

The complaint

Mr B and Mrs B complain about Aviva Insurance Limited and the decision to decline their insurance claim for flood damage.

Mr B has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any actions taken or comments made by either Mr B or Mrs B as “Mr B” throughout the decision.

What happened

Mr B held a home insurance policy, underwritten by Aviva. Unfortunately, on 20 October 2021, there was significantly heavy rainfall in their area. And this rainfall led to significant ground water in the garden, which also housed a culvert that linked to neighbouring properties. Around the same time, Mr B noticed cracking to his ground floor tiles, and moisture in his ground floor carpets. And he felt this damage had been caused by water ingress linked directly to the ground water caused by the significant rainfall. So, he contacted Aviva to make a claim on his insurance policy to repair this damage, on the basis it had been caused by a flood.

Aviva instructed an independent surveyor, who I’ll refer to as “D” to inspect the damage at Mr B’s home in November 2021. D compiled a report and after reviewing its contents, Aviva took the decision to decline the claim. Aviva didn’t think a flood had caused the damage and instead, it felt the damage had been caused by saturation penetrating from the ground upwards. And Aviva thought this saturation had been caused due to the location of the airbricks, which they felt failed to meet NHBC regulations. So, they didn’t think the claim was one that fell within the policy terms and conditions.

Mr B didn’t agree with this. And he advised Aviva he intended to obtain his own independent report to dispute this decision. Aviva acknowledged this and agreed to review any report Mr B provided. But while this report was being compiled, Aviva investigated Mr B’s concerns about their initial claim decision as a complaint. And Aviva issued a final response, expressing their belief that their decision to decline the claim was a fair one. Mr B remained unhappy with this, so he referred the complaint to us, in line with the signposting information Aviva included.

Our investigator looked into the complaint and upheld it. They considered the report Mr B provided from an independent contractor he commissioned, who I’ll refer to as “P”. And they noted P’s findings that, as the floor had dried significantly between D’s initial report and their attendance in February 2022, P felt it was most likely the moisture had been caused by a flash flood in October 2021. So, our investigator didn’t think Aviva had declined the claim fairly and they recommended that Aviva reassess the claim against the remaining terms and conditions of the policy, on the basis there was an insured event and that the airbricks weren’t the cause of the water ingress.

Mr B accepted this recommendation. But Aviva didn’t. And they provided further comments and evidence centring around the installation of the airbricks, and the new patio that was laid in 2019. Our investigator obtained further information from both Aviva and Mr B about these

issues, which included and was not limited to confirmation from the builder who installed Mr B's new airbricks in November 2021, explaining they had been installed in the same position as those present at the time of the flood.

Our investigator considered all of the new information provided. And having done so, their view remained the same. They didn't think the work Mr B had done at the property between November 2021 and February 2022 changed the drainage so substantially that it invalidated the conclusions of P. And they weren't satisfied that the position of the airbricks led to the flood damage present in Mr B's home. So, they reemphasised their recommendation that Aviva reassess the claim in line with the remaining terms of the policy, as well as covering the cost of the report P compiled.

Mr B accepted this recommendation. But Aviva didn't, making the same arguments as those they made to our investigators initial view. As Aviva didn't agree, the complaint has been passed to me for a 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 the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to set out exactly what I've considered. I note that, at the time that Aviva issued their final response to Mr B's complaint supporting their decision to decline the claim, they weren't in possession of P's full report. But I note before Aviva issued their final response, they agreed to consider any report Mr B would commission and provide. And despite this, they continued to issue a final response when this hadn't been provided.

And I also note that they have since been provided with this report by our service, and their position remains that they believe their decision to decline the claim was a fair one. So, I'm satisfied they've been able to consider this, and provide any comments they deem necessary. Because of this, I have considered all the information and events that link directly to the claim decline, whether that be before, or after, the final response of the complaint, as I don't think I would be able to consider the decline fairly and completely without doing so.

When considering a claim decline, I'd first expect a business to ensure there was an insured event in line with the policy terms and conditions. So, I've done the same. In this situation, Mr B feels there was a flood that caused the damage to his home. Whereas Aviva didn't think this was the case as set out in the declination letter, and subsequent complaint response.

Our service's approach for considering whether a flood was present is to first consider the policy terms and conditions, to understand whether these terms define what the business believes to be a flood. In this situation, I can't see that the policy defines the term "flood". So, where this is the case, our service then looks to decide whether we reasonably think there was a flood, based on the individual circumstances of the claim. And to be clear, we follow the approach that a flood doesn't definitively have to be sudden or violent event. Instead, we recognise that a flood can occur when water enters, or builds up, in a property slowly and steadily, and doesn't necessarily need to be caused by a natural event. The key factor we consider is whether water has built up, regardless of where the water has come from.

And crucially, this water doesn't need to enter the property over the ground. It can enter from any direction, including underneath.

In this situation, I've seen the weather reports from Mr B's area at the time. And this shows that on 20 October 2021, in the days immediately preceding the first time he noticed the damage, there was 10mm per hour of rainfall. And our service would deem this to be significantly heavy. To support this, in the two weeks before this date, the highest rainfall per hour recorded was no more than 1.2mm. So, I think it's clear that in Mr B's area, there was a sudden event of significantly greater rainfall than usual.

And I think it's reasonable to assume this would've created significantly more surface water, and the ground itself would've most likely struggled to absorb this. And I've also considered this against the fact Mr B had a culvert in his garden that linked to neighbouring properties, and the fact his local area has a flood action group, which suggests large amounts of rainfall over a short period of time was more likely to impact his property.

I've also then considered the report compiled by P. And this shows that between October 2021 and their visit in February 2022, a forced drying operation had been in effect at Mr B's property. And they noted that this operation had been effective in significantly lowering the moisture readings in the concrete and screed of Mr B's living room and study. So, P explained that this supported their belief that a flash flood had taken place in October 2021 as, if the water ingress was happening gradually due to a defect, then due to the time of year, they wouldn't have expected the drying operation to have worked. And I think this is a reasonable conclusion to make.

I want to reassure Aviva I have also considered D's report, that they relied on when initially declining the claim. But I don't think the findings of this report state explicitly that a flood didn't occur. Instead, it makes clear the water saturation was penetrating upwards from below the concrete floor. And while I do understand how Aviva may have interpreted this information, based on their own perception of what they believe a flood to be, as I've already explained above, I don't think water has to be entering the property above ground to be deemed a flood in all circumstances.

So, based on all of the above, I'm satisfied that, on the balance of probabilities, the heavy rainfall on 20 October 2021 most likely resulted in a flash flood which led to water ingress into Mr B's property. And, that this ingress caused the damage Mr B is claiming for to be repaired. So, I am satisfied there was an insurable event for Mr B to make a claim for on this occasion.

But I recognise Aviva have explained that, even if a flood was present, they feel the positioning of Mr B's airbricks in relation to his garden patio made it more likely for water ingress to occur. And so, they felt any claim would be excluded on this basis, due to the damage resulting from "*unsuitable materials, design or poor workmanship*" which I've seen is a general exclusion within the terms of the policy. So, I've thought about whether I think Aviva are fair to apply this exclusion, in this individual circumstance. And I don't think they are.

I've considered all the photographic evidence supplied by both parties, that show the positioning of the airbricks. And I want to make it clear I can understand why, on these images alone, Aviva may have questioned their positioning.

And to ensure our service gave this enough thought, we've returned to Mr B to understand what work was undertaken after the flood, to prevent future occurrences of similar nature occurring. Mr B has confirmed the culvert walls were heightened, additional drainage added around the property and new smart air bricks were installed.

But crucially, I've seen an email from the builder who installed these new air bricks. And in this, they have confirmed the airbricks were installed in the same position as the original airbricks in situ at the time of the flood. And I'm persuaded from their reasoning for this that this is accurate recollection of the work they undertook, and why.

As I've referred to earlier, Mr B's flooring dried out between the time of the flood, and P's second visit in February 2022. And this drying out occurred, with airbricks, albeit newer ones, situated in the same positions. Had this positioning of the airbricks been defective, or evidence of poor workmanship, I would've expected water ingress to have continued considering the time of year and the likely rainfall through that period.

I think it's also worth noting that I've seen the invoice which details the work carried out when a new patio was installed at the property in 2019. And I think this is relevant as B have made clear they felt the patio was installed too close, and too high, to the air bricks. Mr B has confirmed this patio was installed to replace the existing patio installed when the property was built. And so, Mr B feels that the new patio met the same NHBC requirements that the original patio would've needed to meet at the time the property was built.

The invoice explains that all of the digging out, and replacing, of the patio was subject to ensuring it was re-laid at the correct levels. So, I'm satisfied this was the intention of the work carried out. And I think it most likely was carried out to this requirement, as I note there were no instances of water ingress, and water damage, to Mr B's flooring in the two years between the patio being laid, and the flood on in October 2021. Had the patio been laid in a way that led to water being able to enter Mr B's home through the airbricks, I would've expected damage to have been present before October 2021, considering the length of time between the two and the rainfall that would've been present over that time. And I've no evidence to show that it was.

So, while I do recognise that some work was carried out at Mr B's property between October 2021 and February 2022 which will most likely have improved the drainage around his home, I don't think this work was so fundamental that it invalidates the report compiled by P. Crucially, I think the airbricks were replaced in the same position as they were at the time of the flood. And I'm satisfied that the concrete and screed dried during the time between the flood, and P's attendance in February 2022. Had the airbricks been installed in a position that was unsuitable, I would've expected water ingress to continue and so, the saturation of the floors to remain, during this time.

Because of this, I don't think I can say Aviva have reasonably applied the exclusion I referred to above relating to damage caused by unsuitable materials, design, or poor workmanship. And the onus on any insurer relying on an exclusion to prove the exclusion applies to the circumstances of the claim. So, I do think Aviva have acted unfairly when declining the claim and because of this, I've then turned to what I think they should do to put things right.

Putting things right

Any award or direction I make is intended to place Mr B and Mrs B back in the position they would've been in, had Aviva acted fairly in the first place.

In this situation, had Aviva acted fairly, I think they would've assessed the claim on the basis that there was an insurable event, in this case a flood, present. And I don't think they would've applied the exclusion relating to damage caused by unsuitable materials, design or poor workmanship when doing so.

So, I think Aviva should reassess the claim, and associated costs, on this basis. And I think

they should cover the costs incurred by Mr B obtaining the report from P, as I think this report successfully disputed the original conclusion Aviva reached. And, had Aviva acted fairly, I think it's unlikely Mr B would've needed to incur this cost in the first place.

I also want to make it clear that following Aviva's reassessment, should Mr B and Mrs B remain unhappy with Aviva's outcome or anything else that derives from this reassessment, they would be able to return to our service once they had followed the usual complaint process.

My final decision

For the reasons outlined above, I uphold Mr B and Mrs B's complaint about Aviva Insurance Limited and I direct Aviva to take the following action:

- Re-assess the claim and associated costs in line with the remaining terms and conditions of the policy, on the basis that there was an insurable event and without applying the exclusion discussed above; and
- Cover the costs incurred by Mr B and Mrs B for P's report.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 16 August 2023.

Josh Haskey
Ombudsman