

complaint

D, a company, complains that Aviva Insurance Limited declined a claim under her commercial insurance policy. D is represented in this complaint by Mrs O.

background

Mrs O insured her business premises with Aviva and in 2009 she made a claim for cracking above the window of her shop. The door and window above the shop area had also dropped.

Aviva appointed loss adjusters who inspected the damage. The loss adjuster said *'the internal and external cracking to the front and right-hand elevations adjacent to the front right-hand corner of the property is the result of rot to of the timberwork which supports the front and right-hand elevations over the shop frontage. It is likely that the ends of the timber support columns to either side of the shop door and /or the timber beams they support have been weakened due to wet rot and the timber has compressed under the weight of the brickwork, floor and roof loadings from above. The resultant loss of support has caused the brickwork above to drop slightly local the front right-hand corner resulting in the internal and external cracking'*.

The loss adjuster concluded the damage wouldn't be covered because it wasn't the result of an insured event, and rot was specifically excluded under the policy. He also confirmed that Aviva shouldn't pay for any associated loss of income because the claim had been declined.

A surveyor who inspected the damage noted the UPVC lintels that had been installed seven years before didn't have steel lintels. He recommended that the building should be assessed by a structural engineer because of concerns about the safety of the structure.

Mrs O's architect commented that the damage had probably been happening slowly over many years but had reached the point where collapse was imminent. He also noted *'examination of the posts and beams showed them considerably attacked by beetles (death-watch beetle and woodworm)*.

Once the insurance claim had been declined, Mrs O paid for the repair work herself. But in July 2017 she complained to this service. In support of her complaint, she produced a newspaper article about a complaint to this service in which the issue of rot was dealt with.

Even though the claim was declined over eight years ago, Aviva consented for the complaint to be considered and issued its final response in September 2017. It said it couldn't comment on how the insurer handled the claim in the newspaper article. It said it hadn't been able to fully review Mrs O's claim because it no longer held the paper files. But it reviewed the comments of the loss adjuster and the surveyor and concluded its decision to decline the claim had been fair.

Our investigator didn't feel the complaint should be upheld. He concluded the damage was probably the result of rot or that it had been damaged by beetles, both of which were specifically excluded under the policy. He considered whether there was any evidence that the rot had been the result of an insured event such as a leak, and while he accepted this might be something that the policy would've provided cover for, there simply wasn't any evidence that this is what had happened.

Mrs O wasn't satisfied with the outcome of her complaint and has asked for it to be considered by an ombudsman. She's stated she had no idea the damage had been happening and has suggested Aviva should've carried out proper checks before insuring a property of that age. She feels that Aviva should've assessed the potential risks before agreeing to provide cover and that it should refund the premiums she paid because the policy was unfit for purpose.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint and I've reached the same conclusion as our investigator for broadly the same reasons.

Aviva no longer has the full claim file because of the time that's elapsed since it declined the claim. In the circumstances I think this is reasonable.

Mrs O's raised a number of arguments that are relevant to the sale of the policy. Because this is being considered under a separate complaint I won't consider these arguments for the purposes of this complaint.

In support of her complaint, Mrs O's submitted a newspaper article which refers to a previous ombudsman's decision about rot that had resulted from a leak that had happened gradually. While we do have an approach to complaints about damage that's happened gradually, each case is considered on its own merits and so the outcome of that complaint won't necessarily affect the outcome of Mrs O's complaint.

The loss adjuster who inspected the damage in 2009 concluded it was a result of rot and therefore it wasn't covered under the policy. Mrs O's architect also commented that the posts and beams had been attacked by beetles. The surveyor also commented that the UPVC windows had no steel lintels.

Aviva concluded the damage was caused by rot, and without any evidence to the contrary I'm satisfied this conclusion was reasonable. Further, it's right that the policy specifically excluded damage caused by rot and therefore, I think Aviva's decision to decline the claim on that basis was fair. It's worth noting however that the policy also excluded damage caused by both insects and poor design, so neither of the other possible causes identified in the available evidence would've affected the outcome of the claim.

I accept the loss adjuster referred to 'wet rot', and that it's possible therefore that the rot was linked to a leak. The policy did provide cover for damage caused by leaks; but there's no evidence that a leak was ever identified and so I don't think the fact Aviva didn't treat the claim as a leak claim was unfair or unreasonable. Because I've concluded there's no evidence of there having been a leak, our approach to damage that's occurred gradually isn't relevant.

I understand Mrs O will be disappointed. But I have to base my decision on the available evidence and in the absence of anything which supports the damage having resulted from an insured event, I don't think Aviva's decision to decline the claim was unfair or unreasonable.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O, on behalf of D, to accept or reject my decision before 28 March 2018.

Carolyn Bonnell
ombudsman