

The complaint

A charity, which I will refer to as B, complains about the handling and settlement of their buildings insurance claim by Aviva Insurance Limited.

What happened

The following is not intended as an exhaustive description of the events leading to this complaint. Additionally, other than where necessary, for the sake of simplicity I have largely just referred to B and Aviva, even where others were taking action or corresponding on their behalf.

B operate a synagogue and held a buildings insurance policy underwritten by Aviva. In December 2020, B discovered an escape of water within the synagogue. On 16 December 2020, B's broker notified Aviva of the claim. The broker informed Aviva that B was obtaining a repair invoice, along with estimates and photos. It does not appear Aviva was made aware of the extent of the issue at this point.

On 19 January 2021, B's broker provided further information. Aviva appointed a loss adjuster, which I'll refer to as W. W carried out a virtual site visit (as COVID-19 related restrictions were in place at the time). W the instructed a specialist drying company, which I'll refer to as D. D produced a report on the condition of the building in early February 2021. This report, and photos, indicated damage to a number of areas as well as mould. A high level of humidity was noted. D's report recommended drying equipment be installed.

It was noted that a strip-out of the building was needed in order to properly dry it, and B was asked to provide quotes for this. No drying equipment was installed until 26 March 2021.

The quotes for the strip-out were not actually provided until 1 April 2021. Asbestos tests were then required before the strip-out could take place. So, these works did not actually take place until May 2021.

In June 2021, there was a discussion between B and W about the extent of the damage that had been caused by the escape of water. It appears this conversation took place over the phone/virtually. Regardless of whether the conversation was face-to-face or not, there is some dispute over the content of this conversation. Largely, this dispute relates to the extent of redecoration work Aviva was agreeing to meet as part of the claim.

The building is fairly historical, and a lot of its original decoration is dated. In places this decoration has reached the end of its natural life. And in others it has been damaged as a result of issues unrelated to the current claim (for example separate water damage that occurred around 10 years prior). The dispute in this complaint is largely over how much of the damage to the building related to the current escape of water, and how much was unrelated.

Ultimately, the scope of works that Aviva did agree to pay for did not include all of this damage. B considers this to be a breach of what was agreed in June 2021.

B is also unhappy with the type of cleaning that has been authorised. It considers that a “wet clean” is required to remove the mould and dust that has accumulated as a result of the escape of water and repair works. However, this will likely cause further damage to the paper and plasterwork in the building. And B considers this damage should be included in the claim. Aviva considers that a “dry clean” only is needed, despite the presence of grease.

Other than the disputed issues, the repair works were completed in 2023. B complained about the limits to the authorised repairs and the handling of the claim. And brought their complaint to the Ombudsman Service.

However, our Investigator did not recommend the complaint be upheld. He thought Aviva had agreed to cover the cost of repairing all areas damaged by the escape of water, and that it should not be responsible for repairing areas of pre-existing damage.

B remained unsatisfied, so this complaint was passed to me for a decision. I issued my provisional decision on 15 August 2024. The following is an extract from that decision:

“A number of points have been raised about the claim and its handling. I do not intend to deal with each of these individually, but rather will try to approach the overall picture holistically and will only focus in on the issues I consider to be key.

This was a reasonably complex claim to deal with. Not only did the events take place at a time the country was subject to a number of COVID-19 related restrictions, the building is listed and of architectural merit. The age, and recent limited use, of the building does mean that some of its interior decoration was already damaged and/or in need of restoration. The principle that these pre-existing issues are not something that Aviva needs to include in its claim settlement is largely accepted – albeit there is some dispute in relation to what was discussed in June 2021.

The initial delay

The first issue is whether there was a delay in Aviva dealing with the initial part of the claim process and/or the drying of the building. Aviva was initially notified of the claim in December 2020 and it was not until the end of March 2021 that any drying of the premises began. On the face of it, this is a long time, and it is likely the levels of humidity, etc. within the building increased the level of damage. However, as the timeline above indicates, it is difficult to say that Aviva ought to be held responsible for all of this.

The severity of the claim was not made apparent to Aviva until mid to late January 2021. I am unable to fairly and reasonably say that Aviva ought to have done more within this period. It was waiting for information from B (or their broker), and was not aware of any need to take action. And the report from D indicates that there was already substantial mould etc. to a number of areas by early February. So, the initial increase in damage caused in this period is not something Aviva can be held responsible for outside of the claim itself.

There was then a delay in installing any drying equipment. It is noted that during this period Aviva was also waiting for B to provide quotes for the strip-out, and that until this strip-out was completed, drying the property would not be fully successful. However, regardless of the limitations on effecting a complete drying, I do think Aviva ought reasonably to have begun this drying process without further delay.

It is possible this delay in beginning the drying process increased the level of mould/damage to the building. However, given the size and fabric of the building, and

the fact that without the strip-out there would be further issues, I think this drying process would have taken some time. And, as there was already substantial mould, it isn't clear to me that this delay significantly increased the damage that existed already.

The damage that existed is essentially split into two parts: that caused by the escape of water, and that either pre-existing or as a natural consequence of the age of the building/decoration. In order to be claimable under the policy, the dominant cause of any damage would need to be the escape of water. If, for example, the fabric of the building was already failing in an area and the escape of water merely acted to highlight this, it would not be reasonable for Aviva to meet the cost of repairing this damage. Even if it had not been for the escape of water, this damage would have needed to have been repaired.

June 2021

I do note that there is some dispute over what was discussed in June 2021. I have been provided with notes of this conversation from both B and W. And I have been provided with an email sent by B just after this conversation. It seems this conversation took place by phone. No recording of this call has been provided though, and I don't consider whether it was face-to-face or over the phone to be crucial to my determination.

The issue relating to this conversation is over the scope of redecoration works that were agreed. It is quite possible that the parties came out of this call with a different understanding of what had been agreed. And, if this is the case, it would seem that W was not as clear as it ought to have been.

However, even if that is the case, I do not consider Aviva would be bound by the content of this call. It's requirement in terms of the repairs/settlement is to cover the cost of repairing damage caused by the insured event. Whilst B may have been given misleading information in this conversation about what this would include, I do not consider this means Aviva would need to include repairs to damage not caused by the escape of water.

I have also not been made aware of any consequential loss B incurred by relying on this possibly unclear conversation. B may have arranged for repairs of areas not damaged by the escape of water, but I consider it is likely that such repairs would always have been necessary. And, by carrying out these works in conjunction with the insured repairs, B may well have saved money. So, I do not consider there to be any material financial detriment here. I will though return to this point when considering the general impact on B of the claim handling process.

The damage

As I say, Aviva ought only be responsible for covering the cost of repairing damage to the building where the dominant cause was the escape of water. Aviva is not responsible under the policy for covering the cost of repairing damage caused by wear and tear, or gradual deterioration.

The actual escape of water was in the northwest corner of the building. Large areas of the walls, pillars and seating here were damaged. And repair of these has been included in the settlement offered by Aviva. Largely speaking, the dispute relates to the ceilings of the buildings. There were cracks and broken plaster, as well as peeling paper in some areas. And it is disputed how much of this was as a result of

the escape of water.

The ceilings can generally be broken down to three areas: the upper ladies' gallery, the lower mens' gallery, and the central aisle.

Images provided from prior to the escape of water show that some areas of the building were already suffering failures in terms of the decoration. The eastern wall had been the site of a previous ingress of water, and it isn't disputed that there was already damage in this area. And pre-accident damage is also visible to the ceilings in a number of other areas. Paper is clearly peeling. The extent of damage to plasterwork is not so clear.

B does not dispute that there were areas where paper was peeling. But has said that the levels of humidity following the escape of water meant that the paper de-bonded further.

B has provided a report, from an expert I'll refer to as H. This report includes the following conclusions:

- "It is my opinion that the conditions in the building for the months following the leak would have been conducive to debonding wallpaper from plaster..."
- Mould growth and builder's dust accumulation on the ceilings above the first floor are highly likely to be as a consequence of the water leak incident and the condition the building was left in...
- Similarly the spalling of finishes where embedded ferrous items have corroded recently are highly likely to be as a consequence of the water leak incident and the condition the building was left in for the months following.
- The wet wash and builder's clean is necessary to clear the dust, contamination and mould growth from the surfaces of the building to return it to the condition that it was in before the event. This will increase the likelihood of the paper on the ceilings peeling further as the conditions since the escape of water incident have reduced the adhesion of the paper to the plaster, which in some cases have already led to the paper peeling further than it was before."

The report from H referred to a number of areas of damage that were visible in images from prior to the escape of water.

Aviva said that

Aviva also said that a cash settlement had been paid in relation to the claim. And that this included money to pay for cleaning. So, if a wet wash was needed, B would need to arrange this, and Aviva could not be expected to carryout further works relating to this.

More recently, Aviva has provided the following comments from W:

"It is not disputed that there are areas where plaster had locally failed over nail fixings to upper lathe and plaster ceilings. The failings are few and of a small scale in the context of the overall size of the building. The corrosion to the nail heads is consistent with the presence of a damp environment, but our Surveyor remains sceptical that the local failures can be attributable to the Insured incident in a building of this age, particularly in the knowledge that there has been, and continue to be, problems of damp and water ingress most notably to the east end gable wall. Our Surveyor has previously expressed the view that the plaster could have been dislodged by the

cleaning process itself with corrosion to nail heads being of long standing. It is accepted that it is very difficult to be definitive of any of these points.

I would suggest that both the [H] Report and indeed that of [D] along with historic photographs evidence that the premises did previously have significant areas of unrelated damage. Furthermore, given the scale of issues with the area of the east wall, it is likely that raised moisture levels would have already existing, irrespective of the incident being considered.”

Images from around 2010 show no significant damage, and comments from a third party say that there were no noticeable decorative issues in 2013. A video from 2019 does show significant decorative issues in a number of areas though; with large areas of paper visibly peeling. This indicates that there was a deterioration of the decoration between 2013 and 2019.

It may be that this was, as has been suggested by Aviva/W, the result of elevated moisture levels following the issues with the east wall. But this hasn't been shown conclusively.

Regardless of whether this was the cause of the deterioration between 2013 and 2019, or if this was just the decoration reaching the end of its lifespan, it does seem likely to me that this process would have continued, regardless of the escape of water. It should be noted that I am not an expert on building repair or decoration, but this seems logical to me. If paper has begun debonding in one area, it seems likely it will do so in other areas. And the paper that has begun to peel will also drag surrounding paper down with it. There may be variation in this process due to the localised circumstances (heat, light, etc.). But, generally speaking, I would expect decorations such as this to have a similar lifespan across a whole area.

It also seems likely to me that the issues with humidity, etc. that resulted from the escape of water exacerbated this process. If the paper was already debonding though, it seems evident this would always have needed replacing imminently. The fact that there was an insured event, and that this may even have somewhat contributed to how quickly this work was necessary, does not mean that the repair of this decoration is something that should be covered under the policy.

As I have said above, the key point here is whether the escape of water (and related issues) was the dominant cause of this damage. If the decoration was already failing, the escape of water would not be the dominant cause of the damage.

A comparative example would be an old boundary wall, where the mortar was already significantly failing. If the wall collapsed on an occasion where there happened to be a storm with high winds, the dominant cause of this collapse could not be said to have been the storm. This would merely be the proverbial straw that broke the camel's back. The underlying issue would have been the gradual deterioration of the wall.

In the current case, it seems clear to me that the paper was already failing in a number of areas. And, significantly, that this would have needed to have been repaired or replaced regardless of whether there had been an escape of water. Although I do agree that the escape of water would, most likely, have sped up the debonding process in some areas, I am not persuaded by the evidence provided that significant additional damage was caused by this escape of water to the areas of paper away from the northwest corner. And it follows that I do not consider Aviva needs to include the cost of repairing this decoration in the claim settlement.

However, the issues with damage go beyond the debonding of paper. My understanding is that the lath and plaster ceilings are held in place by nails, and that these nails have become corroded leading to the plaster coming away in some areas. The report from H says that this is “highly likely to be as a consequence of the water leak incident and the condition the building was left in for the months following.” W has said that this may not have been as a result of the escape of water. But has admitted that it is difficult to be conclusive as to this point.

The issue for Aviva here is that it is seeking to rely on an exclusion. The policy says that it does not cover damage resulting from wear and tear/gradual deterioration. In order to rely on this, Aviva needs to show that it is more likely than not that the issues are the result of gradual deterioration rather than the recent claim event. And its own expert has not been able to say this with any certainty.

As with wall/ceiling paper, plasterwork will have a certain lifespan. And if the plaster has reached the end of its lifespan and a claim event has just highlighted this, the dominant cause of any damage will be the gradual deterioration of the plaster.

But, whilst there is clear supporting evidence that the issues with the paper debonding pre-exist the escape of water, and so I am persuaded that the claim event at most served to highlight this issue, there is limited evidence of significant issues with the plaster. This is not to say that none of the plaster issues pre-date the claim event. The issues with the east wall do, and these appear to have included plaster related problems. But there is less evidence of any significant damage to the plaster of the ceiling away from this wall.

And in the absence of any definitive conclusions by Aviva’s experts, I am not satisfied that it has demonstrated that the cause of damage is most likely wear and tear or gradual deterioration. This can be contrasted with the findings of H that these issues were highly likely to be as a result of the escape of water. So, I consider dealing with this damage to the plasterwork is something that Aviva ought to have included within the claim settlement.

I would say that, obviously, the paper is stuck to the plaster. So, if plaster needs to be repaired or replaced, this will mean the paper also needs to be replaced. But this should not change the findings above. The paper would always have needed to be replaced anyway. I do recognise that there might potentially be areas where the paper and its bonding is in a good condition, but the plaster is damaged (or at least is coming away from the lath). But, in my view, I think this will apply to minimal areas at most.

I do appreciate neither party area likely to be fully satisfied with this approach.

B will no doubt consider that the paper was only damaged in limited areas prior to the escape of water. However, I am ultimately not persuaded that the dominant cause of damage to other areas is the escape of water. This can be contrasted with the issues with the plaster.

And, whilst I appreciate Aviva’s position here will no doubt be that there were already issues with the plaster in some areas, the presence of these across the majority of the ceiling are less obvious to me. The conclusions of the experts are not persuasive that the dominant cause of damage to the plaster is gradual deterioration. No doubt there will have been some deterioration in an old building, but it is not obvious that areas of the plaster needed imminently replacing (outside those against the east wall).

The cleaning

The last issue surrounding the extent of damage that I will specifically comment on is the cleaning process that is required. There is some dispute over whether it was formally agreed that a wet clean was to be included in the schedule of works. Aviva has admitted that it may not have been as clear as it could have been that it was basing the works on a dry clean only.

Regardless of this though, it seems that the cleaning would need to deal with issues of grease and mould. And it is not clear to me that a dry clean would resolve all of these. Again, it should be stressed that I am not an expert in these matters. However, the report from H, which is an expert, says that a wet clean is required.

So, in the absence of anything to persuade me otherwise, I think the claim ought to have included a wet clean – at least to those areas that required it; it might be possible to carry out a part wet, part dry clean. This should be done in a way to minimise any additional damage, whilst ensuring that all of the dust, mould and grease resulting from the claim have been dealt with.

I am also not persuaded that Aviva can just say that it has included a sum of money in the settlement to cover the cost of actual cleaning, and that it is not responsible for any issues connected with this. Whilst it might be reasonable to say that it is now for B to determine which method of cleaning is required, the impact of this is something Aviva potentially needs to address. If cleaning is required as a result of the claim event, and this causes damage that otherwise would not have occurred, then Aviva needs to include this damage in its settlement of the claim.

This needs to be understood in the context of the points above though. Where paper is already debonding and would need to be replaced anyway, any “additional” damage caused to this by any cleaning – wet or dry – would not be something Aviva would need to meet. B would always have needed to replace this paper. But where plaster has been weakened by the escape of water, and so cleaning would lead to this being damaged, Aviva ought to include this in the claim settlement.

Claim handling

The other key issue for me to address in this complaint relates to the handling of the claim. I am not going to address every point relating to this separately. The claim process, including the time for repairs, took more than two years. I have already addressed the issues around the initial process and have explained that it is not fair or reasonable to hold Aviva responsible for all of these.

There were some issues with communication throughout the claim. As well as an apparent lack of clarity in relation to the June 2021 conversation, and in regard to the approved method of cleaning, it seems there were other general communication issues.

B has also referred to an alleged refusal of Aviva’s agents to reattend site. Whilst I appreciate B may have wanted this appointment, from Aviva’s point of view it had carried out both a virtual and in-person inspection of the property by this point. This, along with the photos, would have given Aviva and its agents a good understanding of the situation. And, whilst the opinions of the parties differed on what ought to be included in the claim, I am not persuaded that this would have changed following an additional visit. So, I do not consider any refusal that Aviva or its agents may have made here was inappropriate as such.

That said, given the issues that were experienced through the claim process, I do think B was inconvenienced more than it ought to have been. A claims process is often going to cause inconvenience, and this can be considerable where there is extensive damage. But an insurer should not add avoidable inconvenience to this, and I think Aviva needs to compensate B for the inconvenience it has caused. As a charity, B is a legal entity in its own right and cannot suffer distress though. So, whilst I appreciate the situation has had an impact on the individuals involved in the charity, I am not able to take this into account when considering this complaint.

...

In order to put things right, I currently consider Aviva ought to reconsider B's claim on the basis that repairs required to the plaster are covered by the claim. And that this should include any damage caused by any necessary cleaning of the building to deal with dust, mould and grease that has resulted from the claim event or repairs.

I also consider Aviva ought to pay B £300 to compensate it for the inconvenience caused."

I asked both parties to provide me with any additional evidence they wanted me to consider. B didn't respond. But Aviva did provide some additional comments and evidence.

In summary Aviva said:

- It was reasonable to initially hold off on starting the drying, as it expected B to provide quotes without delay
- It considers that the initial delays caused by B resulted in any additional damage to the plasterwork
- Its qualified surveyor has said only a dry clean was required
- It considers there is evidence of water ingress damage to at least one area of the ceiling (away from the east wall) that pre-dates the damage
- It did not have the opportunity to attend with H or arrange its own forensic report. And it does not know whether H was made aware of the relevant background information.

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 have come to the same conclusions as set out above and in my provisional decision, largely for the same reasons.

B did not respond to my provisional decision, so the following is focussed on addressing Aviva's response.

I have largely agreed that Aviva's actions around the drying timeline are not overly inappropriate. But this does not mean it is not responsible for covering the deterioration of the property that occurred over this period. A claim event happened, and the damage that resulted from this claim event falls under the scope of the policy.

Aviva has said that, if the escape of water is indeed the dominant cause of the damage to the plaster, the delays in B making it aware of the extent of the damage have led to this increasing. And that if B had made it aware of the need for urgent drying, it would have dried the property and put in other measures.

However, at the point Aviva was made aware of the extent of the damage, it did not take immediate action to dry the property and put in other measures. So, whilst it is possible the extent of the damage might have been partially reduced had B acted sooner, I am not persuaded Aviva would have acted differently than it did. It seems, based on H's comments, that the deterioration process happened over a period of months. So, although the initial delay in action by B for a month would form part of this, the property was not dried until about six months after the incident. I am not persuaded that reducing this by a month would have led to a significantly different outcome.

I do note that Aviva's surveyor has said that only a dry clean was envisaged. However, the indication is that this needed to be reconsidered when it was recognised that grease deposits needed removing. Ultimately, it does not seem that Aviva's surveyor conclusively said that only a dry clean was required. Whereas H has said that a wet clean is needed.

As above, it may be that a combination of a wet and dry clean is possible. And, if so, this is what should happen. Every effort should be made to limit any additional damage caused by whichever cleaning method is needed for any particular area. But where a wet clean is required, this should be paid for or arranged by Aviva. And where this results in damage that otherwise would not have required repair or replacement, Aviva should also cover this damage as part of the claim.

The exact condition of the property prior to the escape of water is unclear. Aviva has pointed to images that show what it said is an area on the ceiling of cracked plaster, and has said this is the location of a previous ingress of water. Full details of this previous issue have not been provided though. And the image is limited in clarity. It is possible that areas of plaster, away from the east wall, were already damaged or were deteriorating to the extent that the claim event only served to highlight these existing issues. However, the conclusions of H are that the deterioration is highly likely to be the result of the escape of water. And even if there are isolated areas of pre-existing damage, the majority of the issues appear to be new. Ultimately, I do not consider Aviva has done enough to demonstrate that this is most likely not the case. It is for Aviva to show that the relevant exclusion applies, and I am not persuaded that it has.

I note Aviva's comments that it was unable to instruct its own forensic report. However, it had several years to do this if it felt this was required. And it should also be noted that B had asked Aviva to reattend the property. Aviva said this was not necessary, yet now argues it was not given the opportunity to reattend with H. It cannot have this both ways.

It is possible that H was not provided with the full history of the building. But H is experienced in dealing with insurance claims – often on behalf of insurers. So, I think it would have been able to understand what was required. And it is clear from its report that it had a reasonable grasp of the situation and circumstances. Ultimately, I consider H's conclusions are sound. And I am not persuaded Aviva has done enough to demonstrate otherwise or that the relevant exclusions apply to the full outstanding issues.

It follows that I am not minded to come to a different conclusion to that above and in my provisional decision.

Putting things right

Aviva Insurance Limited should reconsider B's claim on the basis that repairs required to the plaster are covered by the claim. And that this should include any damage caused by any necessary cleaning of the building to deal with dust, mould and grease that has resulted from the claim event or repairs.

I also consider Aviva ought to pay B £300 to compensate it for the inconvenience caused.

My final decision

My final decision is that I uphold this complaint. Aviva Insurance Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 25 October 2024.

Sam Thomas
Ombudsman