

The complaint

Mrs R complains that Aviva Insurance Limited (“Aviva”) unfairly declined a claim made under her landlord insurance policy.

What happened

In February 2024, Mrs R made a claim under her landlord insurance policy with Aviva when she was notified of damage to a property she owns and rents out. Mrs R said that following a roof inspection, it was found that the upstairs neighbour had placed scaffolding on the roof of her property’s kitchen extension, which had caused damage. Scaffolding was later also found at the front of her property.

Aviva advised Mrs R to check for planning consent. She found plans for an attic dormer on the planning department’s website and asked the planning department how the neighbour was able to gain consent for the work without her knowledge and permission.

Mrs R says that she later found out that the neighbour had lied on the planning application, stating that he was the sole owner of the property. Mrs R sought legal advice about the matter and also contacted the police.

In April 2024, Mrs R says Aviva confirmed there was cover for her claim. But repairs couldn’t be carried out as the scaffolding remained in place at the time.

Between May and June 2024, Mrs R discovered new cracks in the main building of the property. In June a building survey was arranged and Mrs R says she was told a structural engineer would also visit. But in July she was told the engineer wouldn’t be available. The building survey went ahead.

Following the survey, Mrs R contacted Aviva and was told that her claim had been closed. She said no one had made her aware of this. Aviva ultimately decided to decline the claim based on its view that the type of damage claimed for was specifically excluded under the policy.

Mrs R complained about the decline of her claim, the lack of communication and the confusion after being told the claim would be covered and then finding out it wouldn’t be. In its response to her complaint, Aviva said the accidental damage part of her policy covered her for one off insured events that were “sudden and unexpected”. It said it would’ve considered the claim under this part of the policy, had it not been for an exclusion which said that damage caused by “structural alteration, repair, maintenance, decoration, restoration, dismantling, demolition, renovation or breakdown” wasn’t covered.

It said that due to this exclusion, it wouldn’t be able to consider her claim further. But it accepted that it hadn’t provided a good level of service to her throughout its handling of her claim, so it offered her £700 compensation for the distress and inconvenience this had caused.

It later wrote to Mrs R to apologise for quoting the wrong exclusion in the policy, and it said

the correct exclusion was the one that stated any damage due to “wear or tear, rust, corrosion or gradually developing deterioration of the buildings” wasn’t covered. It also said to Mrs R that as her tenants were aware of the work it was foreseen, thus suggesting there was no valid claim under the policy.

Mrs R didn’t accept Aviva’s response. She said the damage was unforeseen and unintentional from her perspective as the construction work which was the cause of the damage had been carried out by her neighbour without her direct knowledge or consent. She said her tenant had only been given vague details about the work and no information regarding the timing or scale of the work had been shared. She said the structural work exclusion only applied where the policyholder was directly involved with or aware of the work being carried out. She also said the gradual deterioration exclusion hadn’t been applied fairly because the damage was sudden, not gradual, and coincided directly with the unauthorised work commenced by her neighbour.

As Aviva maintained its position about the claim, Mrs R referred her complaint to this service. Our Investigator considered it, but didn’t think it should be upheld. He said that the evidence pointed to two possible causes of the damage – these were gradual age-related damage or damage from the structural work being carried out. In the circumstances, he felt that the exclusions hadn’t been applied unfairly.

Mrs R didn’t agree with our Investigator’s assessment. She sent in a further report which she believed supported her claim. Our Investigator confirmed that on the face of it, the further report didn’t change things but that new evidence could only be properly considered once it had been passed to Aviva for its comments first, and that in this complaint we could only look at Aviva’s actions up to the date of the last final response letter.

As Mrs R didn’t accept what our Investigator had said, the complaint has now been passed to me for an Ombudsman’s 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.

As this is an informal service, I’m not going to respond here to every point raised or comment on every piece of evidence Mrs R and Aviva have provided. I can see Mrs R feels strongly that her specific queries should be addressed, but that isn’t the role of this service. Our role is to give an independent and impartial view of whether a financial business has been fair and reasonable in the circumstances of a particular complaint, up to the point at which it responded to that complaint. So I’ve focused only on those matters which I consider to be key or central to the issues in dispute. But I would like to reassure both parties that I have considered everything submitted and events up to the date of the last final response letter. And having done so, I’m not upholding this complaint. I’ll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the ‘Insurance: Conduct of Business Sourcebook’ (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a claim. I’ve kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

There are two main issues for me to consider, which have been raised by Mrs R and responded to in Aviva’s final response letters – one is the decline of the claim itself and the

other is the poor service Mrs R feels she has received from Aviva.

In relation to the claim decline, I've checked the policy terms and can see there are certain exclusions to the cover provided. But first I should point out that when making a claim on an insurance policy, it is for the insured – so in this case Mrs R – to demonstrate she's suffered a loss covered by the policy. If she can do so, then Aviva will need to accept the claim unless it can show it can fairly rely on a valid exclusion to decline it.

In this case Aviva has raised a number of issues regarding the claim. It's suggested on the one hand that there's no insured peril, because the accidental damage section of the policy only covers damage that was sudden and unexpected. I'm persuaded, from what Mrs R has told us, that she wasn't directly made aware of the renovation work, so it wouldn't be fair to view this as foreseeable damage. But there's not currently enough evidence to show that the damage occurred suddenly. The damage mentioned in the surveyor's report is referred to as "age/wear and tear related" and the surveyor also says it's possible "that vibration from the works upstairs may have exacerbated this".

There isn't any other expert commentary I'm able to consider about the cause of the damage. And as Mrs R is aware, I can't consider new evidence unless Aviva gives its consent for me to do so in this complaint. So any new evidence Mrs R has will need to be referred to Aviva if it hasn't been already, and Mrs R will need to raise a new complaint if she doesn't agree with Aviva's response.

Based on the evidence Aviva had at the time it made its decision to decline the claim, I don't find it unreasonable for it to have told Mrs R that the claim wasn't covered, even though it changed its mind about the reasons for this. I know Mrs R disagrees with the contents of Aviva's report. She's said the surveyor didn't check several key areas of the property, so the report can't be relied on. But as I've said, there isn't any conflicting expert evidence that might have persuaded me that the damage was caused by anything other than wear and tear or the neighbour's building work – both of which are excluded under the policy.

The exclusion relating to building work doesn't say the work has to be carried out by the policyholder, or with the policyholder's consent, for it to be excluded. From my interpretation of the policy terms, it appears that damage caused by structural alteration or renovation work is not a risk Aviva is willing to cover under the accidental damage section of the policy. And there's no other insured peril in the policy that this sort of damage could fall under.

Insurance policies aren't designed to cover every eventuality. An insurer will decide which risks it's willing to cover and set these out in the terms and conditions of the policy document. The test then is whether the claim falls under one of the agreed areas of cover within the policy. So, even if I were to agree that the damage could be considered under the accidental damage part of the policy because it was sudden and unexpected, I'm still not persuaded it's a risk covered by the policy, due to the policy exclusions.

I appreciate the point Mrs R has made about Aviva changing its mind about why the claim isn't covered, so I agree that Aviva hasn't provided an acceptable level of service here and Mrs R should be compensated for that. But Aviva making mistakes doesn't mean that the claim decision should be overturned. As I've said above, I don't think there's enough evidence to show that the claim isn't excluded. But I've considered the level of service Aviva provided and the compensation it offered. It accepted Mrs R should be compensated for her loss of expectation due to being told the claim would be covered and then being told it wouldn't be, as well as for the delay in paying back the excess on the claim, and for other mistakes it made along the way. And I'm satisfied that £700 is a fair and reasonable amount of compensation for the impact of those mistakes. This amount reflects the fact that Aviva's actions in giving conflicting reasons for the decline of the claim has caused Mrs R a great

deal of inconvenience, frustration and confusion and she's had to go to a lot of extra effort during the course of her dealings with Aviva.

As I've mentioned, Mrs R has sent us additional evidence including a new structural engineer's report – which our Investigator has seen, and which I've also looked at. However I won't be able to properly consider its contents as it was obtained after Aviva issued its final responses. And although Mrs R may have passed it on to Aviva for its consideration, I understand Aviva hasn't yet accepted it as evidence that would change its decision about the claim. Mrs R is free to raise a new complaint to Aviva about this, and any other issue that wasn't addressed in the final response letters she received. For example, she's also mentioned she's having difficulty renewing her insurance, so this is also something she can raise with Aviva as part of a new complaint, if she so wishes.

On a separate note, I understand Mrs R has requested that her complaint be considered alongside another complaint she's referred to this service. However, I'm not able to do that – as that case was about a different financial business and each case is considered on its own merits. In any event, a final decision has been made about Mrs R's other case, and I cannot interfere with the decision of another Ombudsman.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 12 June 2025.

Ifrah Malik
Ombudsman