

## **The complaint**

Miss H complains about Aviva Insurance Limited (Aviva) declining a claim under her home insurance policy for damage to the roof of her property.

Aviva use agents to administer the policy and to assess claims. References to Aviva include these agents.

This decision covers Miss H's complaint about Aviva's decline of her claim for damage to her roof (a broken tile). Aviva treated Miss H's challenge of the decline of her claim as a complaint, issuing a final response in May 2023. Miss H subsequently complained to this Service in September 2023. In her complaint she raised a number of issues in addition to the decline of her complaint. These issues weren't included in Aviva's response to what they considered a complaint from Miss H about the decline of her claim. As these issues weren't part of what Aviva considered a complaint or their final response, they aren't covered in this decision, which covers the decline of Miss H's claim.

## **What happened**

In January 2023 Miss H was approached by two tradesmen purporting to be from a roofing company about what they said were issues with her roof. They said a chimney stack needed rebuilding and a broken tile replacing. They provided a quote for £2,500 to carry out repairs. Miss H was suspicious about whether they were genuine tradesmen and she said she didn't want to proceed.

In March 2023 Miss H noticed damp patches in a bedroom and adjacent toilet. She was concerned it was the result of the tradesmen perhaps damaging the chimney stack. She engaged a builder (L) to inspect the chimney and roof, which they did later that month. L said there was no issue with the chimney stack, but there was an issue with the roof. A surveyor from L inspected the property again in April 2023, finding a broken tile that needed replacing. L agreed to send Miss H a quote for the repair (£1,092). She was convinced it was the result of damage by the tradesmen, as she hadn't previously had any problems with the roof.

Miss H then contacted Aviva to tell them about the damage and lodge a claim. In her view it was the result of criminal damage by the tradesmen, who she said had tried to defraud her out of £2,500 for unnecessary work.

Miss H also reported the matter to the police, who provided a crime reference number and recorded the incident as criminal damage. They took a statement but said they couldn't consider the incident as fraud because no money changed hands. They visited Miss H and examined the broken tile, telling her they thought it had been broken by force. Shortly after lodging her claim, Aviva contacted Miss H to say they'd appointed a surveyor (H) to handle the claim. H contacted her to say one of their surveyors would inspect the damage, and a surveyor visited the following day. H also asked Miss H for any photographs of the interior damage and provide a crime reference number. H then contacted Miss H at the beginning of May 2023 to tell her they were declining her claim, on the grounds they considered the damage to the tile was the result of wear and tear.

Separately, a scaffolding firm (T) engaged by L arrived at the property two days later to begin the repair work, which included the need for scaffolding to safely access the roof. L arrived later the same day to complete the repair work, saying they'd been able to bring forward the repair from when it was originally scheduled (June 2023). Miss H said she was told by L the position of the broken-off part of the tile and the broken edge of the tile indicated a clean break, with no evidence of frost having caused the break. Miss H paid the £1,092 quoted for the repair, to avoid any further damage from water entering the property.

Unhappy at Aviva declining her claim, for what she believed was deliberate, criminal damage by the tradesmen, Miss H contacted H to appeal the decline. H treated her appeal as a complaint, which Miss H was unhappy with, as her appeal had been passed to H's Complaints Department without her permission. H contacted Miss H to say they didn't think the evidence supported her view the damage was due to malicious damage, rather the damage to the tile was due to age and related wear and tear. They said the damage to the tile was potentially due to 'freeze-thaw'. So, the damage to the tile was due to gradual deterioration and, through age, related wear and tear. This meant the damage wasn't covered under an insured peril under the policy.

Miss H was unhappy at H's response, saying she hadn't had the opportunity to provide further evidence and information, including photographs taken by T and L. She subsequently received a final response from Aviva later in May 2023, referring to H's earlier response. Based on this, Aviva said they considered the damage due to wear and tear, excluded from cover under the policy.. They referred to policy wording about gradually occurring damage and wear and tear. So, they confirmed the decision to decline Miss H's claim.

Miss H then complained to this Service. She said Aviva had unfairly declined her claim and wouldn't accept the damage was the result of criminal damage, despite her reporting it to the police. Miss H said Aviva and their representatives may have breached data protection regulations regarding the processing of her personal data. She wanted Aviva to accept her claim and reimburse her the £1,092 cost of repair (less the policy excess of £100). Due to how Aviva had handled her claim and the possible GDPR breach, she had found the process stressful, affecting her mental health. As well as reimbursement of the cost of repairs, she wanted Aviva to apologise and pay compensation for what had happened and the impact it had on her. If Aviva and their representatives had breached GDPR regulations, she wanted Aviva to be prosecuted for the breach.

Our investigator didn't uphold the complaint, concluding Aviva didn't need to take any action. She thought H's report (and review by H's Technical Lead) indicated the damage to the roof (the tile) was due to gradually occurring damage, which the policy excluded. And there wasn't any further evidence to support Miss H's view the damage was due to malicious damage by the tradesmen. While the police had recorded a crime and classified the damage as malicious, it didn't mean Aviva had to accept the claim and they could assess the claim against the policy terms and conditions. While Aviva hadn't contacted Miss H to discuss her complaint, they'd issued a final response and the investigator thought it unlikely a discussion would have led to a different outcome.

Miss H disagreed with the investigator's conclusions and asked an ombudsman review the complaint. She maintained her view the damage to the tile was the result of malicious damage and Aviva should accept her claim. She thought the broken tile was evidence that supported her view. She also provided an opinion from a building surveyor firm (W) that the broken tile wasn't due to wear and tear. She referred to the actions of the police in response to her reporting the incident, including distributing details of the tradesmen to other forces.

In my findings, I wasn't persuaded Aviva had done enough to show it was fair and reasonable to apply the wear and tear exclusion to decline the claim.

As I didn't think they acted fairly to apply the exclusion for wear and tear to decline the claim, I thought they should re-assess the claim in line with the remaining terms and conditions of the policy, including any policy excess as appropriate. If they decided to accept the claim (and settle it on the cost Miss H incurred in repairing the roof) then they should also pay interest, at a rate of 8% simple, from either the date they would have expected to settle the claim had they accepted it (or the date Miss H can evidence she paid the cost of the repair) to the date they settle the claim.

As Miss H also reported water damage to the interior of her property (and has provided photographs of the damage) then Aviva should also assess any interior damage alongside re-assessment of the damage to the broken tile.

I also considered the impact of what happened on Miss H. Having her claim declined unfairly will have caused her distress and inconvenience. In the circumstances of the case I thought £150 compensation for distress and inconvenience would be fair and reasonable.

Because I reached different conclusions to the investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

*What I've provisionally decided – and why*

*My role here is to whether Aviva have acted fairly towards Miss H.*

*As noted above, this decision covers the part of Miss H's complaint about Aviva's decline of her claim. While other elements of her complaint to this Service aren't covered, as they haven't been considered by Aviva, I have considered what Miss H has said about possible breaches of data protection regulations and what Aviva considered to be a complaint – which Miss H said wasn't her intention when challenging H's decline of her claim.*

*On the data protection issues, this isn't something that falls within the remit of this Service. If Miss H has concerns about the way her personal data has been handled, then the appropriate route for those concerns would be to raise them with the relevant authority, which would be the Information Commissioner's Office (ICO). So, I haven't considered this aspect any further.*

*On Aviva treating Miss H's objection to the decline of her claim as a complaint, that's an operational decision for Aviva about what they consider to be a complaint. As such, it isn't something that falls to me to consider. And complaints handling isn't a regulated activity that falls within the remit of this Service. So, I also haven't considered this aspect any further.*

*The main element of Miss H's complaint is that Aviva acted unfairly in declining her claim for the damage to her roof (the broken tile). Miss H believes the damage the result of malicious, criminal damage by the tradesmen who approached her and said there were issues with her roof, including the broken tile. Aviva, based on H's inspection and subsequent Technical Lead review, say the damage was the result of wear and tear. They refer to 'freeze-thaw' operating gradually over time. As something that happened gradually and due to wear and tear, this is excluded from cover under the policy.*

*In considering the issue, as Aviva declined the claim on the grounds they considered the damage to the tile to be the result of wear and tear (and their final response refers to the exclusion for wear and tear in the policy) I've looked at what the policy sets out. Aviva refer to the following exclusion, set out in the General Conditions section:*

*"1. Gradually occurring damage*

- wear and tear (natural and predictable damage which happens over time or due to normal use or ageing) this includes, but is not limited to, gradual weathering, the effect of light, deterioration or depreciation”

*I've then considered whether, on the evidence and information available, the damage was the result of wear and tear. In doing so, I've first looked at the views and reports from H and from W. In date order, the report from H's surveyor following their inspection in April 2023 includes the following statements:*

*“We have inspected the reported damage on the rear main roof which is in fair condition, we found that the damage is not consistent with malicious damage (frost damage, snapped tile gradually operating cause).*

*“The claim has been referred for further consideration by the H office due to the claim being escalated to the police as an act of malicious damage.*

*The surveyor surmises that the damaged tile is due to frost/thaw damage of which has occurred over a long period of time (gradually operating cause) and unrelated to an accusation of a rogue tradesman walking over the rear main roof.”*

*In their final response, Aviva include a statement from H's Technical Lead:*

*“There appears to be no evidence of any malicious damage and [the] roof tile which has cracked appears to potentially be due to freeze-thaw. Moisture is constantly present in our air, whether it rains or not, and that moisture will inevitably seep into the nooks and crannies of roof coverings. As temperatures drop below zero this moisture will freeze and in doing so expands, before thawing and contracting as the temperature rises. The combination of rain, moisture and sub-zero temperatures can lead to a process known as freeze-thaw weathering. This cycle repeats over a period of time and then this process causes larger cracks to occur until the tile cracks through and the evidence of this is a dislodged tile as we see to your main roof. Over many numbers of years, the materials will naturally and Gradually Deteriorate, through age, related wear, and tear. In our opinion the damage to your roof has not been caused by any insurable peril.”*

*This wording appears in Aviva's complaint notes, along with a comment that the damage appears to be due to wear and tear. The case notes also include a comment that there is no evidence of malicious damage and [the damage] looks to be gradual due to freeze thaw.*

*I've then looked at the opinion of W. This includes the following statements:*

*“Older clay pantiles such as the tiles found on your roof are generally far more fragile than either modern clay tiles or concrete tiles from my experience of inspecting roofs with similar tiles. Great care has to be taken when walking over such tiles to avoid breakage and good practice would be to use crawler boards to spread the load of a person walking on the roof over a large area of tiles. This practice is intended to reduce the risk of breakage but does not appear to have happened in this case from your account of events.*

*I have looked at photographs of the broken tile, and the broken edge clearly shows clean clay with no areas of discolouration. This would indicate the tile was not cracked or defective before it was broken, if there had been any deterioration of the tile through frost damage or previous cracking, the areas of clay along the crack would be darkened to a colour similar to the face of the tile.*

*Although I have no evidence of how or when the tile was broken, it is my opinion that the break has been caused by an impact to the tile rather than through natural wear and tear."*

*I've also considered what Miss H has told us about the police involvement following the incident she reported to them. As set out earlier, they provided a crime reference number and recorded the incident as criminal damage. They took a statement and visited Miss H and examined the broken tile, telling her they thought it had been broken by force. From what Miss H has said the police circulated details of the incident and description of the tradesmen to other forces. I recognise the police's responsibility is to investigate allegations that a crime has been committed and reach a conclusion on what they think has happened. While the role of the police isn't to assess claims and they aren't surveyors or building experts, I've noted what they've concluded and taken this into account alongside the other evidence and information on the case.*

*From what Miss H has told us when making her complaint, the police recognised her account of the tradesmen's approach to her and the nature of how a potential fraud could be perpetrated. The police retained the broken tile as part of their investigation.*

*The nature of what happened in the circumstances of this case means it isn't possible to reach a definitive conclusion on what caused the broken tile, which is reflected in the wording of the reports and opinions I've quoted above. So, I have to reach a conclusion based on the balance of probabilities as to what is most likely to have caused the broken tile. Having done so, I'm not persuaded Aviva acted fairly in using the wear and tear exclusion to decline the claim. I'll set out why I've come to this conclusion.*

*What isn't in dispute is that the tile was broken – it's the cause of the break where Miss H and Aviva (and the respective surveyors, technical lead and W) disagree. Even allowing for an element of uncertainty, the statements from H, H's Technical Lead and the comments in the case and complaint notes are contingent, in that they use terms such as 'surmise' (H's surveyor) and 'appears' and 'potentially' (H's technical Lead). And the description of 'freeze-thaw' is generic and taken to apply to the broken tile.*

*I've also considered the observation from W (supported by photographs of the broken tile) that the break is clean along the edge and shows no signs of discolouration - which is what W would expect had the break been due to freeze-thaw. The photographs (and H's surveyor report comment) indicates the roof to be in a fair condition. Looking at the photographs of the roof, there are some tiles with slight chips, but none that I can see that have broken in half apart from the one tile in question.*

*I've also considered what Miss H has said about the tradesman climbing onto to the roof and pushing against the chimney stack, supposedly to demonstrate issues with the stack. The location of the broken tile is consistent with where the tradesman may have stood in doing so. I've also noted W's comment about the fragility of the type of tile. So, while the tile may have been deliberately broken as part of the attempted fraud – and the police concluded it was criminal damage and that the tile had been broken by force - it's also possible it was broken accidentally. In either scenario, the damage would be malicious (an insured peril under the policy) or accidental (accidental damage is also an insured peril under the policy).. I've also taken account of the general principle that where an insurer relies on an exclusion to decline a claim, the onus is on them to show the exclusion applies – it isn't for the policyholder to show it doesn't apply. Given the points and conclusions I've set out, I'm not persuaded Aviva have done enough to show it was fair and reasonable to apply the exclusion to decline the claim.*

*Having reached the conclusion Aviva haven't acted fairly and reasonably, I've considered what I think Aviva should do to put things right.*

*As I don't think they acted fairly to apply the exclusion for wear and tear to decline the claim, then they should re-assess the claim in line with the remaining terms and conditions of the policy, including any policy excess as appropriate. If Aviva decide to accept the claim (and settle it on the cost Miss H incurred in repairing the roof) then they should also pay interest, at a rate of 8% simple, from either the date they would have expected to settle the claim had they accepted it (or the date Miss H can evidence she paid the cost of the repair) to the date they settle the claim.*

*As Miss H also reported water damage to the interior of her property (and has provided photographs of the damage) then Aviva should also assess any interior damage alongside re-assessment of the damage to the broken tile.*

*I've also considered the impact of what happened on Miss H. Having her claim declined unfairly will have caused her distress and inconvenience. In bringing her complaint she also told us about how what happened impacted on her, including her health. I've considered all the circumstances of the case and I think £150 compensation for distress and inconvenience would be fair and reasonable.*

#### *My provisional decision*

*For the reasons set out above, it's my provisional decision to uphold Miss H's complaint. I intend to require Aviva Insurance Limited to:*

- Re-assess the claim in line with the remaining terms and conditions of the policy, including any policy excess as appropriate.*
- Assess any interior damage alongside re-assessment of the damage to the broken tile.*
- Pay Miss H £150 in compensation for distress and inconvenience.*

*If Aviva Insurance Limited decide to accept the claim (and settle it on the cost Miss H incurred in repairing the roof) then they should also pay interest, at a rate of 8% simple, from either the date they would have expected to settle the claim had they accepted it (or the date Miss H can evidence she paid the cost of the repair) to the date they settle the claim.*

*Aviva Insurance Limited must pay the compensation within 28 days of the date on which we tell them Miss H accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.*

*Aviva responded to say they were happy to accept the provisional decision. Miss H didn't respond by the date requested for responses.*

#### **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.*

*My role here is to decide whether Aviva have acted fairly towards Miss H.*

*While Miss H hasn't responded to the provisional decision, as Aviva have accepted the provisional decision, my final decision remains the same as my provisional decision, for the reasons set out in the provisional decision.*

## **My final decision**

For the reasons set out above, it's my final decision to uphold Miss H's complaint. I require Aviva Insurance Limited to:

- Re-assess the claim in line with the remaining terms and conditions of the policy, including any policy excess as appropriate.
- Assess any interior damage alongside re-assessment of the damage to the broken tile.
- Pay Miss H £150 in compensation for distress and inconvenience.

If Aviva Insurance Limited decide to accept the claim (and settle it on the cost Miss H incurred in repairing the roof) then they should also pay interest, at a rate of 8% simple, from either the date they would have expected to settle the claim had they accepted it (or the date Miss H can evidence she paid the cost of the repair) to the date they settle the claim.

Aviva Insurance Limited must pay the compensation within 28 days of the date on which we tell them Miss H accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 30 April 2024.

Paul King  
**Ombudsman**