

The complaint

Mr S and Mrs S complain about Aviva Insurance Limited's ("Aviva") decision to decline a claim made on their home insurance policy.

Any reference to Aviva includes the actions of its agents. For ease of reading, I've referred to Mr S throughout my decision.

What happened

The circumstances of this complaint are well known to both parties, so I've summarised events. Mr S has a home insurance policy which is underwritten by Aviva. He made a claim on the policy for damage to his garden patio and steps. He said the damage was the result of flash flooding.

Mr S provided photographs which he considered supported his position, but Aviva said these showed the repairs had already commenced before the claim had been reported. And so, it hadn't had a chance to validate the damage in person.

Based on what Mr S had provided, Aviva said it wasn't satisfied the damage was the result of a flood because there hadn't been storm conditions at the time of the claim. It said the damage appeared to have occurred over time or due to faulty workmanship – both of which were excluded under the policy.

However, it explained to Mr S the damage could possibly be subsidence. But that it couldn't say for sure as it didn't know if there was damage to the main building. So, it advised Mr S to check this. It said that if there was damage to the main building, Mr S should obtain a report from an approved Royal Institution of Chartered Surveyor (RICS) as this would cost less than the excess attributable to a subsidence claim. It added that it was preferable to get a report in the first instance because a claim logged under the subsidence peril would be best avoided where possible.

Mr S thought Aviva's decision was unfair, and so, he brought a complaint to this Service. An Investigator considered it but didn't uphold the complaint.

She explained the onus was on Mr S to show an insurable peril had caused the damage, which he hadn't done. She was satisfied Aviva had sufficiently explained to Mr S what information it would require from him to demonstrate the damage was attributable to an insured peril. And that asking Mr S to obtain an independent report on the cause of damage wasn't an unreasonable request.

Mr S disagreed and so, the complaint has been passed to me for an Ombudsman's decision. In doing so, Mr S said his claim should be accepted as the policy considers "patios" to be part of the "building".

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 also kept in mind Aviva's responsibility as an insurer to handle claims fairly, promptly and to not unreasonably decline a claim. Having done so, I agree with the outcome our Investigator reached – and I'll explain why.

As Mr S is seeking to claim on his policy, it's for him to demonstrate the damage to his patio and steps was caused by an insured peril. Whilst the policy isn't designed to cover every eventuality, it does cover damage caused by flood or storm, as well as subsidence, heave, or landslip - subject to certain terms and conditions. And so, Mr S needs to demonstrate the damage is as a result of one of these.

From what I've seen, there isn't evidence to show storm conditions occurred at the time the claim was made, and Aviva has said the nature of the damage isn't what it would expect to see following a one-off flood. So, I don't consider its position – that the damage wasn't caused by a flood or storm - to be unreasonable.

Mr S has said he didn't tell Aviva the damage was caused by a flood, and was instead as a result of heave, but I've seen evidence which shows he did deem flash flooding to be the cause. I've included the relevant extract below:

"I am in the view that the damage caused to the patio is a consequence of the extensive flash flood water. This water has saturated the ground below resulting in patio slabs and associated steps to dislocate its position and collapse."

Putting this aside, Mr S has provided photographs which he says supports his position that the damage was caused by an insured peril. Whilst the pictures show the patio and steps are damaged, they don't show *how* the damage was caused - which is what's key to enabling Aviva to determine if the damage is covered. So, whilst I appreciate Mr S says the policy includes "patios" within the definition of "buildings" - that doesn't determine whether his claim is covered - the issue is whether the damage was caused by an insured peril.

It's not in dispute Mr S carried out repairs before logging his claim with Aviva – meaning it has been prevented from being able to validate the damage in person. I appreciate Mr S said he had the damage repaired to ensure the safety of children using the garden, but that doesn't absolve him of his responsibility to keep Aviva informed and seek its approval before carrying out repairs if he expected Aviva to cover these. Nor does it mean he doesn't have to show *how* the damage was caused.

Aviva has told Mr S what evidence it needs to be satisfied the damage was caused by subsidence – and has made it clear the report must be from a suitably qualified surveyor. So, whilst it might now be Mr S' opinion the damage is caused by heave (and not flooding), this is simply his opinion and doesn't carry the weight of a qualified expert's opinion. So, I'm not persuaded Aviva has treated him unfairly by declining the claim on the basis that Mr S hasn't shown the damage was caused by an insured peril.

Aviva has said it will consider new information from a suitably qualified expert – which is what I'd expect it to do. And it's told Mr S the cost of the report would be covered under a claim if the report shows the damage is the result of an insured peril. And I consider this to be reasonable. So, I'm satisfied Aviva has given Mr S enough information for him to understand what he needs to do if he wants to pursue this claim further.

I know my decision will disappoint Mr S, but I'm satisfied, as things stand, Aviva's decision to decline the claim to be fair and reasonable in the circumstances. And so, I won't be directing it to take further action.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 24 April 2024.

Nicola Beakhust
Ombudsman