

The complaint

D complains about how Aviva Insurance Limited handled its claim on its commercial property insurance policy.

Ms C has brought this complaint on behalf of D.

What happened

Ms C is a director of D. D has commercial property insurance with Aviva for its premises. In 2017 D made a claim on the policy for subsidence after noticing cracks in the building. Aviva initially declined the claim, but later accepted it.

Throughout the claim, D has made a number of complaints to Aviva. In April 2018 this service considered a complaint about the handling of the claim up until this date. The complaint was upheld and Aviva agreed to pay £1,500 compensation.

After this complaint, it was found that asbestos in the roof of the building had been disturbed. So all work and monitoring on the property had to stop in order for it to be cleaned and decontaminated. Ms C thought Aviva should cover the cost of this, but they declined to.

In 2020 Ms C contacted this service and asked it to consider her most recent complaints. She said she was unhappy with the handling of the claim throughout and the impact this had had on her and her joint director Mr S. She also thought Aviva should cover the cost of the asbestos removal and a full environmental clean of the property to ensure its safety. She also said that due to the asbestos contamination, they'd not been able to use the building for D's business use so thought Aviva should cover its losses under the business interruption cover as well as covering damaged to business equipment. Finally, she said they'd had to pay for the help of a solicitor and thought Aviva should cover the costs of this.

Our investigator considered the issues and recommended the complaint be partially upheld. She said that as Aviva had accepted the claim for subsidence, and that in order for repairs to start the property would need to be decontaminated, it was fair for Aviva to pay reasonable costs for the clean. She also thought Aviva should pay D £800 for the inconvenience it had caused by delaying the claim. She also thought that a claim for the damaged contents should be considered but that Ms C hadn't provided enough information about the impact the matter had had on D for a successful claim under the business interruption cover.

Aviva responded and agreed to pay the compensation. However it didn't agree that it should pay for the clean. It said damage caused by contamination is excluded under the policy. Further, it said it hadn't received a complaint about the decline of the business interruption claim or the claim for damaged contents, so it would need to consider these before they could be considered by this service.

Ms C didn't think the compensation our investigator recommended was enough. She said her and Mr S had suffered greatly because of the handling of the claim and that it had affected their health. So she thought a greater amount was due to make up for this.

As neither party agreed, the complaint has been passed to me to decide on.

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.

Aviva has said it will consider the declined business interruption and contents claim as a separate complaint, as it hasn't logged one about these issues previously. As these issues will form part of a new complaint, I won't comment on them further here. However if Ms C is unhappy with Aviva's response to this, she may bring it to this service.

This means the items that are left outstanding are the environmental clean, the solicitor's fees and the compensation for the handling of the claim. I'll address these in turn.

Environmental clean

Aviva has said that any work or cleaning relating to the discovery of asbestos at the property aren't covered by the policy. It's referenced the exclusion in the policy that relates to damage caused by pollution or contamination.

I've considered this but I don't think it's fair for Aviva to apply this exclusion in the circumstances. From the evidence provided I can see that there was a need to solve the asbestos problem and decontaminate the property before work on the subsidence could continue. And as Aviva has accepted liability for the subsidence claim, I think it's fair that these costs are also covered.

While I accept that asbestos contamination in isolation wouldn't be covered under the policy, I have to consider what's fair and reasonable for this claim. When an insurer accepts a claim, it becomes its responsibility to ensure an effective and long-lasting repair. And this service recognises that sometimes, in order to achieve this, some uninsured work has to be completed that wouldn't otherwise be the insurer's responsibility. Here, the decontamination of the property needs to be carried out in order for work to monitor and repair the subsidence damage to continue. And as it appears most likely that asbestos has been caused due to the subsidence problem, I think it's fair for Aviva to cover the reasonable cost of a clean to ensure the property is safe as part of the claim.

I note that Aviva has said that it considers the asbestos to have been present at the premises already due to the nature of the business that D carries out. However, other than pointing out that link, it has provided no evidence to show that this is the case. From the evidence on file, and Ms C's account, it seems the asbestos tests were done due to cracks in the roof in a similar area to the subsidence damage. And the asbestos report confirms this. So this persuades me that it's most likely the asbestos was linked to the subsidence. And I don't think Aviva has done enough to prove otherwise.

I note Ms C has provided a quote for D to carry out the clean itself. However this appears significantly disproportionate to the work required. I therefore won't require Aviva to base the settlement on this invoice. But instead should pay reasonable costs for the clean – basing this on how much it would cost its own appointed contractors to carry out the work required.

Solicitors' fees

For some of the claim Ms C instructed a solicitor to assist with contact between her and Aviva. She's explained that she felt the matter had become so difficult to deal with that she felt this necessary. While I don't question her reasons for doing so, this isn't a cost I'd ask

Aviva to reimburse. As appointing a solicitor isn't a necessary part of the claim process but instead was Ms C's decision for her circumstances. So I won't ask it to cover Ms C's solicitors' fees.

Compensation

As this service considered a complaint about this claim up until April 2018. I've only considered the progress of the claim after this date as part of my review. However I agree with our investigator that Aviva has delayed the claim more than it should have and caused D unnecessary inconvenience.

There have been numerous times when Ms C hasn't received responses to her requests and complaints, which have left her unable to make any further progress on the claim. This has been particularly inconvenient as Ms C has explained that D hadn't been able to use the premises before the decontamination clean took place. So delays to arranging this meant that this inconvenience lasted longer.

Ms C has also explained the impact the matter has had on both her and Mr S. And I can see they've both been impacted by the stress of the matter and that they feel it has had a direct impact on their health. However as this complaint has been brought by a business – D – I can only consider the inconvenience that has been caused to D as a business, rather than the distress caused to Ms C and Mr S as individuals. So my compensation award reflects that position.

Based on everything, I agree with our investigator's recommendation that Aviva pay £800 compensation to apologise for the unnecessary inconvenience it has caused B.

My final decision

For the reasons I've given I uphold D's complaint. I require Aviva Insurance Limited to:

- Pay reasonable costs for a decontamination clean of the property to remove the asbestos. This should be based on how much it would cost Aviva to have the work carried out by a contractor it would appoint itself.
- Pay D £800 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 22 July 2022.

Sophie Goodyear
Ombudsman