

The complaint

Ms S's complaint is about the rejection of a claim for cover under her legal expenses insurance policy with Aviva Insurance Limited.

Aviva is the underwriter of this policy, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints on its behalf. As Aviva has accepted it is accountable for the actions of the agent, in my decision, any reference to Aviva includes the actions of the agents.

What happened

In December 2023, Ms S contacted the legal helpline, provided as part of her policy with Aviva, to discuss a potential claim against her local authority in relation to a water leak from a flat above hers. Ms S says there had been previous water leaks but, after the latest leak in December 2023, the concierge of the building told her that the floor in the flat above was broken and this was contributing to the leaks. As the freehold of the building is owned by the local authority, Ms S wants to pursue a claim against it for failure to properly maintain the building.

Ms S was advised by the helpline to submit a claim under the policy, which she did in January 2024. Aviva considered the claim and asked for some further information. However, Aviva said the claim was not covered, as Ms S had already complained that there had been five previous leaks from the upstairs flat (the first one it was relying on was in 2014) due to improper repairs by the local authority and therefore the series of incidents giving rise to this claim had started before the policy with Aviva, which came in to force in September 2017. Aviva said it could consider if Ms S could provide evidence she had legal expenses insurance prior to this policy.

Ms S is very unhappy with this. She complained about Aviva asking for excessive and unnecessary information in order to drag the assessment on and waste time; and that the rejection of the claim is not right. Ms S says Aviva has deliberately incorrectly assessed her claim, causing her prejudice. Ms S says the current claim she wants to bring against the local authority, does not relate to any of the previous leaks or buildings insurance claims for damage to her home. It is solely about whether the local authority has adhered to the terms of the lease with regard to maintenance of the building. Ms S also says she was told by the helpline to lodge the claim and the adviser was aware of all the dates at the time.

Aviva did not change its position on the claim, so Ms S referred the matter to us.

One of our Investigators looked into the matter. He did not think that Aviva had acted unfairly or unreasonably in rejecting the claim for the reasons it did.

Ms S does not accept the Investigator's assessment. She has made a number of points in response to his assessment. I have considered everything she has said but have summarised her main points below:

- The Investigator has ignored the content of her complaint and backed up Aviva that she had previously made a claim for damages for her property, which is incorrect.
- He was duty bound to contact her if he did not understand the complaint.
- Aviva has tried to separate her lease agreement from the property dispute, which is beyond comprehension.
- This was about a leak on 23 December 2023 from the flat above. The concierge told her to report a complaint to the local authority for broken floor seals in the upstairs property. She only knew about the problem with the floor after this leak. She wants the legal expenses cover to pursue this issue and whether this is a failure of the local authority to adhere to its obligations as freeholder of the building.
- Aviva harassed her and caused her prejudice by time wasting and dragging out her claim.

As the Investigator was unable to resolve the complaint, it has been passed to me.

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.

Time taken to assess Ms S's claim

Ms S says that Aviva deliberately wasted time asking her for unnecessary information with the intention of always rejecting the claim.

I have read the correspondence between Aviva and Ms S. I can see it asked for a timeline of events and some further information about the previous leaks. I am satisfied it has explained why this information was required and it seems reasonable to me. I do not therefore consider there is any evidence that it asked for unnecessary information.

In addition, Aviva received the claim in mid-January 2024 and its solicitors provided their assessment on 19 February 2024. I do not think this was unreasonable period of time overall.

Ms S also says that the helpline representative knew the dates involved of previous leaks and advised her to make the claim. The helpline is only intended to provide general advice and its representatives cannot make decisions as to whether a claim will be covered or not. It would be wrong of the helpline staff to pre-judge the outcome of a claim, as that is not within their remit. Therefore, I think it was correct advice that Ms S lodge a claim to be considered in full by Aviva and that does not mean it is obliged to cover the claim. While Ms S might now feel that wasted her time, I do not think this was unreasonable advice at the time.

Is the claim covered?

Ms S's legal expenses policy provides cover for the costs related to various possible legal disputes. The section relevant to this complaint is the section for property disputes, which covers, among other things:

"A dispute relating to the interference of your use, enjoyment or right over your home.

A dispute relating to damage to your home."

There is no section of cover for investigating the terms of a lease and establishing the obligations of the local authority as the freeholder on its own. Any claim would have to be for interference with Ms S's use and enjoyment of her home (which would include 'nuisance') or damage to her home. Any such nuisance or damage claim might require investigation of the local authority's obligations as part of the evidence gathering process, but there would have to be a valid nuisance or damage claim.

As with all insurance policies, this is subject to various terms and conditions. The condition relied on by Aviva in this case is as follows:

"Conditions ...

We will not pay for

- a. Any claim we reasonably believe you knew was likely to happen when you took out this insurance, e.g. where you were already in a disciplinary process at work before taking out this policy, which then led to you making a claim...*
- d. claims where the initial dispute or series of incidents leading to a claim on this policy happened before this cover starts or that begin after it comes to an end as shown on your schedule. You can only make one claim for all disputes arising from the same incident."*

Ms S confirmed she had reported *"the repeated nuisance"* of water leaks from the flat above hers to the local authority in 2014, 2019 and 2020. However, she says that is not relevant to this claim as this is in relation to the local authority's obligations to maintain the floor of the flat above hers.

Having considered everything very carefully I do not agree. While I can see the argument that Ms S has made, I do not agree that the discovery of the issue with the floor is effectively a standalone event in time or in cause.

The claim Ms S wants to make against the local authority relates to the impact of the lack of maintenance on Ms S and her property, which is the damage to her home and the nuisance caused by that interference with her use and enjoyment of her own home.

Ms S has confirmed that she reported previous incidents of nuisance, as a result of water leaks, to the local authority. I therefore think it was reasonable for Aviva to consider the incident that has led to this claim (*i.e.* the leak in December 2023 and discovery of the issue with the floor) is the latest in a series of linked incidents of nuisance. And, as the first incident, in that series of incidents, was in 2014 which is before the policy with Aviva started, I think it is entitled to reject the claim.

My final decision

Despite my sympathy for Ms S's position, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 13 December 2024.

Harriet McCarthy
Ombudsman