

The complaint

Mr and Mrs M complain about how Aviva Insurance Limited handled and settled a claim they made under their home insurance policy for damage to their kitchen worktop.

What happened

Mr and Mrs M hold a home insurance policy which is provided by Aviva Insurance Limited. In October/November 2020, Mr and Mrs M had a new kitchen fitted. However, in around July 2021 a kitchen worktop was damaged when a hot pan was placed on it. This caused scorching to the surface.

As Mr and Mrs M had taken out accidental damage cover when they inceptioned their policy with Aviva, they asked it to replace the damaged worktop.

The kitchen worktop was supplied by the manufacturer of Mr and Mrs M's kitchen, which I'll refer to as "H" in this decision. Aviva procured a new worktop from H and appointed a contractor to install the replacement worktop. I'll call that agent "S".

Mr and Mrs M said the damaged worktop was replaced on 21 October 2021. But by February 2022, they observed damage to the worktop in the sink area. They said it had split and warped along the edge.

Mr and Mrs M stated that when H was approached for advice on why the worktop had delaminated, it said this was due to incorrect installation by S. H said the edge hadn't been properly sealed and this is what had caused the damage Mr and Mrs M observed.

Aviva didn't accept that poor workmanship by S had caused the worktop to delaminate. But in March 2022 S replaced the worktop at its own expense because the damage had occurred within one-year of it undertaking work. So, it was covered by S' 12 month guarantee.

There were no further problems with the worktop until June 2023 when Mr and Mrs M said they noticed the same problem as last time.

Mr and Mrs M say they contacted S on 5 July 2023, to notify it of the damage and discuss a resolution. However, they said S didn't proactively respond. So, Mr and Mrs M informed Aviva of the damage and it chased S for a response.

After becoming aware of the problem, S contacted H who denied liability for the damage. Mr and Mrs M stated H visited their property to inspect the worktop and informed them the worktop had been incorrectly installed. But Aviva disputes this. It said H had advised it didn't know the cause of the damaged and wouldn't replace the worktop because the warranty had expired.

S declined to replace the worktop again. It disputed that the delamination had been caused by poor workmanship. And it said the damage had been reported after the 12 month guarantee had expired. Aviva informed Mr and Mrs M it couldn't replace the worktop on this

occasion because there was no identifiable insurance related peril that had caused the damage.

Mr and Mrs M complained to Aviva. They wanted their kitchen reinstating to its former condition and argued that, because they worktops had delaminated a second time in the same area, this had to be due to poor workmanship by S.

On 25 August 2023, Aviva responded to Mr and Mrs M's complaint. It explained that it couldn't provide an outcome at this stage because it was still waiting for H to clarify whether a manufacturing fault had caused delamination. It said once H had confirmed its position S would contact Mr and Mrs M to discuss whether it could replace the worktop.

Before Aviva had heard from H regarding whether it could offer an opinion on the cause of damage, Mr and Mrs M escalated their concerns to our service. Our investigator assessed this complaint. But they didn't recommend upholding it as they weren't persuaded there was evidence showing the damage had occurred as a result of poor workmanship by S. They therefore didn't direct that Aviva replace the worktop.

Aviva agreed with our investigator's view of this complaint. But Mr and Mrs M rejected the outcome. So, I've been asked to decide the fairest way to resolve this complaint.

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'm aware that I've set out the events of this complaint in much less detail than Mr and Mrs M have. I don't intend any discourtesy by this - it just reflects the informal nature of our service. I've concentrated on what I think are the key issues. I can assure Mr and Mrs M and Aviva that I've read everything they've provided. So, if I've not mentioned something it's not because I haven't considered it. It's just that I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

This service is an informal dispute resolution service. When considering what's fair and reasonable, I'm required to take into account a number of matters, which include relevant law and regulations, regulators' rules, guidance and standards, codes of practice, the terms and conditions of any insurance policy and, where appropriate, what I consider to have been good industry practice at the relevant time. I'm not limited to the position a court might reach.

The crux of this complaint is whether Aviva treated Mr and Mrs M fairly, in declining to replace the worktop and in how it dealt with their complaint. And I'll explain why I think it has.

Prior to drafting this final decision I'd invited all parties to provide any further evidence on the cause of damage. This was in efforts to ensure all available evidence and information had been submitted and seen by our service prior to a final decision on the outcome of this complaint being reached.

Aviva provided written submissions to assist and stated it was relying on the report S provided, which had been shared with our service. However, this report doesn't attribute a cause of damage for the reasons already outlined. So, it hasn't been able to assist with the probable cause of damage.

Mr and Mrs M were invited to obtain a report on the cause of damage. But they haven't provided a report of this nature to our service. For this reason, Mr and Mrs M haven't been able to assist with the probable cause of damage.

Mr and Mrs M want me to direct Aviva to replace the worktop and, thus, restore their kitchen to its pre-damaged condition. However, delamination can occur due to several reasons. For example, it can be caused because of a manufacturing fault, the process of cleaning, oxidative degeneration, exposure to direct sunlight or due to the worktop not being properly sealed when installed.

For me to hold Aviva responsible I'd need to be persuaded by evidence that the cause of the damage was due to poor workmanship by S or another error made by it when the worktop was installed. I'd have to be able to discount the other possible causes of delamination to be able to reach a fair and robust finding that S, and therefore Aviva, was responsible for causing damage to the worktop.

I'm mindful that the warranty for the worktop has now expired. So, Mr and Mrs M are unable to ask H to replace it under the warranty it provided. H is not obliged to offer a warranty-based replacement if an item is out of warranty. And it's clearly explained it isn't willing to provide a replacement here because of that. But that doesn't mean I can direct Aviva to cover the cost of replacement if it isn't responsible for what happened.

H has declined to offer an opinion on the cause of damage. It's informed Aviva that, because the warranty has expired, it won't undertake an assessment of the damage or attribute a cause to it. Given its position here, it isn't clear why it visited Mr and Mrs M's property to inspect the worktops when it ought to have known the warranty had already expired.

As H hasn't provided evidence of its inspection, and it isn't willing to cooperate in this process, it isn't possible to exclude the damage as having occurred as a result of a manufacturing fault. If damage had been caused in this way, it wouldn't be fair to hold Aviva responsible for that. It therefore remains plausible that the worktop could have delaminated due to a manufacturing fault.

I can see from the business file that Aviva has provided to our service that S has also declined to assist in offering a cause for the damage. It says this is because it guarantees its workmanship and materials for 12 months. And as the worktop was replaced for a second time in March 2022, the date when the damage was observed falls outside the 12 month guarantee.

Mr and Mrs M appear to place reliance on the fact that S replaced the worktop in March 2022 because it believed its workmanship caused the damage. But that isn't correct. Based on the evidence I've seen, the worktop was replaced by S previously because the damage occurred within the 12 month guarantee it offers for the work it undertakes. This doesn't mean it was at fault.

I appreciate that Mr and Mrs M believe that S must be responsible for the damage caused because it's occurred in the same place as previously. But I can't infer fault by S in the absence of evidence showing that, on the balance of probabilities, it is responsible for the damage.

It's possible that the worktop delaminated as a result of poor workmanship by S, just as it's possible this occurred due to a manufacturing fault or any other possible cause for delamination as identified above. But there's no evidence showing a clear cause on the balance of probabilities.

I'm sorry to disappoint Mr and Mrs M but, there's insufficient evidence to persuade me that the worktop delaminated because of the quality of S' workmanship. And impartially, I think it's more likely that, if the damage had been caused by S' workmanship, the delamination would have occurred within the first 12 months of installation.

As there isn't enough evidence to satisfy me that it's more likely than not that the damage occurred as a result of work undertaken by S, I can't fairly direct Aviva to replace the damaged worktop.

I recognise that there was some delay in the way in which Mr and Mrs M's complaint was dealt with and progressed by Aviva. I say this because Mr and Mrs M escalated their complaint to our service before Aviva was able provided it's final response. However, I'm satisfied that the delay was caused by Aviva making enquiries with both H and S about the likely cause of delamination. These enquiries were sensible and necessary as the information was required before a final response to Mr and Mrs M's complaint could be provided. I've seen evidence that demonstrates Aviva was attempting to expedite the enquiries it had made in efforts to provide an informed response to Mr and Mrs M about the likely cause of damage. For these reasons I am not directing Aviva to pay compensation for the delay that was caused here.

I appreciate the reasons why Mr and Mrs M brought their complaint to our service. But I'm satisfied that Aviva has acted fairly and reasonably here. So, I won't be directing it to take any further action. I'm therefore not upholding this complaint.

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 M and Mrs M to accept or reject my decision before 26 June 2024.

Julie Mitchell
Ombudsman