

## The complaint

Ms C is complaining that Aviva Insurance Limited has declined a claim she made on a block commercial property insurance policy.

## What happened

Ms C was selling a flat she owned and on the day of completion the estate agent and buyer informed her that the shower screen in the property had shattered. So she contacted Aviva to claim on the property insurance policy that covered the building. Aviva instructed a third-party company – who I shall refer to as M – to handle the claim.

M ultimately declined the claim as it said the pattern of the breakage was consistent with Nickel Sulphide Inclusions (NSI). It said NSI causes failure over time where it will slowly grow and in time cause enough localised stress in the surrounding glass to cause the screen to crack and spontaneously fail in the way it did. It said the policy doesn't cover *"Damage caused by or consisting of inherent vice latent defect gradual deterioration wear and tear."*

Ms C didn't agree with M's decision, so referred her complaint to this Service. Our investigator upheld this complaint as she didn't think Aviva had given us enough to show that the above exclusion applied. She said that the policy simply said it covered *"damage to fixed glass"* and it defined damage as *"damage shall mean physical loss destruction or damage"*. She said Ms C had demonstrated that the shower screen was damaged, so it was for Aviva to show that an exclusion clause applied. And she didn't think the report went into detail why M believed the cause was NSI and didn't provide sufficient supporting evidence. So she thought Aviva should reconsider the claim.

Aviva didn't agree with the investigator as it queried what else could have caused the damage as it highlighted that Ms C had said there wasn't anyone present at the property when the damage occurred.

As Aviva didn't agree with the investigator, the complaint's been passed to me to decide.

## 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've decided to uphold this complaint for the same reasons as the investigator. I'll now explain why.

The terms of the policy set out the following cover:

### ***"Glass Cover***

*The Policy extends to indemnify the Insured in respect of Damage to fixed glass".*

So it was Ms C's responsibility to show that there was damage to fixed glass, which is what she has done. It would then fall upon Aviva to demonstrate there's a policy exclusion or

breach of condition that means the claim isn't covered. Aviva says that the damage is caused by NSI which has caused a gradual deterioration of the glass over time which has caused the glass to shatter. So it's relying on the following exclusion to decline the claim:

*"Section 1 - Property Damage and Section 2 - Loss of Revenue do not cover*

*1. Damage caused by or consisting of*

*a) inherent vice latent defect gradual deterioration wear and tear or its own faulty or defective design or materials but this shall not exclude subsequent Damage which itself results from a cause not otherwise excluded"*

However, I agree with the investigator that it's for Aviva to demonstrate that this exclusion applies. I do not dispute that NSI may be the cause of the damage. But I'm conscious that M said in its claim decline letter that NSI *could* be the cause. So it hasn't been definitive in its conclusion and it seems to have been what Aviva and M think is the cause. But it hasn't provided anything to support this.

I recognise that it's queried what else could have caused the damage. But it's not for Ms C to show the exclusion clause doesn't apply – it's for Aviva to show it does apply. And, as I've said, I don't think Aviva has given us enough to show that it does. So I think Aviva should settle the claim in line with the terms of the policy. Ms C has paid to replace the shower screen and repair the consequential damage caused to the shower tray, which I also think is covered by the policy. So I think Aviva should refund what she's paid, less any applicable excess.

### **My final decision**

For the reasons I've set out above, it's my final decision that I uphold this complaint. I require Aviva Insurance Limited to refund the amount Ms C paid to replace the shower screen and repair the consequential damage caused to the shower tray less any applicable excess. It should also pay 8% simple interest of this amount from when Ms C paid it until she gets it back. If Aviva Insurance Limited thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms C how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 20 November 2023.

Guy Mitchell

**Ombudsman**