

The complaint

Mr L and Mrs L complain that Aviva Insurance Limited have unfairly declined their claim for water damage to their property.

What happened

Mr L and Mrs L held a buildings insurance policy with Aviva for their home.

In August 2023 they made a claim under their buildings policy for water damage to the wall and woodwork behind the shower, which had been caused by a leaking shower mixer tap.

Aviva declined the claim as they said that the damage was caused by a gradually operating cause, in other words, wear and tear, which is not covered under the policy.

Mr L and Mrs L were unhappy about this and so they brought their complaint to us.

One of our investigators has looked into Mr L and Mrs L's complaint and she thought that Aviva had acted fairly in declining the claim.

Mr L and Mrs L disagreed with our investigator's view, and so the case came to me to review.

I issued a provisional decision on the complaint. My provisional findings were as follows:

In this case I have to consider whether Aviva have decided the claim in line with the terms and conditions of the policy and come to a fair and reasonable decision in doing so. However, having considered all of the evidence carefully, I am proposing to uphold Mr M and Mrs M's complaint, and I will explain why.

Insurable event and gradually occurring damage

For any loss or damage to buildings to be covered under this or any other insurance policy it needs to have been caused by an "insurable event". What counts as an insurable event is detailed in the policy booklet. Under the buildings section there is cover for:

5. Water escaping from or freezing in water tanks, pipes, plumbed-in home appliances (such as washing machines and dishwashers), fixed equipment or fixed heating system.

The leak was discovered accidentally when Mrs L put her foot through the wall of the shower when shaving her legs. Damage was noted to the wood and plasterboard in the cavity behind the tiles, and Mr L undertook further investigations. He was able to trace the leak to the hot and cold water feeds behind the shower mixer tap and cap these, stopping the leak.

However, there was significant damage affecting the partition stud wall, underfloor heating, boxing and walls behind the toilet, vanity unit and basin.

Aviva declined the claim, saying that the extent of the damage meant that the leak must have been ongoing for a long time, and so was excluded from cover as being “gradually occurring damage”.

Mr L and Mrs L disputed this as they say that they had no idea that the leak was occurring and could not have seen it, as it was behind the tiles and plasterboard, dripping down into the cavity. They have owned the property for eight years and have kept it in a good state of repair throughout that time.

The exclusion that Aviva have applied says:

"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;*
- any other gradually occurring damage"*

Whilst I think it is fair to say that this damage didn't occur as a result of a one off event, but over a longer period of time – and so is gradually occurring - I don't think it is fair for Aviva to exclude cover in this instance and I will explain why.

Mr L has engaged a surveyor to inspect the damage and provide a report. The report confirms that the suspected location of the leak is at the joint of the feed pipes and the mixer valve. It confirms that there is no corrosion of the pipes, and the leak has occurred over a long period of time, the seepage spreading behind the confines of the shower cubicle.

It confirms significant damage and rot to the timber framing on the wall, which would not have been visible to Mr L and Mrs L until the leak was discovered – he concludes that this is “consistent with an undiscovered slow escape of water from concealed pipework.”

From the photographs and diagrams, I can see that there was a stud wall at the side of the shower onto which the shower taps and head were fixed, and that they appear to be in a good state of repair.

I'm satisfied from the evidence provided that the leak was from where the water feeds were joined to the mixer tap, and I'm further satisfied that this piping was within the stud wall and concealed from view with tiling. So I can't see how Mr L and Mrs L could have been expected to notice that there was a leak affecting the wooden framework and take any remedial action. There was no easily visible evidence which would have led them to inspect it sooner, and they have notified Aviva as soon as they became aware of the issue.

In view of that I don't think it would be fair to decline the claim on the basis of gradually occurring damage, and I think that Aviva should continue to assess the claim in line with the other terms and conditions of the policy.

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.

Both Aviva and Mr L and Mrs L have responded to my provisional decision.

Mr L and Mrs L have accepted it, but Aviva have made further comments. They have said that there was a clear lack of maintenance and have included photographs which they say

demonstrate this. They have also said that it would be difficult to differentiate what damage was caused by the leaking pipes and what was caused by the seals.

I don't agree that there is a clear lack of maintenance. The photos of the shower cubicle, the skirting and the opposite wall of the shower room show minor issues that wouldn't have been indicators of the extensive rot that was being caused by the pipes leaking behind the taps, and the photo of the dry rot is the rot inside the cavity that wasn't visible until the accident.

In terms of differentiating between what damage has been caused by the leaking of the pipes, and other issues, the surveyor report has confirmed that the main cause is the leaking tap valves and the rot within the cavity of the stud wall supports this as it is adjacent to the taps, not the seal, which is why I'm satisfied that it's not fair to decline the claim. It will be for the contractor who prepares the scope of works to determine what work is required to correct the damage caused by the leak in line with the remaining terms and conditions of the policy, which is why I haven't made any findings in respect of what restoration work is covered. Once the scope is completed and any settlement offered, if Mr L and Mrs L are unhappy with it, that is a separate issue and would be the subject of a separate complaint.

Putting things right

In order to put things right, I think that Aviva should:

- Allow the claim and continue to assess it in line with the remaining terms and conditions of the policy.
- Reimburse Mr L and Mrs L the cost of the surveyor's report that they incurred in respect of this leak.

My final decision

My decision is that I'm upholding Mr L and Mrs L's complaint, and directing Aviva Insurance Limited to put things right as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 30 October 2024.

Joanne Ward
Ombudsman