

The complaint

I, a charity, has complained about their property insurer Aviva Insurance Limited because it declined their claim made when a ceiling in their building came down.

What happened

I discovered damage at their property on 13 December 2021. They made a claim to Aviva on their “all-risks” policy. Aviva noted there was rot in ceiling timbers and no sign of storm damage to the roof. It said the damage had occurred gradually, for which there is an exclusion on the policy. So it declined I’s claim. I complained to us.

Our Investigator noted the report of damage and the policy exclusion. So he felt Aviva had acted fairly and reasonably. I disagreed and the complaint was passed for an Ombudsman’s consideration. I felt it should be upheld and issued a provisional decision explaining my views in the following findings:

“I has an “all-risks” policy with Aviva which essentially covers it for all damage ‘howsoever’ caused. Unless the damage is excluded. Here the damage, at least in part, does seem to have occurred gradually. I say that as there is rot in the ceiling timbers and rot, by its nature, is a gradual process. And the Aviva policy does exclude gradual damage. However, that does not mean it is fair and reasonable for Aviva to decline I’s claim.

This service doesn’t always find it fair and reasonable for an insurer to rely on a strict assessment of the policy terms in settling a claim. In respect of exclusions for damage which occurs gradually, including any for rot, we expect insurers to take into account whether the policyholder could or should reasonably have known that damage was occurring. If they reasonably didn’t know then we would find an insurer’s reliance on the exclusion to decline liability for the claim unfair and unreasonable.

Here I note from the relevant reports that the ceiling was constructed in such a way that I wouldn’t have known there was any issue going on above it. In short water was causing damage to the upper surface of the ceiling and to the timbers in the void but wasn’t penetrating through to the interior surface of the ceiling. So no-one using the room would have known there was a problem, until the ceiling came down. And I note that I did do maintenance on the property, so I don’t think they neglected things. Nothing I’ve seen makes me think that I did or should’ve known that damage was occurring at their property. It follows that I think Aviva’s decline of I’s claim was unfair and unreasonable. It should now accept the claim and settle it in line with the remaining terms and conditions of the policy – to be clear that is any terms that do not relate to gradual damage of any sort. If settlement is made by a cash payment (rather than Aviva completing any outstanding repairs), interest should be added from the date of loss until payment is made.*

As I understand it, I has done some work already, largely to make the building safe from further damage. Aviva will need to take the costs I has incurred in this respect into account when settling the claim. It may well be that Aviva might have paid less for that work to be done – but it won’t be able to rely on what it would have cost it to do that work when making settlement for I’s outlay. For any part of the claim settlement that relates to I’s costs, interest

on each reimbursed sum will have to be paid from the date the cost was incurred until reimbursement is made.

I has been unable to use the office since, they have said staff have had to travel elsewhere to a different place of work. Clearly this has been an inconvenience for I. And it may also have caused I to incur extra costs. I think Aviva should pay I £250 compensation for the inconvenience it has caused. And if I can show Aviva that they have incurred extra costs due to not being able to use the damaged office, Aviva should reimburse those, plus interest.”*

I provided further evidence regarding the collapse of the ceiling. Aviva said it wouldn't be objecting to my findings.

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.

I thank I for the further evidence provided. This does support what it had said previously. And I note Aviva is not objecting to my findings. As such my provisional findings are now those of this, my final decision.

Putting things right

I require Aviva to:

- Settle I's claim for damage in line with the remaining terms and conditions of the policy.
- If that is done by a cash payment, add interest* to any settlement, from the date of loss to the date the settlement is paid.
- Except for where any settlement relates to reimbursing costs I incurred for building work, then interest* should be applied from the date each reimbursed cost was incurred by I until reimbursement is made.
- Pay I £250 compensation for inconvenience.
- Reimburse I any costs incurred due to not being able to use their office because of the damage, subject to proof being provided by I, with interest* to be added to any reimbursed sum from the date the cost was incurred until payment is made.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Aviva to take off tax from this interest. If asked, it must give I a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Aviva Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask I to accept or reject my decision before 9 November 2022.

Fiona Robinson

Ombudsman