

The complaint

Mr P complains Aviva Insurance Limited unfairly declined his claim for malicious damage to his roof.

What happened

In 2021 Mr P thought some solar panels installed on the roof of his property weren't functioning properly. He says he contacted the company who installed the solar panels (I'll refer to them as "S") and it attended to carry out some works. Mr P was unhappy with the work carried out, so he made further contact with S. He says when it inspected the roof, S found cracks in the solar panels and broken tiles on the roof which had caused holes in the roof membrane, allowing water to ingress. But he says it didn't take any action to resolve matters.

Mr P thought S' contractors who'd attended the property had been hostile; he considered the damage to the roof to have been done maliciously and so he made a claim on his Aviva home insurance policy.

Separately Mr P also made a claim on his Aviva legal expenses insurance policy in order to take legal action against S.

Aviva declined the claim for malicious damage on his home insurance policy. Mr P was unhappy with that decision and on 8 September 2023 Aviva issued a complaint final response letter (FRL). That said as Mr P was pursuing S for criminal damage and using his legal expenses insurance policy to do so, the damage in question wasn't one of those listed as covered by his home insurance policy. So it couldn't assist with a claim.

Unhappy with Aviva's response, Mr P referred the complaint to the Financial Ombudsman Service for an independent review. He said Aviva had asked him to get a crime reference number from the police in support of his claim there had been malicious damage but had then used that as evidence of criminal damage which it said wasn't covered by the policy.

Mr P also brought a complaint to this Service about his legal expenses insurance claim being declined. An Ombudsman colleague at this service issued a final decision on that complaint in January 2024. She found Aviva had acted reasonably declining this claim as it related to issues involving leasing part of his property, which was excluded by the policy.

In regards to the home insurance claim, our Investigator recommended Aviva consider a claim for malicious damage. She said Mr P was covered for malicious damage under the policy and so Aviva should consider the claim and give Mr P an answer on that.

The complaint was resolved at that stage. However, Mr P later contacted this Service to say Aviva had started a claim, and had taken the solar panels off the roof, but then it hadn't agreed to fix the roof.

Aviva said to us that it started the claim in error, as a result of our Investigator's view, but it doesn't think it should have done so. It says it's already received a final decision from this Service in Aviva's favour on the matter and it is a legal issue.

In December 2024 I issued a provisional decision on this complaint. I said there had been much confusion – some of which was caused by Aviva – so I set out the position as I saw it, inviting both parties to respond. But I said I intended to decide Aviva should cash settle for

malicious damage to four roof tiles, at Mr P's contractors' rates, to resolve matters. A copy of my provisional findings is below:

"I realise this has been a worrying time for Mr P, but much of his correspondence to this Service surround his issues with S, who installed the solar panels. I don't have the power to look at complaints about S. So I won't respond to the points Mr P has made in relation to it, or the wider issues he's faced with the solar panels.

This Service has issued a final decision in relation to Mr P's legal expenses cover. That found the policy wouldn't respond as the type of dispute Mr P has (which is related to the leasing of his roof to S, who has installed solar panels on it) isn't covered by his legal expenses policy. I can't review the findings already made by another Ombudsman colleague.

However, declining a legal expenses insurance claim doesn't that means Aviva shouldn't then consider a claim Mr P makes under his home buildings insurance policy. Just because Mr P can't rely on his legal expenses cover to pursue legal action against S, doesn't mean Aviva shouldn't consider a claim he's made for damage to his home caused by S.

Mr P's home insurance policy does cover him for malicious damage. The term says:

*"we will provide cover for loss of or damage to the **buildings** caused by any of the following:
b. Malicious persons or vandals"*

Aviva has assessed the roof in November 2024, so I've assessed the findings of that report. It says the front elevation of the property was assessed and the findings were:

"At the time of the survey [H – Aviva's contractor] could only find several front roof tiles that had been broken and covered in a black DPC material to stop water ingress. There was no evidence of any other malicious damage to the main house roof covering or timbers."

Later in the report it confirms it is talking about four tiles in total which it considers as malicious damage.

The report says it can't find any other evidence of malicious damage. It finds that groves cut into the underside of tiles was done to facilitate the installation of the solar panels and isn't evidence of malicious damage. It also said whilst there were some broken bits of roof tile which had been caught between the external roof tiles and the felt, this was likely from the original installation of the panels in 2013 and wasn't evidence of malicious damage.

Based on this report, I'm satisfied Aviva should be paying a claim of malicious damage (to part of the roof), so that is what I intend to direct it to do. Its contractor found evidence of malicious damage to four tiles, so that is what I intend to require Aviva to settle.

I realise there are other issues with the roof, Mr P seems to remain in dispute with S as to the solar panels and issues he's had. He's also suggested S switched them off in early 2024. But Aviva's only liability here is for repairs needed to Mr P's roof as a result of an insured event. So – bearing in mind there are other disputes over the roof – I'm minded to decide that Aviva should provide a cash settlement amount for Mr P to allow him to arrange the insured repairs himself. It should cash settle the claim at the amount it will likely cost Mr P to arrange the work privately, rather than applying any discount it may receive from it using its own contractors. This will allow him to repair the maliciously damaged tiles himself.

Mr P says there is other damage to the roof which isn't noted in Aviva's report. He says there are rips in the felt, he doesn't know how Aviva didn't see it.

I can't see that Mr P has provided any further evidence of roof damage which isn't covered in the report. So at the moment I'm not persuaded Aviva needs to do more to settle the insured damage. Mr P has provided this Service with many photos, I've reviewed them, but they are mostly of parts of the solar panel system, and various people who've attended his property. I haven't found any photos showing rips to the felt membrane as evidence of malicious

damage. One photo Mr P provided – which looks to me like a felt membrane – doesn't show any rips.

However, I may have missed the relevant photo in the extensive correspondence provided. If Mr P does have any photos which he thinks specifically show damage to the felt membrane of his roof, I'll consider them in response to this provisional decision.

I understand that in order to assess the roof, Aviva removed the solar panels. I'm not going to ask that it reinstalls those panels or pays the cost for Mr P to do so as part of this claim. I understand Mr P is concerned about S suing him for removing the panels, but he's also said S has disconnected the panels as of this year. So I consider that to be something between he and S to resolve, and not something Aviva needs to be involved in further."

Responses to my provisional decision

Mr P responded and provided some photographs of the felt membrane which he says shows malicious damage. He also made the following points:

- He felt the workmen were drunk when attending his property in 2021 and fitted the panels incorrectly showing their work was vandalism.
- The wrong fixtures were used to attach the solar panels to the roof which has left the tiles raised, allowing strong wind and rain to penetrate.
- Broken tiles were left on top of the membrane, which weakened it and caused poor air circulation resulting in black mould.
- The damaged and mouldy membrane represents a breach of building regulations.
- The solar panel company are no longer a concern of Aviva so it should be able to do the works.
- If Aviva had done the works in 2023 as this Service recommended, the damage to the membrane wouldn't have happened, and so it should cover replacement of the full membrane.
- Aviva's report is full of inaccuracies and the whole of the roof and membrane wasn't inspected.
- When roof repairs are carried out, bird netting also needs to be installed onto the roof as Aviva removed this.

Aviva responded to say it had accepted it had caused some confusion, but it didn't consider there to be any malicious damage to the roof. It said the photos didn't support that there had been intentional damage caused to the roof tiles.

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.

I thank Mr P for providing the photographs of the membrane, I'm sorry to hear about the ongoing stress this issue continues to cause him.

I note Aviva now considers there is no malicious damage to the roof. However, that is not what its contractor said when it visited the property, reviewed the roof and assessed the damage. Aviva's current comments from its claim handler on the photographs don't persuade me that the report from Aviva's expert shouldn't be relied upon. So, whilst it now considers the photos don't support the report, I can't see that its provided comments from the contractor who attended to support its change in position. And given the delays and confusion already caused by Aviva in this claim, I'm not going to allow it more time to do so.

So, I'm satisfied its most likely there was malicious damage to the four roof tiles, and as such, that damage is reasonably covered under the policy.

I've reviewed the photographs provided and comments made by Mr P, but they haven't persuaded me to change my opinion from that which I set out in my provisional findings. There are some photos of the membrane showing small holes or rips, but I don't think this is enough to show they were done by the contractor, and crucially, that they were done maliciously by the contractor. The rips/holes appear to be small and in different, random locations, they don't appear to have been done deliberately, for example with big slashes that could only have been done with a sharp implement intending to cause damage. Whilst I note Mr P's comments that he considers the workmen to have been drunk, I'm still not persuaded the damage to the membrane was most likely done maliciously. So it follows that I'm not going to ask Aviva to replace the membrane as part of the claim.

Mr P says if Aviva had done this work in 2023 as this Service recommended, there wouldn't now be issues with mould on the membrane. I remind Mr P that in 2023, an Investigator at this Service recommended that Aviva should *consider* his claim for malicious damage (which it hadn't yet done). That is, she recommended Aviva review the evidence to determine if the claim would be successful, she didn't say Aviva needed to carry out repair works at that stage.

There has then been a delay – caused by Aviva – in considering this claim. However, the report shows only four tiles were damaged maliciously, in that there were cracks in them. I'm not persuaded the damage to those four tiles has resulted in all of the issues Mr P has presented with the membrane, such as the mould, which appears to be widespread and not necessarily in the location of the damaged tiles. So whilst I think Aviva has delayed matters, I'm not persuaded this means it also needs to repair the felt membrane of the roof. I also say this because Mr P says the way the solar panels have been installed has caused roof tiles to lift, which has also likely allowed water to get in, which could have been the cause of the mould. But I don't consider this should be covered by Aviva.

I say this because I'm not persuaded that the way the solar panels were fitted generally, including using the wrong fixtures, is evidence of widespread malicious damage to the roof. Mr P says using the wrong equipment and installing them incorrectly shows vandalism. I don't agree that it does. It likely shows poor workmanship – based on what Mr P has said. But his Aviva insurance policy doesn't provide insurance cover for poor workmanship.

Mr P says Aviva's report isn't accurate and the contractor didn't assess all of the roof. He says the contractor made some inaccurate comments about the installation of the panels and the timings of events. Even if that is the case, I'm not satisfied this means the report as a whole, shouldn't be relied on. And Mr P hasn't provided his own report, for example from his own expert, which disputes Aviva's findings relating to the issues he considers he has with his roof. So I'm still more persuaded by Aviva's report. As such, I still consider the fair and reasonable outcome to this complaint is for Aviva to pay for the four roof tiles which its contractor said it considered had been damaged 'maliciously'.

Mr P says Aviva should carry out the works, as the solar panel company he's been in dispute with is no longer an issue. But it seems to me there are other issues with Mr P's roof – such as to the felt membrane – which also need addressing but Aviva aren't liable for. Mr P has also said that a bird netting also needs installing on the roof, but I don't consider Aviva would be liable for this, even if it took it down in order to assess the roof for damage. Ultimately, it's only been found that Aviva should consider damage to four roof tiles. I consider Aviva took the panels and netting off to assist Mr P with showing he had a valid claim, which was reasonable of it to do. I don't think this means though that it now needs to do more works to the roof than resolving the insured damage – which is to the four roof tiles. So I still consider Aviva only needs to cash settle for replacing those tiles.

My final decision

My final decision is that I intend to require Aviva Insurance Limited to cash settle Mr P's claim for malicious damage to four roof tiles.

Aviva will need to settle the claim at Mr P's own contractor's rates, rather than apply any discount it may have received for carrying the works out itself.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 January 2025.

Michelle Henderson
Ombudsman