

## **The complaint**

Mr R and Mrs D complain about Aviva Insurance Limited's ("Aviva") decision to decline their claim for damage due to water ingress, under their home building's insurance policy.

I'll refer to Mr R in my decision for ease.

References to Aviva include its agents.

## **What happened**

Mr R said a leak due to blocked drains caused damage to his property. He contacted Aviva to make a claim. He said it initially declined the claim as the damage was age-related. Mr R said he provided evidence to refute this. He complained to Aviva and received a response in March 2024. In this the business said it would arrange a site visit to investigate further. Since this time, Mr R said he's had to provide several different companies with the same information. And that Aviva has delayed proceedings and ignored his emails. He submitted a further complaint in October.

Aviva responded and said after a thorough review it was maintaining its decision to decline Mr R's complaint. It said its policy terms don't cover properties that remain unoccupied for more than 60 consecutive days. Aviva explained that as Mr R left his property in September 2023 and didn't return until February 2024 his property was considered unoccupied. It didn't accept that visits to his property by his brother and parents meant the property had been occupied as per its policy terms. But it offered £200 compensation for a delay in dealing with the complaint.

Mr R referred his complaint to us. Our investigator recommended that it should not be upheld. She said she didn't think it was unreasonable for Aviva to decline his claim based on his property being unoccupied. She explained that the evidence didn't support that someone was living at the property. So, she didn't think Aviva needed to do anything more.

Mr R didn't accept our investigator's findings and asked for an ombudsman to consider his complaint.

It has been 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'm not upholding Mr R's complaint. I'm sorry to disappoint him but I'll explain why I think my decision is fair.

It's for the policyholder to show that they've incurred an insured loss, fire, flood etc. If they can then, generally speaking, the insurer should pay the claim. This is unless it can reasonably rely on a policy exclusion not to. I've thought carefully about how this applies

here.

Mr R said it was a blocked drain that resulted in water entering his home and causing damage. Aviva said it didn't dispute that an insured event had occurred. But it said this had merely highlighted an area of pre-existing damage. This eventuality was excluded under its policy terms, so it declined the claim. I note this was decided using a desk-based investigation. As Mr R was dissatisfied Aviva arranged for further enquiries to be made into validating his claim.

Aviva arranged a meeting with Mr R. It said he confirmed that he'd moved out of his property on 21 September 2023. And that he and his family didn't return until February 2024. Aviva was concerned that this meant the property was unoccupied.

I've checked what Mr R's policy terms say about an unoccupied property. The terms say:

*"Buildings - 5. a. Water escaping from water tanks, pipes, equipment or fixed heating systems. b. Water freezing in tanks, equipment or pipes..."*

*Exclusions - Loss or damage that happens after the home has been left unoccupied or unfurnished for more than 60 days in a row."*

I think this shows the damage Mr R claimed for isn't covered in the event his property was unoccupied. The terms say that 'unoccupied' means, *"Not lived in by you or by anyone who has your permission"*.

Based on these terms if Aviva can show that Mr R's property was unoccupied, it can decline his claim.

The terms say that unoccupied means not 'lived in'. But no further explanation is given to show what this means. So, I've relied on what our service considers reasonable. We think that 'occupied' should mean the property has been used for carrying out normal living activities such as cooking, washing and sleeping. And that this has been done sufficiently regularly.

Aviva gave a similar description of what its underwriters consider 'lived in' to mean. Albeit this definition isn't set out in Mr R's policy terms.

I've thought carefully about whether the evidence supports that Mr R's property was occupied or not at the time of his claim.

The business said Mr R confirmed his brother would often stay at the property for two to three nights every other week. And that this meant his property was lived in. However, when it discussed this with Mr R's brother Aviva was told he'd stayed at the property only twice. This was between 2 and 4 November 2024 and then between 10 and 16 November. It pointed out that this differs to the information Mr R had given.

Aviva said Mr R advised that his parents had also stayed at the property two to three times a week. I can see that it asked for evidence of this. It suggested this could be in the form of receipts or bank statements showing purchases at local shops, supermarkets, and food delivery companies etc. It also asked for statements from Mr R's energy supplier to show energy use over the period he was away from his home.

I've seen the energy statements Mr R sent to Aviva. These are estimated, which means he hasn't shown what the actual amount of energy used was. Mr R sent photos his parents took whilst they were in his home. However, as Aviva pointed out this doesn't show that they

stayed at the property or carried out daily living activities.

I can see that Aviva asked Mr R to explain why he had told its investigator that his brother was staying at his property every other week, given what his brother had said. It also asked for the exact dates his parents had stayed, along with receipts or bank statements to show purchases locally.

I can't see that Mr R responded on the point about the discrepancy with his brother's occupancy at his property.

However, in his submissions to our service Mr R explained that his parents took food with them when visiting his property. He said they would not have bought food locally. He said the photos he supplied show they had made a hot drink and lit the wood burning stove, which showed use of the facilities. He also said that these photos included date/time stamps. Mr R said he did provide statements from his energy supplier. But Aviva didn't accept this as they were estimated. But he explained that he doesn't have smart meters installed.

Aviva has also said that Mr R told it the damage to his property wasn't discovered until he returned in February 2024. It queried how this was the case if his brother and parents had been staying there whilst he was away. I note its comments that Mr R hasn't provided a reasonable explanation for this, which supports its view that the property was unoccupied.

I've listened to the call when Mr R first reported his claim to Aviva on 21 February 2024. The agent asked him, "*when did this start happening*". Mr R replied, "*I've been away for a couple of weeks, so in the last month*". He then spends some time looking through emails before he said, "*21 December for arguments sake*".

Based on this information I don't think it's entirely clear when the damage occurred. I note Mr R's view that the 60-day period re-sets from when his brother stayed in November 2024. But the policy requires Mr R's property to be lived in. I don't think the time Mr R's brother said he was at the property reasonably meets this requirement. In addition, Mr R doesn't appear to have explained why he said his brother was staying every other week. When his brother said he'd stayed only twice over the six-month period Mr R was away.

In summary, there is no dispute that Mr R and family weren't living at the insured property from 21 September 2024 until they returned in February 2025. Mr R hasn't reasonably shown his parents were occupying his property during this period. His brother said he stayed over on two separate occasions. But there's clearly a discrepancy between this and Mr R's account that his brother stayed every other week. I think it's reasonable for Aviva to have had concerns about this and for it to have asked Mr R for clarification. As mentioned previously, I can't see that he responded to this point. The estimated energy statements don't reasonably demonstrate actual usage. And Mr R's parents haven't been able to provide receipts, or other evidence, that supports them having lived at the property.

Based on this information I'm not persuaded that Mr R's property was occupied, in line with his policy conditions, after the date he confirmed he and his family had moved out.

Having considered all of this, although I'm sorry to disappoint Mr R, I don't think Aviva treated him unfairly when it relied on its policy terms to decline his claim for the reason it gave. This means I'm not upholding his complaint, and I can't reasonably ask Aviva to do anymore.

**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 D and Mr R to accept or reject my decision before 27 June 2025.

Mike Waldron  
**Ombudsman**