

## **The complaint**

Ms M complains about Aviva Insurance Limited (Aviva) declining a claim under her home insurance policy, for damage from a leak at her property.

References to Aviva include their agents who provide services and deal with claims under the policy.

## **What happened**

In May 2021 Ms M noticed water coming through the kitchen ceiling of her property, which she thought was coming from the bathroom above. She contacted Aviva to tell them of the leak and lodge a claim. (Aviva had previously sent engineers on two occasions to investigate the course of the leak, but they were unable to identify the cause of the leak).

Aviva assigned a firm to trace the leak and they subsequently carried out a remote assessment of the bathroom using video to assess the bathroom and the likely cause of the leak. From the assessment, Aviva declined the claim because they thought the leak was due to damaged and broken tiles and damaged grout to tiled areas of the bath/shower area of the bathroom. As such, they considered this to be a wear and tear and maintenance issue, which wouldn't be covered under the policy.

Ms M then contacted a local handyman to investigate the problem, who first renewed the sealant around the bath and the grout between the bathroom tiles. But the leak continued. The handyman visited the property again to further investigate the problem. He diagnosed the issue as a hole in a pipe leading to the shower.

Ms M contacted Aviva again to tell them of the repair work. Aviva then carried out a further video assessment of the bathroom. From the assessment Aviva noticed discolouration and cracks in the sealant grout and tiles around the bath and shower. Ms M said the discolouration and cracks had happened in the period since the handyman repaired them. Based on this, Aviva again declined Ms M's claim, on the grounds the repair work hadn't been carried out correctly or to a satisfactory standard.

Unhappy at her claim again being declined, Ms M complained to Aviva. They didn't uphold the complaint. In their final response, they confirmed the earlier decisions to decline the claim. They said the evidence didn't indicate a one-off insured event and the issue related to a wear and tear issue. This conclusion was confirmed after review of the further information supplied by Ms M and a digital assessment. Aviva confirmed Ms M's policy didn't cover damage caused by wear and tear, faulty workmanship or maintenance.

Ms M then complained to this service. She disagreed with Aviva's decision to decline her claim on the grounds that the damage was caused by poor maintenance. She was also unhappy Aviva's engineers couldn't diagnose the problem, so she had to engage her own engineer. She's had to pay a significant amount to fix the problem and repair the damage (and the work still wasn't complete). She wanted Aviva to accept her claim and pay for the cost of fixing the damage.

Our investigator upheld Ms M's complaint. Based on a report from Ms M's handyman and accompanying photographs, the investigator concluded the leak had been caused by a hole in a pipe leading to the shower valve, causing water to leak when the valve was set in a certain position. So, the damage from the leak wasn't due to issues with the sealant, tiles or grouting and so wasn't an issue of wear and tear, or maintenance. She thought Aviva should carry out a physical inspection of Ms M's property and assess the claim against the policy terms and conditions.

Aviva disagreed with the investigator's conclusions and requested an ombudsman review the complaint. They challenged the evidence provided by Ms M's handyman, particularly the apparent dates of the photographs being much earlier than the subsequent report. They also referred to their second video assessment and the issues about discolouration and cracks in the sealant and grouting Ms M said the handyman had renewed and repaired. They also requested further information about the handyman's report and why Ms M hadn't provided it (and the accompanying photographs) at the second time she contacted them about her claim.

### **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.

My role here is to decide whether Aviva have acted fairly towards Ms M.

The key issue in Ms M's complaint is whether Aviva have acted fairly in declining her claim for the damage caused to her property from the leak in the bathroom. Ms M says they unfairly declined her claim on the grounds of the wear and tear, maintenance and faulty workmanship exclusions. She says, referring to the report from the handyman she engaged, that the issue was a leak in a pipe leading to the shower valve. As such, she thinks Aviva should accept her claim and reimburse her for the cost of the repair and reinstatement work. For their part, Aviva say the cause of the damage (the leak) was due to issues with the sealant, grouting and tiles in Ms M's bathroom. They base this on video assessments of the bathroom carried out on two occasions. Based on these assessments, they say the damage wouldn't be covered under the policy as it's due to wear and tear, maintenance and poor workmanship.

Having considered both views carefully, including the information and evidence provided by both parties, on balance I've concluded Aviva haven't acted fairly in declining Ms M's claim on the grounds of the exclusions they've sought to rely on. I'll set out why I've come to that conclusion, together with what I think Aviva should do to put things right.

On the issue of the likely cause of the leak and the resulting damage, I've considered the report from Ms M's handyman, together with the associated photographs of the pipe he diagnosed as the cause of the leak. While Aviva have raised questions about the difference in the date of the photographs (July 2021) as opposed to the date of the handyman's report (October 2021) on balance, as the photographs do indicate they were taken following a physical inspection of the bathroom and affected areas, then I'm persuaded the leak was more likely to have been the result of a hole in the pipe mentioned by the handyman. Also, that would only have been apparent after removing parts of the bathroom to access the pipes behind. So, it wouldn't have been clear either from the initial visits by Aviva's engineers (who didn't seek to gain access to areas behind/under panels or walls) or by Aviva's subsequent video assessments.

In coming to this conclusion, I've also considered the grounds put forward by Aviva for declining the claim. In their final response, they refer to the policy not covering damage

caused by wear and tear, faulty workmanship or maintenance. The relevant policy terms are included under the *General exclusions* section which states:

*“We won’t pay for:*

*1. Gradually occurring damage*

- wear and tear (natural and predictable damage which happens over time or due to normal use or ageing) this includes, but is not limited to, gradual weathering, the effect of light, deterioration or depreciation*
- any other gradually occurring damage*

*4. Faulty material or workmanship*

*Damage caused by faulty or unsuitable materials, design or poor workmanship.”*

As a general principle, where a claim is made under a policy, in the first instance it's for the policyholder to show there's been an insured event covered by the policy. In this case, it's clear there has been damage caused by an escape of water (which would be an insured event under the policy). But the issue here is the cause of the damage. Where an insurer seeks to rely on exclusions to decline a claim (as is the case here) the onus is on them to show that the exclusions apply. Based on my conclusion about the most likely cause of the leak, then I don't think Aviva have done enough to show the exclusions apply. Particularly as they haven't carried out a physical inspection of the property.

While coming to this conclusion, I've also considered Aviva's points about the difference between the date of the photographs (July 2021) and the subsequent report (October 2021). Ms M says she engaged the handyman when Aviva first declined the claim (June 2021). This would be consistent with the photographs being taken in July 2021. And that she asked for a report when Aviva declined the claim for a second time (October 2021). I don't think that's implausible. And while there are some discrepancies in the details of the report, I don't think they invalidate it and as a local handyman it's not unreasonable that some of the details aren't as comprehensive as they might otherwise be from a larger firm.

On the point about the discolouration and cracks in the sealant and grouting observed by Aviva in their second video assessment, to the extent these suggest issues with the quality of the work carried out, I'd expect that to form part of any assessment of Ms M's claim (but not as a reason to decline the claim in its entirety).

Turning to what I think Aviva need to do to put things right, as I've concluded they haven't acted fairly in using the policy exclusions to decline Ms M's claim, I think they should assess the claim in accordance with the remaining terms and conditions of the policy. This would include the information provided by Ms M, including that from her handyman. I'd also expect Aviva to consider the nature, extent and quality of the work carried out to repair the damage (as well as the evidence that supports it) as they would for any other claim

### **My final decision**

For the reasons set out above, my final decision is that I uphold Ms M's complaint in part. I require Aviva Insurance Limited to:

- assess the claim in accordance with the remaining terms and conditions of the policy (without the exclusions for wear and tear, maintenance and poor workmanship).

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 22 September 2022.

Paul King  
**Ombudsman**