complaint

Mr R complained because Aviva Insurance Limited declined his escape of water claim. He also complained that the incident was logged against his claims record causing his subsequent insurance to be more expensive.

background

Mr R lodged a claim with Aviva under his home insurance policy following his discovery of water leaking from his bathroom.

Aviva commissioned an electrician and plumber to carry out emergency works and appointed loss adjusters to manage the claim.

Mr R stated that the plumber damaged his bath panel and a row of tiles whilst carrying out emergency works. The plumber stated that, due to the type of panel, it could not reasonably remain in one piece following removal. He said that the panel was covered in mould and that the water leak had occurred over a period of time causing the panel to disintegrate when removed.

With respect to the damaged tiles, Aviva stated that Mr R mentioned that the tiles were coming away from the bath when he submitted a claim before any investigation. The loss adjuster noted from its site visit that there was cracking and bulging to the lath and plaster ceiling and the woodwork was suffering from wet rot. It also said that the grout was missing in several places and that the row of tiles on the edge of the bath was coming away from the wall.

Given the conclusions of the investigations carried out, Aviva declined the claim on the basis that the cause of the damage was wear and tear.

Our adjudicator upheld this complaint as he did not believe Aviva had provided enough evidence to verify that the condition of Mr R's bathroom had deteriorated to the extent it stated. He concluded that Mr R could not have reasonably noticed the water leaking over time. In respect of the claim being logged against Mr R, our adjudicator advised him that he would not be able to recommend this is removed as claims are automatically logged by an insurer once a policyholder reports such a problem.

Aviva felt that its' loss adjuster's comments were conclusive and asked for the matter to be referred to an ombudsman.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I think it is fair to look at the evidence independently, rather than just assuming because an expert has said the matter is wear and tear, that he is right. Our position in respect of escape of water claims is that it is not reasonable to expect a consumer to discover 'hidden' leaks that may have been going on for some time. The loss adjuster's position is that:

- the lath and plaster kitchen ceiling was cracking and bulging
- under the bath the plasterboard stud had disintegrated
- there was localised rotting to the floorboards

- grout was missing around the tiles which were coming away from the wall
- when the shower was run, water poured over the tiles and under the bath
- there was very little bath seal to the end of the bath
- the bath panel was rotting and disintegrating

I am firstly satisfied that all the above matters relate to water leaking. In order to be persuaded that the matters were wear and tear, Aviva needs to show that Mr R must have noticed the deterioration for some time before he made a claim. He says that he only noticed it when water started coming through the kitchen ceiling. It does appear to me that most of the matters identified relate to 'hidden' damage either behind or under the bath. The loss adjuster took photographs of the damage. However without exception they are all out of focus and do not assist me in deciding whether visible damage like the tiles or the bath panel should have been noticed buy Mr R as water damage.

After due consideration of the evidence, I conclude on balance that Aviva has not shown that the damage was wear and tear. I find that Mr R could not have noticed the damage. Aviva should therefore reconsider Mr R's claim.

As regards the claim being recorded, I note that following a complaint to Aviva, it recorded the claim as "no fault" and refunded the excess premium Mr R had to pay as a goodwill gesture. I think that this is reasonable – Aviva was entitled to record the claim. Mr R should understand that if Aviva now pays out in respect of the claim, it may record it as a paid claim.

my final decision

I uphold this complaint. I direct Aviva Insurance Limited to reconsider Mr R's claim subject to the remaining terms and conditions of the policy. If it makes a cash settlement it must add 8% per annum interest (less any tax legally deductible) from the date of claim to the date of payment.

Ray Lawley
ombudsman