

The complaint

Miss C is unhappy with how Aviva Insurance Limited handled a claim made on her home insurance following an escape of water.

Reference to Aviva includes its appointed agents and representatives.

What happened

Miss C had a home insurance policy with Aviva that covered her buildings and contents. In August 2021 a mains water pipe leak was discovered. Miss C reported it to Aviva, who appointed a surveyor. The pipe had been repaired by the end of the month.

A report was compiled in September 2021 which said the escape of water had spread under the entire timber suspended floor of the property. The walls closest to the leak were showing 100% moisture when tested, and Miss C noticed mould growing on leather items.

By the end of September 2021 a specialist drying company had installed equipment in the front two bedrooms. Shortly after Miss C said the property filled with a wet fog and she found water dripping from the underside of the radiators. She reported it to the drying contractor, but was told that was normal. A week later the contractor told Aviva the damp was far more extensive than first thought and requested a more specialist drying company be brought in. Air moisture level readings were taken periodically in these first few weeks, with fairly low amounts detected initially and the levels increasing by the final reading.

A second drying contractor started work at the end of October 2022, and Miss C says she was told by them the first company hadn't set up the equipment correctly. She complained mould had developed as a result of the property being left damp for weeks, which had made her unwell. Miss C also reported the theft of some cash from the house to the police, and believed the first drying contractor was the perpetrator. During a site meeting she told Aviva she had started staying with a neighbour, as she was worried the conditions in her home were making her ill.

Following that meeting Aviva offered Miss C alternative accommodation (AA). But due to delays in sourcing somewhere suitable, and the incorrect furniture size being ordered, Miss C wasn't able to move into a rented property until the start of December 2021. In the meantime she had to move out of the place she was staying and find somewhere else at very short notice. Aviva offered to pay a disturbance allowance of £25 per day for the period she was without AA, but Miss C rejected that offer saying it didn't cover her out of pocket expenses. Aviva also said it would arrange for the second drying contractor to undertake a cleaning regime to ensure against any mould growth.

In November 2021 Aviva's surveyor assessed the site in order to compile a scope of works. The report described minor mould growth appearing on the skirting boards, kitchen units and plinths, as well as the fitted wardrobe. It said if the proper cleaning regime been implemented there shouldn't be mould appearing now.

Over the next couple of months Miss C says when she visited the property she noticed the drying machine wasn't working and displayed an error. She also questioned why there were so few machines in the property, and says she was told by the contractor they were all out on other jobs. In January 2022 Miss C instructed a report which said extensive further

drying, with far more equipment was needed – yet Aviva's drying contractor declared the property dry and issued the certificate two weeks later. Miss C says the meter still gave damp readings – but those were dismissed by the contractor as inaccurate.

Miss C appointed her own loss assessor (LA) to help with the claim, as she was struggling with her health. She disputed the drying certificate and said high moisture levels remained, but Aviva maintained the property was dry so the claim stalled. Miss C also issued a personal injury claim through her solicitors for the health problems she attributed to mould.

In April 2022 Aviva instructed another report, which returned damp readings throughout the house and elevated salt sample levels. From that Aviva concluded there was likely an underlying damp problem at the property, which it said needed to be sorted before any restoration work could begin. In response Miss C commissioned her own report in May 2022 which found no evidence of an existing damp problem, with the damp proof course (DPC) still intact and in good condition. Her surveyor pointed to damp being localised around plaster that hadn't been removed during the initial drying process. A separate report into the mould level was also sent to Aviva, with high levels of airborne spores found in the bedroom.

Aviva maintained its position that the property had been dry in January 2022, and an existing problem had caused the damp to return. It therefore didn't consider it was responsible for the damage caused by exposure to damp conditions to the kitchen, boiler cupboard, carpets and wardrobe. Aviva also refuted the personal injury claim, on the grounds that the moisture readings taken in the property while Miss C was living there didn't suggest it was uninhabitable.

In August 2022 Miss C paid for another company to dry out the property – and a new certificate was issued after two weeks. After that the restoration work began, and the contents claim started to be assessed. Aviva authorised the cleaning of the belongings that had been in storage, and a lot was deemed beyond economic repair. The insurer eventually agreed to pay 75% towards the cost of replacing the kitchen (though not the other damaged fittings), and wanted to settle all the contents for £5,000 – but Miss C didn't accept that offer.

There was a dispute about a specific joist, with Aviva's agent saying it could be repaired and Miss C's surveyor concluding it needed to be replaced. To avoid delaying the claim further, Miss C paid for the replacement of the timber herself. There was also disagreement over whether tiles damaged in the bathroom by the last drying company, when they were removed as part of the drying process, should be covered by Aviva as part of the claim.

Aviva didn't send a response to a complaint, with referral rights to our service, due to the legal claim issued. But after contacting her MP, Miss C referred the matter to us. She was able to move back into her home in March 2023, but there still wasn't agreement on what should be covered under the insurance claim – and any legal action was stayed while our service investigated.

An investigator here thought the complaint should be upheld. In her view the claim had been delayed significantly – with failings in the drying process, rather than an underlying damp problem, being the cause. Those failings had resulted in considerable stress and worry, over a sustained period, for Miss C – as she'd been displaced from her home. The investigator thought £2,500 compensation was fair to recognise the substantial impact the mistakes in handling the claim had caused. She also recommended Aviva covered damage caused to Miss C's kitchen, boiler cupboard, carpets, wardrobe, electrical sockets, and contents – by the prolonged exposure to damp conditions. There were other costs arising from the mistakes which the investigator believed should be reimbursed – including the loss assessor's fees and the cost of any reports Miss C had instructed.

Aviva disagreed with the investigator's opinion, and said it thought the report conducted in April 2022 was most persuasive. The insurer maintained the salt readings, and the property being damp again after being declared dry in January 2022, were indications of an underlying damp problem. Aviva also didn't believe it had caused delays.

As no agreement could be reached, the complaint was passed 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.

Having done so, I'm upholding Miss C's complaint – and for much the same reasons given by the investigator. I've explained my rationale below, but before I do I want to acknowledge that I've summarised events in my own words and in far less detail than what's been provided to me. If I've not mentioned anything it's not because I haven't considered it – I've carefully reviewed all the evidence submitted by both parties. Instead I've focussed on the key elements of the timeline, and what I consider to be the crux of the complaint – in line with our remit as a quick and informal alternative to the courts. No discourtesy is meant by that, nor is it my intention to minimise in any way what Miss C went through.

Miss C has stayed legal proceedings while she awaits our outcome – and any claim for personal injury (including other losses arising from it, like earnings) is better directed to the courts. I don't have the same remit as a court, which has the ability to properly interrogate any medical evidence (like calling expert witnesses). There are also recent snagging issues and queries over contents which aren't included within the scope of this complaint. Anything not commented on in this decision would need to be directed to Aviva as a complaint in the first instance, along with any evidence Miss C has to support her claim. That's so Aviva has the opportunity to set out its position in writing on whether it is prepared to cover them. Our service can then review those matters separately if no agreement can be reached.

A claim of this nature, where restoration works were required to pretty much every room in the house, was always likely to be a very disruptive and stressful experience for Miss C. Ultimately the mains leak resulted in the conditions that gave rise to the claim. But I've had to decide what impact Aviva has caused over and above what might reasonably be expected, through its handling. Bearing that in mind, I consider there are three main questions for me to decide in reaching a fair conclusion to this dispute:

- Do I find Aviva acted reasonably by concluding there was likely an underlying damp problem at the property?
- How does the answer to that first question inform what should be covered by Aviva?
- Were there any instances where the claim wasn't handled as it should have been by Aviva or its agents – and if so, what impact did that have on Miss C, and what does fair compensation look like in the circumstances?

Evidence for an underlying damp issue

Aviva has pointed to comments in the initial report conducted by the first contractor as indications of an existing damp problem. Specifically it has said photos indicated that under the floorboards there was evidence of rot, and Aviva believe that suggests there was an underlying issue. But the September 2021 report says the joists and wall plate were saturated where there has been a lot of water on the floor void at some stage, and there were signs of wet rot (which has the potential to turn into dry rot). I've found various sources online suggesting wet rot can set in after seven to ten days, so I don't think evidence of rot is necessarily a persuasive indication of an issue that pre-exists this escape of water. The September 2021 report also makes no such finding.

Aviva says the surveyor stated at the time *"we have carried out a thermal imaging inspection and found that there is 100% readings to some of the area and some other areas 20% reading (but are quite far from the point of the EOW) so may be some underlying damp*

issues". I haven't seen any evidence of that comment, other than the loss adjuster quoting it, and there is no mention of it in the surveyor's report. But it seems logical to me that the walls further from the escape of water would contain lower readings. The statement also appears to be speculative, as it isn't backed up by any other specific supporting evidence. The surveyor's actual report doesn't draw that conclusion either, so I don't find that statement persuasive in evidencing there was a pre-existing damp problem.

The loss adjuster has also interpreted what the surveyor said in September 2021 about there being no clear visible damage (except to the bathroom floor), to mean there had been a breach of the damp proof course (DPC). In his view, that was the only way the moisture could have penetrated above ground level, particularly as there was no obvious residual damage to the floor to indicate water had been above it. But, again, the report instructed by Aviva doesn't make that finding – it just said the thermal images showed the damp tracking up the walls through capillary action at the base. Miss C has provided a surveyor's report which said the DPC was found to be intact and in good condition, with no evidence dampness is penetrating or bridging it. That surveyor said in his opinion there is no reason for dampness to be present in the walls above DPC level other than as a result of the leaking pipe and the subsequent build-up of water in the sub-floor void. Miss C also provided a statement from a surveyor that visited the property a year before the escape of water, and he found no evidence of damp during his visit.

Aviva has pointed to some other indicators, like rusty nails behind the skirting boards and some mould appearing on leather boots. I accept that screws being rusted indicates damp within the wall, but I'm not persuaded that necessarily points to a pre-existing problem. By the time surveyor visited, water had travelled up the walls through capillary action and it was many weeks on from the leak. So there would have been time for rust to develop. I also don't think an isolated case of mould is particularly conclusive either – as the boots could have been wet from being outside, and then stored in a way (like in a cupboard) that promoted mould growth. Aviva has pointed to an email from Miss C, which it believes is an admission from her of an existing issue – but I haven't interpreted it that way. All Miss C's email says is she accepts that any pre-existing damp discovered during repairs would be outside of the scope of the claim. I don't consider that acceptance of what might be found should be read to imply some awareness on her part of an underlying issue – she, along with everyone else, just didn't know what might be uncovered when things were stripped back.

All of the above reasons put forward by Aviva are to my mind quite speculative, and I haven't found them to be backed up with supporting evidence or indicative of there likely being a pre-existing damp problem. The main piece of expert evidence Aviva has relied on is the salt report compiled in April 2022. Those results indicated that all of the material sampled was 'dry' with no free moisture. The report also gave the salt levels sampled from around the property, with most having none or trace amounts. But two (out of the six) samples returned low, moderate or heavy levels of chloride and nitrate. The appendix of the report explained that salts in masonry may arise from ground water and be present as a result of long term rising dampness – or could arise occasionally from other sources.

I think it's important to note that the report itself doesn't conclude there's likely to be rising damp at Miss C's property – it talks in very general terms, and recognises there could be other reasons to explain the presence of salts in the masonry. Miss C lives in a coastal area, and higher levels of salts in the air can lead to increased amounts being absorbed into plaster. She also lives in a hard water area – so the tap water will likely naturally contain a higher level of dissolved salts too. However, no baseline readings for the levels of salts in either the walls or the tap water was included in the report commissioned by Aviva. That means the insurer has no idea whether those readings are in fact elevated. Also, given there was extensive flooding of the solum, it seems likely the leaked mains water mixed with the

ground water anyway – which, again, would explain a salt presence if the walls were saturated for an extended period by that water.

One last issue to consider is that the property was damp for so long, and became damp again after it was declared dry in January 2022. Aviva believes that indicates an existing damp problem, but I disagree. There appears to be differing opinions on whether the drying equipment was installed correctly initially (or indeed whether the correct equipment was used). Miss C says she was told by the second drying company the first one hadn't approached it correctly, and Aviva recorded in its claim notes that the meeting on site at the end of October 2021 was "due to issues identified by [the new drying contractor]". But I haven't seen anything directly from the second company explaining what it thought the first agent had done wrong, or anything from the first defending its actions. Aviva also referred things internally to its own technical manager, who thought the equipment evidenced in the photographs didn't need a separate dehumidifier. But, again, I haven't got anything definitive from Aviva on what the right approach to drying out this property was. What we do know is the first specialist drying contractor said the job was too big for it, and requested a 'more specialist' drying company be brought in to take over.

I'm sure a great deal of water was leaked under the property, but I haven't been provided with anything from Aviva that persuades this was a particularly complex or unusual escape of water claim. So I've seen no reason why a specialist drying company wouldn't have been able to handle the drying out of Miss C's home, if approached correctly. Even if there was an underlying damp problem, and the problems later returned, it still ought to have been able to dry the property initially. The first contractor's moisture readings show the damp situation was gradually worsening even after weeks of attempted invention. So those readings, coupled with its own admission it wasn't able to handle the task, persuade me that the first drying company Aviva instructed didn't do a satisfactory job. That resulted in the property being damp for five additional weeks by the time the second company took over.

It then took the second company a further 14 weeks of drying before it declared the property dry in January 2022. I've not seen anything suggesting that the drying process was expected to take that long, or any explanation for why it did. Miss C said she returned to the property during this period to find the equipment displaying an error code, and queried why only one piece of drying equipment was present with the contractor. That's supported by the surveyor's report, commissioned by Miss C a couple of weeks before the drying certificate was issued – which said the property needed further intensive drying for another three weeks with substantially more equipment (including heaters) than was present. That didn't happen, yet the property was declared dry two weeks later.

Aviva instructed a scope of works in November 2021, around three weeks after the second drying contractor had started. That report said that mould was beginning to appear in various places around the property, and that wouldn't be the case if surfaces had been properly sanitised. Due to Miss C's concerns over there being mould in her home, Aviva said extensive fumigation would be the first thing its new contractor would do following the site visit in October 2021. So, the report in November 2022, combined with the length of time it took the second drying company to dry the property, ought to have been big red flags that the claim wasn't progressing as it should do. Meaning the insurer ought to have intervened a few weeks into the new contractor's tenure, particularly given the failings of its first agent. The report Miss C provided in January 2022 really just confirmed what she had been telling Aviva – that the second company wasn't getting to grips with the drying out needed. A later report provided by Miss C, from May 2022, also showed that the highest damp readings were from plaster that ought to have been removed during the first strip out (like from around the plug sockets) – again, suggesting a failure on the part of Aviva's contractors. I'm surprised then, given everything it knew, that Aviva accepted the property was dry at the end of January 2022 (as I'm not satisfied it was) – and I consider it made a mistake by doing so.

Overall, I've not found Aviva's arguments that there was an underlying damp problem persuasive. Most of its points are speculative, and I consider the report provided by Miss C's surveyor more persuasive, particularly when combined with the testimony of the one that visited the year before the claim. That expert report drew specific conclusions from supporting evidence about the causes of the damage in Miss C's property – none of Aviva's reports made such findings. She also later arranged for the property to be dried out by her own contractor, and that was achieved in two weeks – with no recurrence of damp. So, taking that into account along with everything I've said above, I find that Aviva's agents didn't satisfactorily dry the property, and caused it to be left damp for almost a year.

What should be covered by Aviva

Taking account of what I've said above, I consider the mould that developed at the property was result of it being left damp for almost a year – and I've decided that Aviva is responsible for that failing. Miss C's home being damp for so long has also resulted in damage to contents, wooden fixtures and electrics.

That means Aviva should cover the full cost of replacing the kitchen, as I consider it's been damaged by the damp environment. The same goes for the boiler cupboard and wardrobe – so the costs of replacing those should also be met by the insurer, because the damage to them resulted from Aviva's mistakes. Considering the comments from the surveyor's report in May 2022, that there was moisture present for almost a year in the plaster that should have been removed around the electrical sockets, Aviva should pay the cost to replace those. Miss C's carpets should also be replaced by Aviva, as I consider it's likely the damp environment which resulted in the damage to them.

I've reviewed the damage to tiles and sanitaryware in the bathroom, and consider Aviva should settle those associated costs in full too. I accept it was caused by Miss C's drying contractor, and Aviva's permission wasn't sought before that work was undertaken. But I consider Aviva is liable for that work, as its contractors hadn't satisfactorily dried the property. Unfortunately the nature of tiles and sanitaryware means they can be damaged when removing, and I've not seen anything to suggest their removal wasn't attempted carefully. It's a cost linked to the insured event that was covered under the policy, so I find the insurer should pay for the repairs. Aviva had the opportunity to organise the repairs or request alternative quotes, so it should now reimburse whatever Miss C paid for the work.

Miss C paid to have the property dried herself, and that ought to have been covered under her policy. Given I don't think it was reasonable for Aviva to conclude there was an underlying damp problem, and the failings of drying contractors I highlighted, I consider Aviva should reimburse those costs. Aviva should also pay the costs of all the reports and surveys Miss C instructed. I don't think any of those would have been necessary, but for Aviva's failures on the claim. The insurer had enough from its own evidence and reports to determine works at the property weren't being carried out correctly, and so ought to have stepped in. I don't think it would have been necessary for Miss C to employ a loss assessor either if the claim had been managed reasonably by Aviva – so it should reimburse her all of those costs too.

Miss C paid to have a particular joist replaced, and I've considered what both parties have provided me in respect of that work. Having done so I'm not persuaded the joist couldn't have been repaired. Miss C decided to proceed with replacing it, and I understand her reasons for doing so. But I don't think Aviva are required to cover the cost of doing that, as it amounts to betterment if the joist was repairable (which it looks like it was). It then falls to Miss C to cover the 'betterment' bit of that work, and Aviva to pay up to the amount that was covered under the policy. So, given Miss C has already paid for the replacement, Aviva

should reimburse Miss C the estimated cost of repairing the joist it was liable for – so that she only covers the difference.

Miss C should supply Aviva with proof of payment for anything I've asked it to pay her back for. Any reimbursement payments I've directed Aviva to make should have 8% simple interest yearly applied to them, to compensate Miss C for the time she was deprived of those funds. Interest should be calculated from the date Miss C paid them until the date Aviva refunds her. If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss C how much it's taken off. It should also give Miss C a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

As I mentioned at the outset there are lots of other aspects which haven't been settled – including the extent of Aviva's liability for Miss C's contents, and the more recent snagging issues. When considering those issues Aviva must bear in mind my findings in this decision (i.e. that her belongings were left for an extensive period in a damp environment). If damage has arisen as a result of the mistakes I've highlighted, then the associated costs should be covered by Aviva irrespective of any policy limits. Miss C should formally submit her claim for anything that she believes the insurer should pay for as a result of its mistakes, along with other costs arising from the claim (like her electricity bills and council tax).

Miss C alleged that one of Aviva's contractors stole money from her. She reported the matter to the police, and I believe they are best placed to deal with that allegation. I've not seen enough to persuade me that Aviva are at fault in the matter and should reimburse Miss C what she says she lost. Aviva should, however, pay the £25 per day disturbance allowance it promised her during the site visit in October 2022, for the time she was without AA. I also think it's fair that amount is deducted from the claim excess. Miss C has said that offer doesn't cover her costs during that period, but I haven't been supplied anything to support that assertion. It's also a standard entitlement under the policy.

That said, I don't think that amount covers the impact on Miss C of Aviva's failings in respect of the arranging the AA. Whilst it rightly picked up that she was in a vulnerable position during the site visit in October 2022, it took almost six weeks to move her into a rental property. That seems to have been down to mistakes by Aviva in ordering the wrong size of furniture, and (according to the insurer) some delays in Miss C finding something suitable. However, I'm holding Aviva accountable for the full period of delay. That's because the insurer said it would have acted quicker if the situation was urgent, and I consider it was. Aviva knew she felt forced to stay with a neighbour due to her belief mould in the property was making her ill, and the insurer commented in its notes that the circumstances appeared to be affecting her mental health. Given Aviva acknowledged Miss C's vulnerability and was aware of the precariousness of her living situation, it should have ensured she was rehoused far quicker than she was. I've considered the impact of that mistake as part of my overall deliberations on compensation.

Putting things right

Based on the failings described above, Miss C was displaced from her home for around a year longer than she should have been. She also had to watch her home and possessions deteriorate gradually in a damp and mouldy environment. The stress of that affected Miss C significantly – and she has described at length the impact the claim has had on her health. Aviva has suggested that some of the delay was down to Miss C not agreeing to a way forward at certain points – but that was ultimately because she disagreed with the assertion there was an underlying damp problem, and I've found she was right.

I haven't seen enough to say Aviva caused Miss C mould related health problems, and I've already mentioned that any personal injury claim would be better suited to court. But Miss C was certainly worried that the conditions in her home were making her ill. Given what I've said about the handling of the claim by the first contractor, I think that was a legitimate concern – and Aviva is responsible for that distress. So, whilst I can't say Aviva is entirely responsible for all the health problems Miss C has sadly had to deal with, it has certainly contributed to them – by causing her substantial amounts of added stress and disruption to her life over a prolonged period. Added to that is all of the time taken in dealing with the claim, over the period it should have concluded – though I accept she had help with that after a certain point, from the loss assessor.

I've also thought about the period Miss C was effectively homeless, before the AA could be sorted – where she had to stay with various people. I know Aviva believes the property was habitable at that point, based on air moisture readings, but Miss C was extremely worried for her health. I've said Aviva are accountable for that concern, due to the handling of the claim up until that point by its agent. So I don't think returning to her property was viable, and I've already explained why I consider swifter action was needed from Aviva during this period.

The effect of Aviva's mistakes on Miss C has unfortunately been particularly severe in this case. I've considered our published guidance on making awards for distress or inconvenience, and I find the description and examples for our second highest award range (covering compensation of 'up to £5,000') commensurate with the impact Aviva are accountable for. Taking stock of everything, I've decided £2,500 is the fair amount required to put right the distress caused to Miss C.

My final decision

My final decision is I uphold Miss C's complaint about Aviva Insurance Limited, and direct the insurer to:

- reimburse all the costs, plus 8% simple interest, as I've directed in my decision above; and
- pay Miss C £2,500 compensation for the distress and inconvenience caused, less any amount it has already paid her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 11 August 2023.

Ryan Miles
Ombudsman