

The complaint

Mr K complains that Aviva Insurance Limited (“Aviva”) offered a disturbance allowance but then it declined his claim and didn’t pay anything.

All references to Aviva include the actions of the agents acting on its behalf.

What happened

The background to this complaint is well-known to both parties. So I’ve set out a summary of what I think are the key events.

Mr K had buildings only insurance underwritten by Aviva. In January 2024, he returned after an evening away to find that water had escaped from a burst pipe in his loft and flooded parts of his house. He stopped the water flow, claimed under his buildings policy, and had the burst pipe repaired. In the meantime, Mr K went to stay with his family. He said Aviva told him it would pay a disturbance allowance (DA) of £30 per day until his house was inhabitable again.

Aviva appointed a loss adjuster (LA) to assess the claim. The LA inspected Mr K’s house and took many photos of the damage. In their report, the LA said the house looked as though it hadn’t been occupied because there was a lack of contents.

Aviva asked Mr K to provide many different forms of evidence to show he lived at the house, and asked for explanations of various observations. Mr K provided evidence, such as his driving licence, council tax bill, utilities bills, and other similar documents. In response to Aviva’s question about his belongings, he said he’d moved his contents out of the house before any of its agents visited. Mr K provided photos of some of the larger items stored in a portable cabin. Aviva remained unconvinced that Mr K lived in the property and continued to seek evidence from him.

Mr K chased payment of the DA several times throughout the duration of the claim assessment. Each time, Aviva said the payment would be made only if the claim was validated. Unhappy with the delays in validating the claim and making the DA payment, Mr K brought a complaint to us. We referred him back to Aviva to raise a complaint and give it the opportunity to investigate. Mr K complained to Aviva.

Aviva issued a final response dated 13 May explaining that the DA would only be paid if the claim was validated and liability accepted. As liability hadn’t been established, Aviva didn’t uphold Mr K’s complaint. In its letter, Aviva reminded Mr K that he hadn’t provided the information it required to assess his claim.

Ten days later, Aviva declined the claim because it hadn’t received sufficient evidence that the house had been occupied, as defined by the policy, when the damage occurred. Mr K complained again because he thought he’d provided enough evidence to demonstrate he’d lived there.

One of our investigators considered the complaint and thought Aviva had fairly declined the

claim in line with the policy wording based on the evidence available. And as the claim was declined, she said Aviva hadn't done anything wrong in refusing to pay the DA. Our investigator didn't think it was a complaint we should uphold.

Mr K didn't agree. He commented further on the details of his complaint and the evidence he'd provided of his occupancy. He also sent video footage of the leak happening and the house in its up-to-date state, pointing out inconsistencies between his evidence and that provided by Aviva.

Our investigator didn't think Mr K had provided anything that persuaded her to change her view, so the complaint was passed to me to decide.

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've decided not to uphold Mr K's complaint. I understand this will come as a disappointment to Mr K, especially with how he's described being affected by the escape of water and damage to his home. But I haven't seen anything in the evidence to suggest that Aviva unreasonably refused to pay DA until it established liability, or that it declined his claim unfairly. I'll explain.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. The policy sets out the detail of the contract between Mr K and Aviva so, to begin with, I've looked at the wording it relied upon to decline the claim.

Aviva declined Mr K's claim stating:

"whilst we accept that you are registered at [the property] as per your council tax bills and driving licence, we cannot accept that the property is or was lived in by you, as there was no evidence of this, and you have been unable to prove to the contrary."

The policy provides the following definitions:

Unoccupied - Not lived in by you or anyone who has your permission or doesn't contain enough furniture for normal living purposes.

'Lived in' means that normal living activities like bathing, cooking and sleeping are regularly carried out in the home.

The policy excludes cover for:

*Loss or damage caused by any of the following when your home has been left unoccupied for more than the period shown on your schedule:
... water escaping from or freezing in water tanks, pipes, plumbed-in home appliances, fixed equipment or fixed heating system;*

The schedule clarifies:

*Unoccupancy
You have confirmed that the home will not be unoccupied for more than 60 consecutive days.*

Turning to the evidence, I'm satisfied that Mr K provided several documents to show that he was registered as living at the house, and that he was responsible for the bills. I don't think Aviva disputes this or the validity of the documents. However, none of those documents show that Mr K *lived* there. I understand it's difficult to prove where he did or didn't live. So, where the evidence is inconclusive, I'm required to reach a decision based on the balance of probability – what's most likely to have happened.

In doing so, I've thought about other evidence Aviva asked Mr K for, and the explanations it requested in response to its observations. There were many, so I haven't listed them all here. Instead, I've selected a few to help explain my decision.

- Aviva asked Mr K for evidence of take-away food deliveries and courier deliveries. Mr K said he didn't use any of these services.
- Aviva asked for evidence of his oil supply for his heating. I haven't seen that Mr K provided anything.
- Aviva asked why the electricity usage shown on his bills was always estimated, and noted that the reading taken by its agents was significantly higher than that on the bills. It asked for a bill with an actual reading. Mr K simply said he pays his monthly bills.

I've also looked at the photos Aviva took and compared them to the video footage Mr K provided. In doing so, I haven't noted any significant differences in the content. The difference is in the conclusions each has drawn from them. For example:

- Aviva said there was no evidence of the house being furnished, whereas Mr K said that both photos and video show some indentations on the carpet where furniture would've stood. I agree with Mr K on this matter as the evidence clearly shows indentations consistent with a bed and wardrobe/drawers. However, the marks are relatively shallow.
- Aviva also said there were no belongings in the house, whereas Mr K pointed to the photos showing clothes hanging up and full holdalls. While those items were in the photos, I note that only coats were shown hanging up, and the content of the holdalls wasn't visible. Further, when Mr K provided up-to-date video footage seven months later, it seems none of the clothes or other items had moved from the position they were in when Aviva photographed them.
- Aviva said the oven appeared to have had little to no usage and it still had the warranty sticker on its door from six years earlier. The kitchen had been replaced as part of a previous water damage claim. Further Aviva said nothing in the kitchen looked different to the time it was fitted, and it provided rental photos from 2022 as evidence. Mr K videoed the inside of his oven in September 2024 to show it had been used, and he also showed water staining in his shower. While I'm satisfied that Mr K's evidence shows some usage, I can't fairly conclude that it evidences any significant use prior to the leak in January 2024.
- Aviva pointed out that the house looked the same as it did in photos when it was marketed for rent in 2022. That is, it was devoid of personal belongings. Mr K said he only lived in one small part of the house. While that may be the case, I'd have expected at least to see some cooking utensils or similar in the kitchen, to show he lived there.

The final point I'll make in respect of occupancy is in relation to the absence of contents. While I've said there were some belongings, they are more indicative of items that someone might leave in a property for brief visits. For example, there's a kettle and what appears to be one cup in the kitchen, suggesting there's enough to make a hot drink. But the cupboards are completely empty, and Aviva points out there are no marks to show that anything had ever been stored inside them.

Aviva told Mr K that it didn't think it was likely that he'd moved every item from his house within a couple of days of the flood to the day of its inspection. Having thought about this, I agree. To move more or less everything from a large house so quickly, especially as the water was turned off to prevent further flooding, seems to be an extreme response. Mr K hasn't provided Aviva with any evidence of how he transported his belongings to the various locations he claimed to have done, and his video of the water leaking on the day he found it reflects the same image of a near empty house as shown in subsequent photos. This supports Aviva's suggestion that the contents weren't in the house when the leak happened.

As I said, this isn't everything Aviva provided to explain why it thought the property was unoccupied. But I'm satisfied it's enough to show it had cause for concern regarding its liability for the claim. So, on balance, I find that Aviva reasonably interpreted the evidence as showing that the house wasn't being lived in when the damage occurred, and it fairly declined the claim relying on the policy exclusion for unoccupied properties.

Disturbance Allowance

Having concluded that Aviva fairly declined the claim, I've thought about whether it treated Mr K unfairly by not paying the disturbance allowance. The allowance is intended to cover some of the additional costs Mr K would've incurred living with his family while Aviva completed repairs. However, that was always dependent on it accepting the claim and the evidence shows that Aviva told Mr K that.

Given the evidence demonstrating Aviva had concerns about its liability, it's reasonable that it investigated the claim first. So I wouldn't have expected it to pay an allowance during that time. Aviva explained this to Mr K on the several occasions he chased up a payment. Once Aviva declined the claim, there was nothing to pay either for the claim or the disturbance allowance. Therefore, I don't find that Aviva treated Mr K unfairly by not paying the allowance.

In summary, I'm satisfied that the evidence shows Aviva had sufficient cause for concern regarding the occupancy status of the property to warrant investigation. And in the absence of any persuasive evidence that Mr K was not just registered at the property but also *lived* there, I find that Aviva declined the claim fairly for the reasons it gave and in line with the policy.

To be clear, I haven't concluded that Mr K didn't live in the property - my finding is about Aviva's handling of the claim and its decision to decline. Should Mr K be in a position to provide Aviva with any of the evidence it requested to establish that he lived at the property, he may wish to contact it directly.

My final decision

For the reasons I've given, my final decision is that I don't uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 October 2024.

Debra Vaughan
Ombudsman