DRN-3906375

The complaint

Miss G complains about Aviva Insurance Limited's (Aviva) decision to decline her claim for water damage and avoid her buildings insurance policy.

What happened

In February 2022 Miss G contacted Aviva to report water damage in her home. Based on the information she initially provided, a settlement payment of £4,000 was offered. Miss G declined this offer as the quotes she obtained for the repairs cost more.

Aviva subsequently arranged for an inspection by a loss adjustor. The assessor concluded there were signs of damage having been caused gradually, which occurred prior to inception of the policy. The claim was declined in May 2022 based on this assessment. Aviva says the property appeared unoccupied at the time of the inspection, which was confirmed by Miss G in October 2022 when discussing her complaint over the phone.

Miss G says tenants were living in the property, but they left in December 2021. After they left, she says work began to refurbish the property starting with the bathroom. The bathroom fixtures had been taken out in preparation for this. Miss G says the property was occupied but she had to move back in with her parents in March 2022 when the leak was discovered. Miss G disputed Aviva's decline decision. She says she chased for an update on several occasions without receiving a substantive response.

When Aviva contacted Miss G in October 2022 to discuss her complaint it concluded the property had been unoccupied when she took out the policy online. It says its underwriters wouldn't have offered cover had it known this. Aviva explained it would cancel the policy back to inception and refund the premiums.

Miss G didn't think this was fair and contacted our service. Our investigator upheld her complaint. He says Aviva acted fairly when declining the claim based on its assessor's view of a gradual cause. He didn't think Miss G had shown that an insured event had occurred. But he didn't think Aviva acted fairly when avoiding the policy back to inception. He says Miss G had intended living at the property and so it should remove all records of the cancellation.

Our investigator says Aviva provided a poor standard of service when responding to Miss G's appeal and should pay £150 to compensate her.

Miss G didn't accept this outcome and asked for an ombudsman to consider her complaint.

It has been passed to me to decide.

I issued a provisional decision in January 2023 explaining that I was intending to partially uphold Miss G's complaint. Here's what I said:

provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

My intention is to uphold Miss G's complaint in part. I'm sorry to disappoint her as this isn't the outcome she had hoped for. But I will explain why I think my decision is fair.

It's for the policyholder to show that they have suffered an insured loss (fire, theft etc.). If they are able to do this then, generally speaking, the insurer should pay the claim. This is unless it can reasonably rely on a policy exclusion not to.

In this case Aviva says that Miss G hasn't been able to show that the cause of the damage she reported is covered by her policy. It says she hasn't shown that there was a leaking pipe or otherwise demonstrated the cause of the damage.

I've read the report from the inspection Aviva arranged towards the end of March 2022. This says Miss G's contractor had removed the shower tray, which revealed that the floor was rotten. The report says the contractor thought a leak had originated with the waste pipe in the bathroom. The loss adjustor refers to clear signs of failed sealant and grout issues with the bathroom wall tiles. He says this issue would've been evident prior to the bathroom works because of the extent of the damage throughout the property.

The loss adjustor says there are signs of rot in the hallway cupboard, and signs of dampness in the kitchen with some blistering apparent on a wall. He also says there are clear signs of rot to the joists, chipboard and plasterboard walls indicating the leak was ongoing for a period of time.

Miss G's policy terms, under the heading "General Exclusions" say:

"1. Gradually occurring damage

• wear and tear (natural and predictable damage which happens overtime 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 (except subsidence, heave and landslip)."

I haven't seen evidence to support Miss G's contractor's view that a leaking waste pipe caused the damage. Based on the loss adjustor's report there are signs of a problem that has been ongoing for a period of time. He highlights deteriorated grouting and sealant. I haven't seen photos of the deteriorated sealant. But the images taken of the grouting do clearly show signs of deterioration. I understand it wasn't possible to see the condition of the sealant in more detail around the shower tray, as this had already been removed by Miss G's contractor.

Based on this evidence I don't think it was unreasonable for Aviva to decline Miss G's claim. The cause hasn't been shown to be one that is covered under the policy terms. In addition, the problem was identified in February 2022 shortly after the policy was incepted. The indication is the damage was pre-existing at this time and that signs of the damage would've been apparent in several areas of the property.

However, this is essentially a moot point. Aviva says no insurance cover would've been provided had Miss G told it the property was unoccupied at the outset. Because of this it is avoiding the policy (treating it as though it never existed) back to inception and refunding the premiums. I've thought about whether this is fair.

The relevant law here is The Consumer Insurance (Disclosure and Representations)

Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

If a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer must show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out several considerations for deciding whether the consumer failed to take reasonable care. The remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Aviva thinks Miss G failed to take reasonable care not to make a misrepresentation when she completed her online application for its insurance cover. Specifically, that she confirmed the property was occupied when it wasn't.

I've looked at screen shots showing the customer journey Miss G followed. This includes the question, "is this house your main home?". The responses include, permanent main residence, weekend only, weekday only, holiday home, and unoccupied. A subsequent question asks if the property will be left empty for more than 30 consecutive days.

Miss G didn't select unoccupied. Aviva says this was the correct option as she wasn't living in the property at the time. I note Miss G disputes this. She says she was living at the property and so she had answered the questions correctly.

I've listened to two call recordings provided by Aviva. These took place in October 2022 when its agent called Miss G to first discuss her complaint, and later to confirm it was avoiding the policy because of the information she had given.

In the first call Miss G explains that the property was let out to tenants, but they left in December 2021. She says she intended moving back in but was doing some refurbishment work starting with the bathroom. Aviva's agent asks Miss G, "you hadn't moved back in". Miss G responds that she didn't want to move straight back in, the property was being done up, starting with the bathroom, and moving on from there.

During the second call, after Miss G is told about the avoidance decision, she says she had to move back with her mum and dad when work began on the bathroom. But she maintains that the property was occupied. Miss G also talks about having lived in the property with her boyfriend at one point, but she doesn't say this was at the time the policy with Aviva was agreed.

I've looked at the definition of the word, "unoccupied" from Miss G's policy terms. It says:

"Not lived in by you or anyone who has your permission or doesn't contain enough furniture for normal living purposes. 'Lived in' means that normal living activities like bathing, cooking and sleeping are regularly carried out in the home."

The terms also say Miss G should inform Aviva if she is leaving her home unoccupied for more than the number of days shown in her schedule. Her policy schedule confirms that the property cannot be unoccupied for more than 30 consecutive days.

Miss G's policy was incepted on 12 January 2022. The loss claim was recorded at the end of February. From the call recordings Miss G is clear that she didn't want to move in straight after the tenants had left and that the refurbishment work started with the bathroom. This is

when the damage was first noticed. This was over six weeks after the policy was put in force. I think it's clear from the call recordings that Miss G didn't intend moving in until after this work had been completed. As works to the bathroom had only just begun at the end of February, this shows Miss G wouldn't have been occupying the property for well in excess of 30 consecutive days after the policy started. In the call recording she makes it clear she wasn't living in the property before this work began.

In her submissions to Aviva and our service Miss G argues that she was occupying the property. She says utility bills had been returned to her name and the previous tenants had vacated the property in December 2021. She says there was some food and utensils in the cupboards, but she had removed her tv as it was expensive and didn't want to leave it in the property after she moved back in with her parents once the damage was found. She also says her clothes were removed from the property to avoid them smelling because of the damp in the property.

Aviva points to its loss adjustor's report that says there was no sign the property was occupied during the inspection visit. It says there was limited furniture present in the property, an empty fridge that was unplugged and no tv.

I note Miss G's explanation that she had moved out of the property when the damage was found. But this is at odds with the information she gave to Aviva's agent when discussing the matter in October 2022. I think the agent was clear when asking if Miss G had moved back into the property after the tenants had moved out. The responses Miss G gave confirm that she hadn't.

Aviva has provided underwriting information to show that it wouldn't have offered Miss G a policy based on the correct information. So, I'm satisfied that Miss G's misrepresentation was a qualifying one. Aviva says it will be refunding the premiums Miss G paid in full. This fits with a careless misrepresentation having been made under the CIDRA rules. In the circumstances described I think this is reasonable. I don't think Miss G deliberately or recklessly provided inaccurate information. But I don't think she was occupying the property when she applied for the policy. She may have intended to move in at some point, but it's clear she didn't meet the policy definition of occupying the property at the time cover was first provided.

I've looked at the actions Aviva can take in accordance with CIDRA. Aviva can refund the premium paid where a misrepresentation is careless if no claim has been made against the policy. It declined Miss G's claim, so I think it acted fairly when confirming it would refund the premiums.

Finally, I've thought about the standard of service Miss G experienced when she appealed Aviva's initial decision to decline her claim. This decision was confirmed in May 2022. I can see that she contacted Aviva on a number of occasions and was advised the matter had been referred to its underwriting team. It hasn't been explained why Miss G didn't receive a response to her appeal sooner. It appears the onus was on her to make contact to chase a response. I don't think Aviva provided the service Miss G should reasonably expect in this instance. This has been frustrating for her as well as causing worry and inconvenience. I agree with our investigator's findings that Aviva should pay £150 compensation to Miss G to acknowledge this point.

In summary I don't think Aviva treated Miss G unfairly when relying on its policy terms to decline her claim and avoid her policy back to inception with a refund of premiums. But I think it's handling of her later appeal was poor and it should pay Miss G £150 to recognise this.

I said I was intending to uphold this complaint in part and Aviva should:

- pay Miss G £150 compensation for the frustration, worry and inconvenience it caused.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Aviva responded to say Miss G raised a complaint about the decision to decline her claim. It says it identified the underwriting issue, which later resulted in the policy being avoided. Aviva says Miss G didn't make clear that any worry or inconvenience was to be reviewed as part of her complaint.

Aviva says the investigation of the claim was with its special investigators. It says it takes time to complete a full review of the circumstances. It says Miss G had advised her property was on the market for sale. It doesn't think the time it took to investigate the matter caused material distress or inconvenience. Aviva also says the handling of Miss G's later complaint appeal was handled within accepted timescales and she was kept updated.

Miss G responded to say that she was happy with the outcome in my provisional decision. But she makes several points for me to consider. She says there were no signs of rot or leaks anywhere until the bathroom work started. Also, that there were no signs of damp in the hallway cupboard as there was "*Gyproc*" on the wall. Miss G says the damage only became apparent when the work had started and everything started getting pulled back.

Miss G has provided an email from the letting company she used. She highlights that no signs of dampness were noticed during their inspections or by the tenants. Miss G says the blistering referred to by Aviva in the kitchen is incorrect. She says this is from when she removed a cupboard and painted over a wall that hadn't been plastered.

Miss G has sent a number of photos to support her comments, including images of her shower, kitchen, flooring, cupboard and washing machine. In addition to a floor plan and the email from her letting agent.

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 acknowledge Aviva's view that it doesn't think Miss G has been caused worry or inconvenience as a result of its handling of the claim or complaint. I've thought about whether its further comments warrant a change to my provisional findings.

In my provisional decision I said that Aviva confirmed it was declining Miss G's claim in May 2022. She appealed its decision and was told the matter had been referred to Aviva's underwriting team for consideration. Miss G wasn't kept informed of what was happening and had to initiate contact on several occasions. It was some months later before she was told the decline decision was to be maintained. It's also apparent from the submissions Miss G provided that she chased for progressed on a number of occasions prior to receiving the initial decline decision. I can see some of these emails weren't responded to.

In my provisional decision I said it wasn't fair that the onus was on Miss G to have to chase for updates on her claim and her appeal. I said the standard of service Aviva provided in this respect was below that Miss G should reasonably expect. Miss G was worried and caused inconvenience. This was made worse because of Aviva's delay in handling her appeal and

its lack of communication. I note its comments, but I'm able to consider the impact any service failings in its claim handling have had on Miss G in my decision. In these circumstances I think it's fair that Aviva pays £150 compensation to acknowledge these points.

I note Miss G's comments that there were no signs of dampness within her property. She says this is supported by the letting agent's email, in which it says no dampness was noticed at its inspections or reported by the tenants. She also points to evidence of dampness highlighted by Aviva that she didn't think was related to the claim. And I acknowledge her point that the dampness in the hallway cupboard was obscured by the Gyproc that was in place.

I've thought carefully about Miss G's further comments and looked at the photos she provided in support of her arguments. But I don't think this warrants a change to my provisional decision. The evidence indicates there was a problem with water ingress that had been ongoing for some time. There is evidence of deterioration to the grouting in the bathroom, which is where Aviva's expert felt the issue originated. However, the cause of the water ingress couldn't be confirmed any further as the bathroom was stripped out before Aviva inspected the damage.

I also pointed out that how the damage was caused was a moot point. This is because Miss G's property was unoccupied at the time the policy was taken out. Had this been known Aviva has shown that it wouldn't have provided cover at all.

Having considered all of this I'm not persuaded to change my decision. I don't think Aviva acted unfairly when relying on its policy terms to decline Miss G's claim and avoid her policy. But it did treat her unfairly in the standard of service it provided so should pay her £150 compensation.

My final decision

My final decision is that I uphold Miss G's complaint in part. Aviva Insurance Services should:

- pay Miss G £150 compensation for the frustration, worry and inconvenience it caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 21 February 2023.

Mike Waldron
Ombudsman