

The complaint

Mr C's complaint is about a claim he made on his Aviva Insurance Limited property owner's insurance policy for loss of rents, which Aviva declined.

Mr C feels that Aviva treated him unfairly and wants them to pay his claim.

What happened

In October 2022 a property Mr C was renting out to tenants suffered water damage, which caused the ceiling in the dining room to fall in and problems with the electrics. Mr C says that as a consequence it was necessary for the water to be turned off. His tenants moved out as a result of all of this.

When the leak was traced by a plumber, it became necessary for some of the bathroom floor to be removed along with the basin pedestal and bath side panels. Mr C, through his broker, sent quotations for repair to Aviva who agreed to pay his claim. Mr C says that Aviva didn't arrange for an agent to visit his property but rather agreed to the quote submitted.

After the work was completed Mr C made a claim on the loss or rent section of the policy because his tenants didn't move back in whilst the work was ongoing. And because the repairs took until the end of January 2023 to complete, his tenants found permanent accommodation elsewhere. Mr C asked Aviva to pay his claim for loss of rent until the work was completed. Aviva refused. They said they were only prepared to pay a loss of rent claim for 11 days because this was the time it took to make the property habitable. Beyond that Aviva said that although it might have been inconvenient for the tenants to live in the property whilst the work was going on, it wasn't uninhabitable so the claim for loss of rents was not covered.

On the other hand, Mr C says his tenants had very young children, aged 2, 4, 5 and 7 years old and the property wasn't safe for them to live in in the condition it was in until all the repairs had been completed.

Our investigator considered Mr C's complaint and initially said it should be upheld. He thought that by accepting the quotation Mr C had sent in, Aviva had accepted the bath had been damaged and couldn't be used so they should accept his claim that the property was uninhabitable. Aviva didn't agree. They made further submissions in response to this. The investigator considered those and changed his mind. He said that based on the evidence from Aviva's surveyor who said he'd spoken to Mr C's contractor, the damage to the bath was not related to the leak and therefore wasn't part of the insurable event. As such it followed that Mr C wasn't entitled to a loss of rent claim for the period he was claiming for. Mr C didn't agree, so the matter was been passed to me to determine.

I issued a provisional decision in March 2024 in which I said the following:

"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 uphold Mr C's complaint. I'll explain why.

The starting point is the policy terms. They say:

"Loss of Rent or Alternative Accommodation for Residential Units

11.1 We will cover You if Your Residential Property or any of the Residential Units at Your Premises cannot be lived in or if access to them is denied as a result of Damage insured under the Property Damage Section".

So, the issue for me to determine is whether Mr C's property could not be lived in as a result of the water damage rather than anything else that might have happened along the way like for example the work undertaken to identify the cause of the leak.

In this case Aviva didn't send their surveyor to look at the property but from what they've said, he considered the quotation Mr C supplied and spoke to the contractor who undertook the work. Aviva haven't supplied me with any photographs showing what the property looked like after the water damage, but Mr C has. In particular Mr C says the ceiling of the dining room was exposed with parts of it hanging down which would have been dangerous. But I haven't seen any expert evidence to support this, nor that after the initial 11 days that Aviva have accepted his claim for that the ceiling was unsafe beyond this. Without expert evidence, I'm not currently persuaded that the dining room was not capable of being lived in, even if doing so was inconvenient.

What I'm more concerned about is the bathroom floor. Aviva said one floorboard was lifted. But I've looked at the photographs Mr C has supplied and even if I accept that it was necessary to only lift one floorboard as a result of the flood, that in itself made this particular property unfit to be lived in in Mr C's particular circumstances. Mr C's tenants had 4 very young children. The photograph I have seen of the bathroom with even one floorboard lifted is indicative of a significant risk to a child putting a foot through or falling into the void under the floorboard. As such I consider that this situation would make the bathroom unsafe and therefore the property as a whole, for small children to live in. And given Aviva didn't arrange to inspect the premises or seek to mitigate the loss of rents claim by for example, considering whether temporary work could be done to make the bathroom floor safe, I take the view that they've now lost the opportunity to argue that Mr C is not entitled to be paid his claim until the work was complete.

In coming to this conclusion, I wish to make clear that we would usually consider a property to be inhabitable so capable of being lived in as long as there is heating, cooking facilities and bathing facilities. But we also take into account the safety of a property in the occupier's particular circumstances. If Mr C's property had been tenanted by persons without small children, I'd be less inclined to determine that it could not be lived in. But the ages of the children and the fact that there were more than one- thereby increasing the risk of harm- with an open floorboard in the bathroom, posed a safety risk here such that I would consider it unfit to live in. I reach this conclusion leaving aside the cause of the problems with the bath which were discussed within the investigator's second view. I say so because the floorboard would always have needed to be removed in order for the damage to be rectified and that in itself was risk enough in my view to mean this property could not be lived in with 4 small children ranging from 2 to 7 years old. I've set out what I think Aviva should do to put things right below.

Putting things right

I direct Aviva to pay Mr C's loss of rents claim for the entire period claimed for plus interest at 8% per year simple from one month after the claim was made until it's paid.

In reaching this conclusion, I've also taken into account the submissions Mr C has made about the stress and worry Aviva's decision to decline his claim caused him at an already difficult time. As such, Aviva should pay him £150 in compensation for this."

I asked both parties to provide me with any further evidence or comments in response to my provisional decision. Both parties have now responded. Mr C has accepted my provisional decision but Aviva has not. Aviva has essentially repeated the points they made in support of their position before I reached my provisional 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.

Having done so, I remain of the view that Mr C's complaint should be upheld in the same way I set out within my provisional decision. That's because Aviva haven't said anything new that persuades me the conclusions, I reached were incorrect.

Aviva haven't specifically commented on the issue I raised within my provisional findings- namely that I considered the bathroom in Mr C's property was not safe for his tenants in their particular circumstances to use and that I thought as a result the property was uninhabitable from the time of the insured incident giving rise to the claim, until the works were complete. Nor have Aviva commented on the fact that they haven't mitigated the loss I've referred to at the time it happened, or my conclusion that as a result they should pay Mr C's claim now. In sending my provisional decision to Aviva I also appended the photograph of Mr C's bathroom, but they didn't comment on that either.

Rather, Aviva have commented on the history of the claim, said that they requested a tenancy agreement to consider any loss of rent from Mr C a number of times and that they aren't responsible for any delays in Mr C's claim progressing. They've also said they discharged the buildings insurance claim promptly. I'm not sure of the relevance of Aviva's submissions to my provisional findings, so in the absence of anything that makes me think that Mr C's property was habitable for his tenants in their specific circumstances the duration of his claim, I can't say that Aviva acted fairly by turning it down. For that reason, I direct them to put things right in the way I set out in my provisional decision which I've repeated below for ease of reference.

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My final decision

I uphold Mr C's complaint against Aviva Insurance Limited and direct them to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 May 2024.

Lale Hussein-Venn
Ombudsman