

The complaint

G, a limited company, complain that Aviva Insurance Limited unfairly declined claims under their Commercial Combined insurance policy.

Where I refer to Aviva, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

In February 2021, the gable wall of the insured premises collapsed so G made a claim under their insurance policy. Two weeks later, a fire occurred rendering the building a total loss, so a further claim was made.

Aviva declined the claims, the main reasons being:

- The gable wall collapsed because of gradual deterioration and / or wear and tear which falls outside of the scope of cover offered by the policy.
- Cover under the policy for malicious damage or arson is conditional on there being an alarm at the premises. But this was decommissioned by G after the gable wall collapsed.
- G failed to comply with the temporarily unoccupied premises condition which required G to inspect the exterior and interior of the property every seven days.
- G breached its duty to make a fair presentation of the risk when they took out the policy as incorrect information was given regarding the fire alarm and CCTV at the premises.
- There were concerns about the losses and damage for which G had claimed.

G raised a complaint which they brought to our service. They say Aviva has failed to provide valid reasons to decline the claims and has accused them of committing arson for fraudulent purposes. They want Aviva to cover the losses to the buildings, contents, stock, business interruption / loss of profit, and legal fees, as well as compensation for the emotional distress they've suffered.

Our Investigator didn't uphold the complaint as she was satisfied Aviva had declined the claims in line with the policy terms and it hadn't treated G unfairly.

As G didn't agree, the complaint 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.

We've received very detailed submissions from both parties. I've summarised some of the key points, but I haven't set everything out in full. We provide an alternative dispute resolution service and our role is to provide an impartial review, quickly and informally. I use my judgement to decide what's fair, based on the main crux of a case. So, while I've considered everything, I won't comment in detail on every single point. Instead, I'll focus on the key points that are relevant to the outcome I've reached.

Gable wall claim

The terms and conditions of G's insurance policy covers claims for property damage arising from all risks, but specifically excludes:

"We will not indemnify you in respect of:

Damage to the property insured caused by or consisting of...gradual deterioration or wear and tear.

Damage to any buildings or structure caused by its own cracking or collapse."

Aviva instructed a Chartered Structural Engineer who attended the premises several days after the wall collapsed. A cherry picker was provided to get high level access and a drone was used to get footage of the roof. I've been provided with a copy of the subsequent report which says that, at the time of the collapse, the property was *"in poor condition"*, and the engineer would *"go so far as to describe it as dilapidated"*.

Many maintenance issues are raised within the report, including evidence of leaking gutters and downpipes, a hole in the roof, render which had debonded and fallen off, deterioration of mortar within the gable wall, repairs carried out as temporary measures without long term fixes implemented.

The report concludes by saying:

"In my opinion, the most likely cause of the collapse is that, over time, the wall moved gradually due to deterioration following water penetration, until the point where it became unstable. It finally partially collapsed when it became eccentric and unable to stand vertically any longer without further restraint. This process is likely to have taken a number of years to occur but it is not possible to say exactly how long. Had appropriate repairs been carried out throughout the lifetime of the property, the collapse would likely not have occurred."

G has provided a statement from their own Chartered Surveyor, which says:

"On the balance of probabilities, yes, the collapse of the gable wall could have been caused by gradual wear and tear. However, this wear and tear is not uncommon for a building of this age. It is important to note, Aviva insured the building on 11 August 2020, fully aware of its age and condition. However, it is my view the collapse was not solely caused by this."

The statement goes on to contest Aviva's expert's opinion that the property showed signs of deterioration, but queries why Aviva would insure the building in that condition. The surveyor doesn't offer any contradictory explanation as to why the wall collapsed.

Based on the evidence provided, I'm persuaded the gable wall collapsed as a result of gradual deterioration and / or wear and tear.

Whilst the premises may have been in a poor condition from the outset of the policy, this doesn't mean Aviva are responsible for any issues that arise as a result of that. Aviva has been clear in its policy terms about what it is and isn't providing cover for, and there is a clear policy exclusion for gradual deterioration or wear and tear. This isn't an uncommon policy exclusion, as insurance policies are designed to cover one off sudden and unforeseen events, they're not maintenance contracts, and they don't relieve a property owner of their obligation to maintain their property.

As such, I'm satisfied Aviva's decision to decline the claim for the collapse of the gable wall is in line with the policy terms and fair in the circumstances.

Fire claim

A fire occurred at the premises two weeks after the gable wall collapsed. Both the fire service and police concluded the cause of the fire was arson, the respective reports stating:

"Evidence of force entry to rear of property. Conclusion – most likely deliberate ignition. Unspecified naked flame and combustible materials brought together deliberately."

"Unknown suspect has taken a wheelie bin and placed it at the side of the building. They have peeled back the roof by unknown means and ignited the building by unknown means."

G's policy schedule sets out the conditions that apply to the policy cover. It says:

"NACOSS Approved Dual Comm with Level 1 Response, otherwise any loss caused by or in connection with Theft or attempted thereof, Malicious Damage or Arson excluded from inception date, unless agreed by Underwriters."

As G had decommissioned the alarm two days after the gable wall collapsed, Aviva declined the claim on the basis the above policy condition hadn't been met.

G says it couldn't reset the alarm as a result of the damage from the collapsed wall and they couldn't enter the property as it was deemed dangerous. They say they informed Aviva that there was no alarm at the property, and they weren't told cover wouldn't be provided because of this.

I've been provided with the email chain of the conversation G refers to. I can see G emailed their broker in the evening of the day the wall collapsed informing them of the damage. The following day, they sent a photo of the building and the broker responded advising that details of the likely cause would assist.

G responded to this email advising that the cause was unknown, but a surveyor had been instructed to help. G goes on to say:

“Also, could you let the insurance company know that we have had to remove all monies etc from the building as we are unable to set the alarm due to damage caused to the system by the collapse.”

The broker responded to G asking to be kept updated on the potential cause of the damage. This email chain was then forwarded to Aviva with the following comments:

“Please find below brief details of a recent incident at the client’s premises.

As you will see the client has instructed [a chartered surveyor] to assess the damage including its cause and attached is an email with their initial comments. Can you advise whether it is your intention to appoint a Loss Adjuster to deal with this matter on your behalf? If so, I would suggest they liaise with [the chartered surveyor] but keep us in the loop too.

I look forward to receiving a note of your reference and any reserve shortly.”

Whilst I acknowledge that Aviva had the information regarding the alarm, I don’t agree that it was reasonably expected to take action here. The comments are in the third email down in a chain and no reference is made to it in the covering email to Aviva.

It’s clear the intention of the email was to inform Aviva of the damage to the gable wall and to initiate a claim. If G were asking for Underwriters agreement to extend the cover for arson and malicious damage in the absence of an alarm system, I would’ve expected them to have made this request clear – and to follow up with Aviva had they not received a response. Instead, this appears to be more of a notification of the situation.

Our Service has made enquiries with Aviva to determine what it would’ve done had a request been made to extend cover. It’s said:

“Had a relevant extension been sought, then this would have been referred to Underwriters.

They have advised that they would have been unable to agree the extension (or propose additional terms) without seeking significant further information regarding the premises and the alarm. For example, further information would have been sought regarding the practicability of resetting the alarm, or of securing alternative alarm arrangements.

The state of the Property post-Collapse and the fact that the claim was ongoing, mean that the risk picture was complicated, and Underwriters would have had a significant potential range of queries as they sought to understand the position so that appropriate additional terms could be imposed.

Regrettably it is not possible to say with certainty what the outcome of such investigations would have been. However, Underwriters would not simply have agreed to extend the cover, without further investigations. The timescales of those investigations cannot be stated with certainty, but there is (at least) a possibility that those enquiries would not have been completed by the time of the fire.”

As such, even if I was satisfied that Aviva should’ve taken the broker’s email as a request to extend cover – which, to be clear, I’m not – I’m not persuaded this would’ve resulted in G being covered for arson in the absence of an alarm at the time of the fire.

I think it's more likely enquiries would've been made with the alarm provider to see if the original alarm – or a temporary replacement – could be activated. And based on the comments provided by the alarm provider to Aviva, it doesn't appear this was explored by G prior to their decision to decommission it.

G had been clear to Aviva and their alarm provider that the property was going to be demolished. They made the decision to remove the alarm and it was clear from the policy documents that cover for certain perils – including arson – would be excluded without one. Therefore, the risk of any damage caused by arson became G's responsibility at that point and not an insured peril.

I'm satisfied Aviva's decision to decline the claim for the fire damage is in line with the policy terms and fair in the circumstances.

Aviva has given further reasons as to why the claims have been excluded, including that G has breached its duty to make a fair presentation of the risk when it took out the policy and failed to comply with the temporarily unoccupied premises condition.

As I'm already satisfied Aviva can fairly decline the fire damage claim based on the lack of an alarm as required by the policy, I don't need to address these arguments, nor any other points its raised in support of its decision.

Customer service

G complain that Aviva has failed to provide valid grounds for its decision to decline the claims and instead has asked additional questions and requested more documentation, causing G to incur unnecessary costs.

I can see that Aviva conducted a detailed investigation into the claims and gathered significant evidence from G and the relevant parties. This did take some time, but I don't think the investigation was unjustified given the nature and value of the claims.

Aviva confirmed to G by letter dated 22 December 2022 that there was no cover for these claims setting out in detail its reasons why. This was reiterated in its letter dated 14 July 2023. So I don't agree that Aviva has failed to provide valid grounds for its decision.

G also complains Aviva has accused them of committing arson in order to make the insurance claim. But I've seen no evidence of this. Aviva is entitled to make enquiries into the circumstances of the claim to ensure its valid and meets the policy terms and conditions. I haven't seen anything to suggest those enquiries were unreasonable in the circumstances, and Aviva has made clear in correspondence that it is satisfied the arson was carried out by "*unknown criminals*".

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 5 August 2024.

Sheryl Sibley
Ombudsman