

## **The complaint**

Mr D complains that Aviva Insurance Limited turned down his commercial insurance claim.

## **What happened**

Mr D holds commercial insurance cover with Aviva which covers a flat and a shop. On 8 February 2023, pipes burst in the loft space above the flat which caused water damage to the flat below. There was no damage to the shop. Mr D made a claim under the policy for the damage to the flat.

Aviva turned down the claim, as it said the flat had been unoccupied for more than 45 days. After Mr D complained about this, Aviva didn't change its claims decision. However, it did pay Mr D £450 compensation for the delays it had caused with the claim. Unhappy with this, Mr D brought a complaint to the Financial Ombudsman Service.

Our investigator didn't recommend the complaint be upheld. He thought Aviva's claims decision had been reasonable.

Mr D didn't accept our investigator's findings, and so the matter 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.

The policy covers damage to the property. However, the policy says:

*'We will not indemnify You in respect of*

*...*

*(9) Damage to the Property Insured caused by  
(a) escape of water from any tank, apparatus or pipe*

*...*

*when The Premises are Unoccupied.'*

'Unoccupied' is defined in the policy as:

*'Any building or portion of a building that is*

*(1) not physically occupied by You or Your Employees during Your normal working hours, and/or*

*(2) not used for the purposes of The Business, and/or*

*(3) empty, vacant, disused, untenanted or unfurnished, and/or*

*(4) awaiting refurbishment, redevelopment, renovation or demolition,*

*For a period in excess of 45 consecutive days'*

In June 2022, Mr D moved out of the flat due to a bereavement and moved in with a family member. However, his business continued from the shop. I understand that Mr D moved

back into the flat in July 2022 for a few days, but then again moved out due to personal circumstances.

Mr D explains that although he wasn't living in the flat when the escape of water happened, his colleague continued to work out of the shop every Monday to Friday. He also says that friends and family regularly visited the flat to check on it, and he often visited himself on a weekly/fortnightly basis to collect his post.

I've taken into account Mr D's explanation that the flat was regularly visited (though we don't know when those visits happened). However, apart from the visits the flat was vacant/disused, and had been for more than 45 days, so I think it was reasonable for Aviva to treat the flat as a portion of the building that was unoccupied.

I'm therefore satisfied it was reasonable for Aviva to turn down the claim.

I've also considered Aviva's handling of the claim. I understand the claims decision took around 16 weeks, and Mr D wasn't kept updated throughout. Aviva has recognised it took too long to make a claims decision, and that its handling of the claim was poor. I would agree, but I think the £450 compensation paid by Aviva was reasonable in the circumstances.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 25 April 2024.

Chantelle Hurn-Ryan  
**Ombudsman**