

## **The complaint**

Mr and Mrs B complain that Aviva Insurance Limited declined a claim on their home buildings insurance policy.

## **What happened**

Mr and Mrs B became concerned about water entering the garage at their property and causing damage. They looked into what was causing the problem, sought advice from a surveyor and contacted the neighbour about this, as it appeared to be due to the way the neighbour was using his property.

Mr and Mrs B tried to claim on their home insurance but were told there was no cover because the policy covers specific risks such as fire, flood or theft, and the issue had been ongoing for a long time and wasn't covered by any of the insured risks. Aviva considered whether support could be given under the legal expenses section of cover but this wasn't included in Mr and Mrs B's policy. They complained but Aviva didn't change its decision so they referred the complaint to this Service.

Our investigator said Aviva had dealt with the claim fairly. He didn't think Mr and Mrs B had shown there was an insured event that would be covered by the policy, and said they didn't have legal expenses cover included with their policy so it was fair for Aviva not to assist with a legal claim.

Mr and Mrs B disagree and have requested an ombudsman's decision. Amongst other things, they say it would not be fair to describe the problem as a gradual deterioration in the property when it's due to the actions of their neighbour.

## **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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly, support a policyholder to make a claim, and not unreasonably reject a claim.

Mr and Mrs B have explained how difficult their circumstances have been, and the lengths they have gone to in trying to resolve the problems. I appreciate how challenging it has been for them, but that doesn't mean their insurer needs to cover the claim if the damage is not covered by the policy.

Having considered everything carefully, I don't think this is something that's covered, for the following reasons:

- No insurance policy will cover every risk that may result in a policyholder suffering financial loss. It's for insurers to decide what risks they want to accept and they will consider this when deciding whether to offer a policy. Insurance is always subject to terms and conditions that limit the insurer's liabilities to its policyholders.

- The policy sets out the risks that are covered under the buildings section of cover. There are also some exclusions that apply. The relevant one in this case is an exclusion for any gradual deterioration.
- In the first instance it's for the policyholder to show they have a valid claim. So Mr and Mrs B need to show the claim falls under one of the insured perils. Looking at the circumstances of what's happened it was reasonable for Aviva to conclude there is no insured peril that would apply. The damage has happened gradually over a period of years, due to damp and water penetrating the garage. It is not something that arose following a specific incident. Even if there is an insured peril that would apply, it would be fair for Aviva to say the exclusion for something that happens gradually applies.
- The issue seems to lie with the neighbour, and it may be there's a remedy against them - Mr and Mrs B have explained they believe there would be grounds for legal action against the neighbour for nuisance.
- Mr and Mrs B have said if the neighbour had accepted liability and dealt with the problem in late 2021, when they made him aware of the issues, there would not have been a gradual deterioration. I think that serves to confirm the gradual nature of the issue, which was already apparent then and continued to get worse.
- Aviva did consider whether a claim could be made on the legal expenses section of cover, which might then cover Mr and Mrs B's legal costs of pursuing a legal case. However, legal expenses is an optional extra and they hadn't included this in their policy, so they don't have the benefit of this cover.

### **My final decision**

My decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 17 July 2025.

Peter Whiteley  
**Ombudsman**