

The complaint

Mr and Mrs B complain about Aviva Insurance Limited (Aviva), who declined their claim under their home insurance policy.

What happened

Mr and Mrs B held a policy of insurance with Aviva. They discovered a leak under their sink at their home in April 2023. Aviva initially carried out a digital assessment of the damage, but later sent a loss adjuster to report on the damage.

The report concluded that the cause of damage to the flooring, wasn't due to a one-off insured event. It was a leak that had occurred over a period of time. Because of this, Aviva declined the claim.

Mr and Mrs B replaced the damaged flooring at a cost of £11,291. They raised a complaint to Aviva as they didn't agree with Aviva's decision to decline the claim.

In its final response, Aviva maintained its position, highlighting that there was evidence that showed damage to the area, that pre-dated the policy inception. So, it concluded that the damage was because of a pre-existing issue. And that the decision to decline the claim was correct.

Mr and Mrs B were given their referral rights and referred a complaint to our service. One of our investigators considered the complaint and didn't think it should be upheld. He said he was persuaded by Aviva's expert that the damage wasn't caused due to a one-off incident. He said that Aviva had provided evidence to show that damage had been present well before the leak. He explained that Mr and Mrs B hadn't provided any expert evidence in refute. And he concluded that Aviva was fair to decline the claim.

Aviva accepted the view, Mr and Mrs B did not. They said in their opinion the leak had occurred over a short period of time, maybe days rather than weeks. That a slow leak could discharge many litres of water. They felt that the water spread between gaps in the sub-base. This caused the floor to swell in several areas of the property, not solely near the sink. They said water didn't affect the kitchen base unit, as this wasn't the nature of the leak that they had. They attributed the staining on the flooring to have been caused by heavy traffic in that area. Finally, Mr and Mrs B said that the wear and tear of the area that was evidenced in the historical photographs, had no bearing on the leak that occurred in April. As it was the leak that caused the damage to the floor. And Aviva were incorrect in its decision to decline the claim due to a pre-existing issue. So, they asked for a decision from an ombudsman.

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 won't uphold this complaint, for much the same reasons as our investigator. I understand that this might be a disappointment to Mr and Mrs B, but I hope my findings go some way in explaining why I've reached this decision.

I appreciate that Mr and Mrs B have provided several detailed comments, all of which I have carefully considered. As an informal dispute resolution service, we are tasked to investigate complaints, with the minimum of formality and on a fair and reasonable basis. I think it's important to focus on what the main issues of the complaint are, rather than address all points that Mr and Mrs B have raised. And I think the main issue of this complaint is whether Aviva was fair to decline the claim, due to the pre-existing issue.

Aviva essentially declined the claim because of a pre-existing issue, that it felt Mr and Mrs B would've been aware of. It relied upon its expert's damage report, historical photographs of the area, as well as the policy exclusion.

It said that for Mr and Mrs B to be able to claim under the policy, they would have to show that the claim, was due to one of the listed insured perils. As, the policy doesn't cover any gradual damage, caused by wear and tear.

I should point out that the onus is on the policyholder, to prove that the claim comes under one of the insured perils. Mr and Mrs B said that the insured peril was an escape of water. They accepted that there had been some pre-existing damage, but the new damage to the area was because of the leak.

Aviva instructed a surveyor to inspect the damage. The written report found that historical images showed damage in the form of water staining and cupping of the floorboards. The report concluded that the damage was likely present before the policy inception and had occurred gradually overtime. Therefore, Aviva ought to repudiate the claim.

I've had a close look at the photos provided by both parties, as well as the surveyor's report. Turning to the photos, I can see evidence of damage (cupping and staining) as far back as 2009. Apart from Mr and Mrs B's comments about how they believe the damage was caused, they haven't provided me with any expert evidence that could directly refute the evidence from Aviva's expert. So, I'm persuaded by Aviva's expert, that the damage had occurred gradually over time, had been a long-term issue and wasn't because of a one-off event.

In addition, Aviva relied upon the following exclusion to decline the claim:

'General exclusions - These exclusions apply to all sections of the policy. We won't pay for: Gradually occurring damage • It does not cover wear and tear or damage which happens gradually over a period of time.' Events before the cover start date • Loss, damage, injury or liability which occurs before the cover under this policy.'

I note that Mr and Mrs B said that it was their belief that heavy traffic in the area and continual splashing of water, were the reasons for the discoloration and cupping. They don't agree that the damage was claim related. But having reviewed the photos, as previously mentioned, I do think there is evidence of damage to the floor and this damage had been present for a long time. And I haven't seen enough persuasive evidence from Mr and Mrs B that water splashing from the sink would have caused staining or cupping. As I think, that if water was splashed it's reasonable to assume that it would be quickly cleared up and not left on the floor. Consequently, I do think Aviva was fair to rely on the policy exclusion to decline the claim.

Finally, I've reviewed the comments made by Mr and Mrs B regarding the leaking compression joint. Essentially, they said that a slow and steady leak occurred, possibly over a few weeks or days. This led to the failure of the flooring in several areas and the cupping and staining, that was evident in the photos. But the base kitchen unit remained undamaged (both Mr and Mrs B accept this). Mr and Mrs B said that for the flooring to have failed, it must have been exposed to a significant amount of water. Having considered these comments, in view of the evidence that I've seen. I don't find either to be persuasive.

First, if it was a slow and steady leak over a few weeks or days, this can't be deemed a 'one-off sudden event'. As is required under the policy terms and given the location, I would've expected to see some damage to the base unit. Second, if it was a slow and steady leak, how did this produce a significant amount of water that caused the damage to the flooring. Further, as mentioned, I haven't been provided with any expert evidence from Mr and Mrs B that could support these comments. Accordingly, I think that it is more likely than not, that this supports that the damage wasn't caused by a one-off, sudden event. And lends to Aviva's position that the damage was caused gradually.

Mr and Mrs B have accepted that there was pre-existing damage and seemingly chose not to investigate the cause of this further. I should say had this been done and there was no evidence of prior damage in that area, in those circumstances, Aviva wouldn't have been fair to decline the claim. But in this complaint, I find that there was pre-existing damage to the area, that had been present for a long time. So, I can't agree that Aviva were unfair or unreasonable to decline the claim for this reason. Nor can I find that it was unfair for it to rely on the policy exclusion.

Consequently, although I accept that my findings are likely to be a disappointment for Mr and Mrs B, and I acknowledge their strength of feeling about this complaint. I haven't seen enough evidence to show that Aviva was unfair or unreasonable to decline their claim, under the policy exclusion. So, I'm unable to reasonably ask it to do anything further here.

My final decision

For the reasons given, I won't uphold Mr and Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs J to accept or reject my decision before 28 February 2024.

Ayisha Savage
Ombudsman