

The complaint

Mr D complains about Aviva's handling of a claim made under his property insurance policy.

What happened

Mr D owns a flat which is covered by a property insurance policy underwritten by Aviva and taken out by the management company and freeholder for the development in which the flat sits.

He made a claim in late July 2021 after a water pipe above his flat leaked causing extensive damage within Mr D's property.

Aviva sent a surveyor to assess the damage in mid-August 2021. And having accepted the claim, they sent contractors to carry out the drying of the property and to scope the required repair works.

The background to the events which followed is well known to both parties and so I'm going to summarise it very briefly here.

In short, Mr D wasn't happy that Aviva weren't going to replace all of his fitted kitchen, including those parts which weren't damaged by the escape of water, but which matched the parts that were damaged.

He wasn't happy that Aviva weren't going to replace the carpets which had been damaged. Or the appliances in his kitchen – which he says were damaged and aren't working properly now.

He was also unhappy with the delays in the settlement of the claim – which is still on-going. And with the way Aviva handled the alternative accommodation associated with the claim. They paid for this for a while, but then ceased to do so.

Mr D has made a number of complaints to Aviva about their handling of the claim. The first of these was lodged with Aviva in early September 2021, around six weeks after the claim was first made.

Mr D wasn't happy with Aviva's response and brought his complaints to us. Our investigator looked into it.

She thought Aviva should pay 50% of the costs for the undamaged matching parts of the kitchen, which Aviva had already offered to do in response to Mr D's complaints.

She thought they should pay for replacement of the carpets. And they should seek to appoint independent specialists to assess the state of Mr D's kitchen appliances – in line with Mr D's wishes.

She said that if those experts concluded that the appliances had been put out of action by the escape of water in July 2021, Aviva should pay Mr D a disturbance allowance – at the

rate of £10 per day – for the time he'd lived at the flat after the alternative accommodation payments had stopped.

And she said Aviva should pay Mr D £500 in compensation for the trouble and upset caused by the delays in the settlement of the claim.

Aviva disagreed and asked for a final decision from an ombudsman.

Mr D agreed with the majority of our investigator's view, but he also feels Aviva should "reinstate" the arrangement for alternative accommodation until such time as the claim is settled.

Because I disagreed with some aspects of the view given by our investigator, I issued a provisional decision on this case. That allowed both Mr D and Aviva an opportunity to comment on my thinking and/or provide further evidence or information before I make my final decision, which is this service's last word on this complaint.

My provisional decision

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There were broadly five issues remaining at the time Mr D brought his complaint to us. These were centred around: the undamaged matching parts of the kitchen; the kitchen appliances; the carpets; the alternative accommodation; and the delay in the claim being settled, which is on-going. I'll deal with these below, in that order.

The undamaged matching parts of the kitchen

Our investigator's view, in line with our usual approach, was that Aviva should replace or pay for the damaged kitchen units. And they should cover 50% of the cost of replacing the undamaged units which matched the ones which are being replaced.

I believe that is now agreed by both Aviva and Mr D, so I needn't go into any great detail on this point. I understand Mr D wanted Aviva to cash settle this and the other parts of the claim, but I'm not going to require them to do that. The policy terms give Aviva that option and no doubt they'll consider it in due course.

The kitchen appliances

An electrician carried out an inspection and concluded that there was no major damage to the electrics at the flat. Mr D maintains that his kitchen appliances aren't working.

Aviva asked Mr D to allow them access to the flat to carry out an inspection of the appliances. Mr D didn't agree to this. We want independent experts in the particular brands and/or appliances to carry out the inspection.

Our investigator thought Aviva should comply with Mr D's wishes. I'm minded not to agree entirely with that view.

In all the circumstances, Aviva are entitled to assess the damage and losses at the flat that Mr D is claiming for before they agree to pay for repair or replacement. They

should be allowed to find out whether the appliances are in fact damaged. And whether, if so, that damage was caused by the escape of water in late July 2021.

If Mr D doesn't allow that inspection to take place, it's not unreasonable for Aviva to refuse that part of the claim. If Mr D isn't happy with the conclusions Aviva's inspectors come to, he'd be perfectly entitled to commission his own expert inspection and report. I'm sure Aviva would then take that into account when assessing Mr D's claim.

The carpets

Our investigator thought Aviva should replace or pay for replacement of Mr D's carpets which were damaged by the escape of water.

The policy under which Mr D is making the claim provides buildings insurance cover. It does not cover contents. There is no real dispute about this. Mr D simply says that because the carpets were fixed in place they should be considered part of the building, not contents of the building.

Our line on this issue is made clear on our website, which offers advice for both financial businesses and their customers. In short, we do not normally regard carpets - or indeed other flooring - as part of the structure of a building.

Carpets and flooring are considered contents unless they are fixed in such a way as to make it impossible or very difficult to remove them without causing damage to the building itself. That would be exceptional with any type of floor covering – but is clearly more likely to apply with wooden, laminate, or other hard floorings rather than with carpets.

Unsurprisingly perhaps, Mr D's carpets weren't fixed in a way that would make it impossible or difficult to remove them. It appears they were fixed as carpets are usually fixed – using treads and grippers.

That being the case, I'm minded to conclude that the carpets were contents and are not covered by Mr D's policy.

The alternative accommodation payments

Aviva paid for alternative accommodation for Mr D at the outset of his claim. It subsequently came to light that Mr D had had a lodger in the flat at the time of the escape of water and the lodger was using the alternative accommodation. It's not clear whether this was with Mr D or alone.

It's not for me to comment on whether Mr D was entitled to have a lodger at the flat under the terms of his leasehold. That's between him and the management company / freeholder.

However, I can say that Mr D wasn't covered under the policy to have alternative accommodation provided for anyone to whom he may have sublet part of the flat.

Mr D hasn't denied that the alternative accommodation was being used by his lodger. And it wasn't unreasonable for Aviva to stop those payments when that became apparent.

Since then, Mr D says he's been living in the flat, but he describes it as uninhabitable. He says there's rubble and mess caused by the escape of water. And as I've already mentioned he says his kitchen appliances aren't working.

Where customers stay in a dwelling that might otherwise be described as uninhabitable – lacking in basic facilities for washing or cooking, for example – after a claim has been accepted, we'd expect insurers to pay a disturbance allowance to cover the additional costs incurred by the customer. These might, for example, be laundry costs or additional food costs.

Where those costs aren't specifically evidenced in detail, it's our assumption that around £10 per day would constitute a reasonable disturbance allowance, in normal circumstances.

I've said above that I think Mr D should allow Aviva to carry out an inspection, to determine whether his kitchen appliances were in fact damaged - to the point where they no longer functioned - by the escape of water event in July 2021.

If they find that the appliances *were* put out of action by that event, it would be fair and reasonable to conclude that Mr D has been living in a home that would normally be considered uninhabitable since the alternative accommodation payments ceased.

And in that case, Aviva should pay Mr D £10 per day as a disturbance allowance – from the date when the alternative accommodation ended to the date when Aviva make the flat inhabitable again or pay out a cash settlement to allow Mr D to do so.

If on the other hand, the appliances are found to be functioning or to have been damaged by something other than the escape of water, Aviva would not be obliged to pay any disturbance allowance to Mr D.

The delays

Aviva's initial response to Mr D's claim was reasonably speedy. A surveyor visited the property within a few weeks of the claim. And contractors were tasked to dry out the flat and scope the works required to repair the damage within a week or so after that.

The claim then became rather snagged on the points of contention about the kitchen units, the kitchen appliances and the carpets. Mr D also made complaints around this time (early September 2021) about the alternative accommodation as well as the claim handling more generally.

I can see from the records we have on file that Aviva were chasing Mr D about their wish to arrange a date for inspection of the kitchen appliances. They were maintaining their line on the carpets – and on the non-damaged matching kitchen units. And they were right – as I've set out above – on both of those points.

Given that Mr D wouldn't allow a further inspection, to assess the kitchen appliances – and that he didn't accept Aviva's position on the carpets or the undamaged kitchen units – it's difficult for me to conclude that Aviva were entirely responsible for the delays in progressing the claim after September 2021.

That said, there were times in the handling of the claim when Aviva might have been clearer in their communication with Mr D about what needed to happen next to progress the claim.

They might also have more clearly set out what they were willing to cover and how they might begin the work on those aspects of the claim without necessarily needing to resolve any issues about the carpets and/or the kitchen appliances beforehand.

In short, it seems to me that Aviva weren't quite as proactive as they might have been in attempting to improve Mr D's position (by carrying out basic repair works at the flat – or at least offering to do so) and/or in setting out for Mr D the necessary next steps to get the claim moving.

I think it's fair and reasonable to ask Aviva to compensate Mr D for their failings in this respect by paying him £100. I understand Mr D might be disappointed that this is some way short of the £500 suggested by our investigator. But for the reasons set out above, I'm not convinced that Aviva are solely – or even primarily – responsible for the delays in progressing Mr D's claim."

And on that basis, I said I was minded to require Aviva to:

- carry out or pay for repairs to or replacement of the damaged parts of Mr D's kitchen;
- cover 50% of the costs of repairing or replacing the undamaged matching parts of Mr D's kitchen;
- carry out an inspection of Mr D's kitchen appliances, as soon as Mr D is willing to make arrangements to allow them to do so;
- pay Mr D a disturbance allowance of £10 per day from the date they ceased to cover alternative accommodation costs until the date Mr D's flat is again inhabitable or the claim is cash settled, *if and only if* the inspection confirms that Mr D's kitchen appliances were damaged and non-functioning as a result of the escape of water in July 2021;
- pay Mr D £100 in compensation for his trouble and upset caused by the delays in progressing the claim which were Aviva Insurance Limited's fault.

The responses to my provisional decision

Aviva responded to my provisional decision to say they'd already offered Mr D a 50% contribution to the costs of repairing his kitchen. And they'd already paid him £100 in compensation for his trouble and upset.

They also said Mr D was still not allowing them access to inspect the flat, but they were happy to inspect his kitchen appliances at Mr D's convenience and would be happy to consider paying the suggested disturbance allowance if the flat were deemed uninhabitable.

Mr D responded to my provisional decision at some length. I hope he won't be disappointed that I'm not going to set out his comments in full here. I will try to summarise his position without, I hope, missing out anything significant.

Mr D says it should be up to him who he shared the alternative accommodation with, and he shouldn't have to explain his relationship with the individual concerned.

He says he had to leave the alternative accommodation for a period of time, because he had a medical operation and was vulnerable if infected with COVID. But he moved back in later.

He says the property was uninhabitable – as one might expect given the extent of the water damage. And so, Aviva should have provided alternative accommodation throughout.

He says it was only after some persuasion on his part that Aviva accepted his integrated kitchen appliances were covered under his policy.

He says Aviva unfairly denied him access to the policy documents and terms and conditions.

Mr D is also frustrated that the management company for the development were also obstructive about access to the policy – and didn't support his claim.

He says some of the carpets in the property were glued down, not attached by treads and grippers. And so, those carpets should be covered by the policy, which covers buildings but not contents.

He says Aviva involved lots of different companies in the claim – loss adjusters, a drying company and contractors – but failed to coordinate their efforts, leading to confusion and delay. He says the fact they've already paid him £100 in compensation shows Aviva admit they failed him.

He says he was told Aviva would cash settle for all of the repairs to the kitchen.

And he says he wasn't at all responsible for any of the delays in his claim being progressed or indeed for the stalemate he and Aviva have arrived at.

Mr D was also keen to stress how difficult it's been for him to live in the flat, without basic facilities – and to cope with the stress, worry and inconvenience caused by what he sees as Aviva's failure to settle his claim in good time.

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.

I've looked again at the evidence and information we have on our case file. And I've carefully considered the further comments and information provided by both Aviva and Mr D in response to my provisional decision.

I know Mr D will be disappointed, but I haven't seen anything to change my mind about the outcome of this case. I am very sorry to hear about how difficult things have been for Mr D. And he has my sympathy that his flat was damaged in this way through no fault of his own. But I'm satisfied that the outcome set out in my provisional decision is fair and reasonable.

I'll address the comments made by both parties and explain why I haven't changed my view about this case.

Aviva say they've already offered Mr D 50% of the repair costs for his kitchen and £100 in compensation. I was aware of that, although I'm grateful for the confirmation.

To be clear, in settling Mr D's claim – which they accepted – Aviva will need to replace or repair all the damaged parts of Mr D's kitchen. And they'll carry 100% of the cost of that.

They will also need to pay 50% of the cost of replacing the undamaged parts of the kitchen which are part of a matching set. That's in line with our usual approach where repairs or replacements can't be made to match the undamaged parts of a matching set. And it's what

Aviva previously agreed to.

I'm sure that's what Aviva meant in their response to my provisional decision, but it wasn't quite what they said. They said they'd offered Mr D 50% of the cost of repairing or replacing his kitchen (full stop).

I was also aware they'd paid Mr D £100 in compensation. As their final response to Mr D makes clear, this was for the "confusion" around the alternative accommodation arrangements.

The £100 compensation I proposed as part of my provisional decision was (see above) for the delays in Aviva's handling of the claim and their lack of proactivity in progressing the claim when they came to an impasse.

To be clear, that's a further £100 on top of the £100 they've already paid to Mr D. It's for a completely different error or omission on Aviva's part.

I'll respond to Mr D's points in roughly the order he made them in his response to my provisional decision.

Bluntly, it's not up to Mr D who lived in the alternative accommodation provided by Aviva. That provision was for him, as the beneficiary of the policy. If he was living elsewhere whilst Aviva were paying for a hotel for him to live in, it's not unfair or unreasonable for Aviva to cease making the payments. And the reason he had to live elsewhere – whether a matter of medical necessity or not – is neither here nor there.

Mr D says his property was uninhabitable. That would be the case *if* he didn't have access to the usual essential facilities, including for cooking and washing. Whether the flat was in fact uninhabitable is yet to be determined – and that's why Aviva legitimately need access to Mr D's flat to carry out an inspection.

To be clear, for Mr D particularly, a disturbance allowance is reasonably payable if the flat was in fact uninhabitable by the usual standards (whether or not he actually managed to live there – which he did). The allowance essentially recognises that if a customer doesn't have access to washing or cooking facilities, for example, they will spend more money on food, and/or on launderette costs.

As I said in my provisional decision, if the flat was uninhabitable, Aviva will have to pay a disturbance allowance of £10 per day to Mr D – and that will run from the date they ceased alternative accommodation payments to the date they settle his claim (in one way or another).

I understand Mr D thinks he had to put in some effort to persuade Aviva's agents that his integrated appliances were covered under the policy. However, they did accept that, and they've been willing to proceed on that basis as soon as they can get access to inspect the appliances within the flat.

I can understand Mr D's frustration about the failure to provide of the policy documents and terms and conditions in a timely manner.

Given the nature of the policy, it wasn't entirely unreasonable for Aviva to refer Mr D to the management company for the development – in whose name the policy was taken out. However, Aviva could have been more helpful to Mr D in explaining the position - and once it became clear the management company weren't providing the documents.

This is one of the things I took into account when I said Aviva could have been more proactive in the handling of Mr D's claim – for which I suggested the additional compensation payment.

In his response to my provisional decision, Mr D also made it clear he was very unhappy with the actions of the management company more broadly. I can see why he may have been frustrated, but it's not for me to comment on that in this decision. The management company weren't providing a financial service to Mr D and so their actions (or inaction) aren't something we can look into.

Mr D says lots of different entities were involved in responding to his claim – and their efforts weren't properly coordinated by Aviva. It's not unusual for a number of different companies to be involved in handling a claim from start to finish. Or for underwriters – such as Aviva – to ask their loss adjusters to coordinate activity.

As I said in my provisional decision, I'm satisfied Aviva might have been more proactive in seeking to progress the claim. Hence the further compensation I'm going to require them to pay to Mr D.

Mr D says Aviva initially told him they'd cash settle the claim for the whole of his kitchen. And now they're offering only 50% of the cost of replacing the undamaged parts.

I'm sure there was room for some confusion in the early discussions about the claim. Where Aviva's agents said they'd pay for all of the repairs, they may not have been intending to suggest they'd replace elements of the kitchen that weren't affected by the escape of water at all (and didn't need repairing).

Again, Aviva may be responsible for some of that confusion – hence the compensation I'm going to require them to pay to Mr D now. But I'm satisfied they've been reasonably clear, reasonably soon, about their stance towards the undamaged parts of the kitchen. And I'm satisfied what they're now offering is in line with what we'd expect as a fair and reasonable contribution to those costs.

Mr D says he's in no way responsible for the fact that the claim has not progressed in a timely manner. I'm sorry, but that doesn't fit with the evidence and information we have.

I'm not relying on what Aviva have told us about this. Mr D himself has clearly said that he doesn't want Aviva to inspect the property in the way they've suggested. And, as I said in my provisional decision, what Aviva are suggesting to progress the claim (the proposed inspection) is not unreasonable.

I can appreciate that it has been difficult for Mr D to live in the flat in its current state. As I say, he has my sympathy – it's extremely unfortunate that his flat was damaged in this way.

But I have to bear in mind that Aviva didn't cause the escape of water and they're not responsible for the inevitable upset this has caused. I can only hold them responsible for their own actions in handling Mr D's claim.

The one remaining issue raised by Mr D in response to my provisional decision is whether the carpets in his flat should or should not be covered by his policy.

Our view, as I explained in my provisional decision, is that carpets are *usually* transportable and so should *usually* be regarded as contents rather than part of the building. And Mr D's policy covers the building but not the contents.

In Mr D's original complaint to us, he told us that he found it odd that carpets were regarded as contents when they were, in his own words "*secured to the ground with gripper rods and sit securely fitted under skirting boards*".

Mr D will no doubt be able to see why we've assumed his carpets were fitted using grippers, in the usual way. He's since told us that *some* of the carpets in his flat were in fact glued to the floor, rather than being fitted with grippers.

If Mr D's carpets *were* glued to the floor, in a way which would have made it impossible or difficult to remove them without any damage, I think Aviva should re-consider Mr D's claim relating to those carpets alone.

However, given what Mr D said to us in his original complaint – which may mirror what he'd said to Aviva before that point – I can't conclude that Aviva have acted unfairly or unreasonably when they said the carpets wouldn't be covered as things stand.

If Mr D can now provide Aviva with evidence that some of his carpets were glued down – in such a way as to make them non-transportable – I'm sure they will re-consider that aspect of his claim.

Putting things right

As I say, my position on the outcome of this case hasn't changed in response to the further comments provided by Aviva and Mr D. What I'm going to require Aviva to do to put things right was set out in my provisional decision – and it appears again below.

Just for the sake of absolute clarity, I'll reiterate what I said in my provisional decision. I am aware Mr D is very keen to get a global cash settlement for his claim. Given the terms of the policy, it would be unreasonable for me to *require* Aviva to cash settle the claim given that they are entitled to decide how to meet the claim.

It's open to Mr D to suggest a cash settlement – and I'm sure Aviva would consider that option - but I'm not going to *require* Aviva to cash settle the claim.

My final decision

For the reasons set out above and in my provisional decision, I uphold Mr D's complaint.

Aviva Insurance Limited must:

- carry out or pay for repairs to or replacement of the damaged parts of Mr D's kitchen;
- cover 50% of the costs of repairing or replacing the undamaged matching parts of Mr D's kitchen;
- carry out an inspection of Mr D's kitchen appliances, as soon as Mr D is willing to make arrangements to allow them to do so;
- pay Mr D a disturbance allowance of £10 per day from the date they ceased to cover alternative accommodation costs until the date Mr D's flat is again inhabitable or the claim is cash settled, *if and only if* the inspection confirms that Mr D's kitchen appliances were damaged and non-functioning as a result of the escape of water in July 2021;

- pay Mr D £100 in compensation for his trouble and upset caused by the delays in progressing the claim which were Aviva Insurance Limited's fault.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 July 2022.

Neil Marshall
Ombudsman