit for human habitation and served notice on the neighbouring property to repair the balcony area from which water was entering Ms C's property.

Ms C notified Aviva that she wanted to make a claim against the policy as water was entering her property. Aviva declined the claim as they said the damage had been occurring over a period of time and it was happening because of issues with the neighbour's property.

Unhappy with Aviva's response, Ms C complained to Aviva and then referred her complaint to our Service for an independent review. Our Investigator considered the complaint but recommended that it not be upheld. As Ms C remained unhappy, the complaint has been referred to me for a final decision.

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.

Although a number of issues have been raised, this decision only addresses those issues I consider to be materially relevant to this complaint. This isn't meant as a discourtesy to either party – it simply reflects the informal nature of our Service.

It's my opinion that the complex nature of this complaint, the numerous issues it raises about the responsibilities of the neighbouring property and the considerations that have been raised by Ms C *could* mean that our Service is not best placed to deal with it. But on balance, overall I see no good reason for our Service to not consider the complaint.

I'm sorry to hear of how these events have impacted Ms C. Having seen the relevant reports and photographs of her property, it's clear Ms C has been experiencing a very tough time and suffered extensive damage to her property.

It's important that I'm clear when I say the role of our Service when considering this complaint is to decide whether - on balance, Aviva have fairly considered this claim in line with the policy terms before taking the action they have. My decision will *only* be considering this claim - and not any previous claims made by either Ms C or her neighbour. For example, Ms C in her complaint form, has alleged that Aviva failed to take certain actions – such as appointing a surveyor to inspect her own property when responding to her neighbour's claim - and that this has had a negative impact on her. I can only consider Aviva's actions when responding to the claim Ms C made here.

Our Investigator previously shared our general approach to storm related complaints and I've kept it in mind when considering this complaint. <https://www.financial-ombudsman.org.uk/consumers/complaints-can-help/insurance/home-insurance/storm-damage>

Have Aviva fairly and reasonably considered this claim in line with the policy terms?

Aviva declined this claim for two main reasons; 1- the damage had not occurred as a result of an insured, one off event and 2- it had likely been happening over a period of time.

The starting point in any insurance claim is there has to be an insured event. For example – storm damage to Ms C's property. Although Ms C has said it was the storm that caused the damage, this was (it seems) directly to her neighbour's property – not directly hers. I find an important piece of evidence in this complaint to be the expert, independent third-party report which states:

“The main cause of water ingress to the ceiling of the master bedroom is the neighbour's balcony directly above. Since the original roof was blown off due to high winds, holding moisture/rainfall has been able to sit and penetrate through the tiled surface and work its way into the ceiling area over time and also the adjoining internal walls.”

The report highlights the likely cause of the water ingress. This particular policy is not intended to cover damage to another property that, in turn, impacts Ms C's property.

I acknowledge Ms C's point that a storm may have *indirectly* impacted her property here. But I've also noted that there were other issues with other general water ingress going back a few years before this claim was made. As I've concluded, on balance, that Aviva can fairly rely on there not being an insured event for the policy to respond to here, I've not considered the gradual causes (reason 2 for the claim decline) angle further.

In summary, I find that Aviva have fairly and reasonably considered this claim before declining it. This is because unfortunately, there is not an insured event here for the policy to respond to. For completeness, Aviva have also confirmed that the accidental damage caused by water ingress is not covered under this policy. I find this fair and in line with the policy terms.

This will not be the outcome that Ms C wanted and it brings to an end our Service's involvement in trying to informally resolve this dispute between her and Aviva. Ms C retains all other dispute resolution routes - such as taking legal advice.

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 Ms C to accept or reject my decision before 7 August 2023.

Daniel O'Shea
Ombudsman