

The complaint

Mrs B is unhappy a claim made under her landlord property insurance policy has been declined by Aviva Insurance Limited (Aviva).

What happened

Mrs B owns a property which was let out to tenants. She also had a landlord commercial property insurance policy with Aviva.

After the tenant's departure, Mrs B discovered multiple areas of damage to the property. This included water ingress causing damp as a result of a neighbouring wall which had collapsed. So, Mrs B contacted Aviva to make a claim.

Following ongoing communication between Mrs B and Aviva, agreement was reached on some of the claim, but the damage caused as a result of the collapsed neighbouring wall remained declined. So, Mrs B approached this service.

Our investigator didn't uphold the complaint as she was satisfied Aviva's claim decision was fair and reasonable and in line with the policy terms.

Mrs B didn't agree and asked for a final decision from an ombudsman.

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.

Mrs B has confirmed that the only outstanding claim she wants us to consider is the damp and damage which was being caused by the neighbour's collapsed wall. There were two previous issues which have been resolved. These were Aviva's application of 25+ policy excesses, and a claim for escape of water damage. Aviva also paid £250 compensation for claim delays.

As the complaint about the damage caused by the wall collapse and whether the insurance policy should cover it remains in dispute, my final decision will focus on this.

The issue being claimed for by Mrs B is water penetration causing damp to her property as a result of a collapsed neighbouring wall. Aviva has declined the claim based on there being no evidence of a specific one-off insured event, and they also say there is no wider accidental damage cover either due to a policy exclusion.

Mrs B's insurance policy with Aviva covers a number of specific single one-off unexpected events, known as insured events or perils, for example, fire, explosion, malicious acts or thefts. The policy also covers the wider event of accidental damage. But there are also exclusions which apply to the policy.

The onus is on Mrs B to show an insured event has occurred, and if she can demonstrate this, then Aviva needs to consider the claim, unless they can show an exclusion applies which means the claim isn't covered.

There has been extensive communication between Mrs B, Aviva, and the various surveyors, loss adjusters and experts involved. I don't intend on commenting on every event that occurred. I don't mean this as a discourtesy, but the crux of this complaint is relatively straightforward and that's what I'll focus my final decision on – has Mrs B shown an insured event has occurred, and if she has, has Aviva shown an exclusion applies.

Various inspections and comments have been made about what has caused the water penetration resulting in damp to occur following the collapse of the wall. And what caused the collapse in the first place.

But from what I've seen, I don't think these reports or comments, either from Aviva or Mrs B or her surveyor, have conclusively shown a one-off insured event or peril has occurred in line with the policy terms. Not least, the date of the collapse isn't known and could've been at any point over an extended period, potentially as long as two years before being discovered when the tenant vacated. And it's unclear whether it was a single ingress of water which caused the damp, or it accumulated over time. Generally, damp does take time to occur, and damage occurring gradually isn't covered. And for things like storm damage to be covered, a one-off single event of a storm would have needed to cause the damage being claimed for, rather than rainfall accumulating over an extended period of time.

In the absence of a clear report confirming an insured one-off event in line with the policy terms has caused the water penetration leading to damp, I'm not persuaded Mrs B has demonstrated a listed one-off insured event under her policy has occurred. So, I don't think Aviva acted unfairly here by not accepting the claim for damage.

If Mrs B is able to obtain any further evidence which demonstrates one of the specific insured perils under her policy has occurred and caused the damage being claimed for, she should submit this to Aviva to consider further.

Along with the specific listed one-off events covered under the policy (which I don't think has been shown has occurred), Mrs B's policy also covers the wider event of accidental damage. Accidental damage is defined in the policy as:

“Accidental damage

Damage caused suddenly and unexpectedly by an outside force.”

Mrs B said she thinks the wider accidental damage part of her policy should cover the damp as a result of water ingress. However, Aviva has declined to cover the claim under accidental damage based on the following exclusion in the policy terms and conditions:

“Section K

Accidental damage

This extension to cover applies only if it is shown on your schedule.

All other accidental damage to the buildings.

Exclusions

Maintenance and normal redecoration costs.

Damage excluded in Section A.

Damage caused by:

....

- *Damage caused by water entering the home regardless of how this happened (please note – certain water damage is covered under Section A, please refer to pages 12 and 13)”*

So, this exclusion says water entering the home regardless of how this happened is excluded under the accidental damage part of Mrs B's policy.

Mrs B has argued that this exclusion doesn't apply to her policy. When arguing this, she's referred to her policy schedule which outlines:

“Accidental Damage – Buildings (Extension to standard policy cover)

This extension to cover applies only if it is shown on the schedule.

All other Accidental damage to the Buildings.

Exclusions:

Maintenance and normal redecoration costs.

Damage excluded in other parts of the Buildings section.

Damage caused by:

- a. Wear and tear, settlement, shrinkage, vermin, insects, fungus, weather conditions or anything that happens gradually;*
- b. Faulty materials, design or workmanship;*
- c. Chewing, scratching, tearing or fouling by domestic animals;*
- d. Building renovations, alterations, extensions or repairs; or*
- e. Paying guests or tenants.*

The exclusion of damage caused by paying guests or tenants is deleted in respect of Landlord's or Holiday Home policies or where it has been declared and a policy has been so noted that paying guests and lodgers are received.”

Mrs B's policy was changed to Aviva (by her broker) in 2019, and she says that since then, the exclusion Aviva seeks to rely on about water entering the home (outlined above) isn't listed on her policy schedule, so she says Aviva can't decline the claim on the basis of this exclusion.

However, whilst it isn't listed individually in the schedule, it is contained in the full policy terms and conditions. The endorsement section on the schedule says it is an *extension to the standard policy cover*, not a replacement of it, or that it overrides or deletes all the remaining policy terms and conditions and exclusions.

Furthermore, the schedule isn't a document which is designed to be read in isolation, in fact the schedule also confirms that it needs to be read alongside the terms and conditions:

“Endorsements

To be read in conjunction with the policy wording”

The schedule is a summary of the policy cover. If as Mrs B argues, the three-page schedule is a standalone document confirming all the policy cover and exclusions, it would render the accompanying 48-page full policy terms and conditions redundant and would mean a 48-page schedule would be required instead to capture the same full cover and exclusions.

Also following the logic that Mrs B argues, this would mean that there are no exclusions for the buildings or contents parts of the policy, as none are listed in the schedule. However, there are numerous exclusions that apply to all different sections of the policy cover, and these are also found in the full policy terms – which the schedule says needs to be read in conjunction with it.

Our investigator said that if the intention was to include cover for water entering the property under accidental damage, despite what the full policy terms said specifically about excluding it, she would have expected this to be listed on the schedule in the endorsements confirming that exclusion had been deleted. This is exactly what happened on the schedule for the deletion of the damage caused by tenants’ exclusion (as outlined above). And I agree with what our investigator said here, that if despite the exclusion in the policy terms, Aviva wanted to include it, then I would have expected this to be confirmed. The fact it is silent in the schedule about this exclusion doesn’t mean that the exclusion is automatically deleted from the full policy terms.

With the above in mind, I’m satisfied Aviva has acted fairly and reasonably by declining this part of the claim on the basis a specific insured event hasn’t been demonstrated by Mrs B, and because there is an applicable exclusion under the wider accidental damage part of the policy. Therefore, I’m not going to direct Aviva to do anything further in relation to the claim for damage or pay any of the invoices Mrs B has provided for works completed or pay any further compensation.

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 Mrs B to accept or reject my decision before 11 August 2023.

Callum Milne
Ombudsman