

The complaint

Miss S is unhappy with what Aviva Insurance Limited did after she made a claim on her legal expenses insurance policy.

All references to Aviva include its agents and claims handlers.

What happened

Miss S took out legal expenses insurance (alongside her home insurance) with Aviva in September 2017. In January 2021 she made a claim on her policy as she had a dispute with the landlord of her block of flats (a local authority).

She said the local authority hadn't taken action in relation to health and safety issues she'd raised (relating to a tenant leaving items in a communal area). And she was unhappy with a lack of service from the concierge of her building. Miss S withheld payment of service charges and was unhappy the local authority informed her mortgage provider about this. And she was unhappy with the action the mortgage provider then took following that contact.

Aviva turned down the claim. It said there was evidence of her complaining about the neighbour leaving possessions in communal areas in 2016. That was prior to the start date of her policy and it excluded claims where that was the case. It also thought the service charge issues related to this. Our investigator agreed these issues had begun prior to Miss S taking out her policy. He thought Aviva acted fairly in turning down the claim she made.

Miss S didn't agree. She said the issues she raised in 2016 had been satisfactorily resolved and she didn't make a further complaint about her neighbour storing personal items on the communal landing until October 2020. In any case the issues relating to the concierge were unrelated to this and we hadn't considered the concerns about the actions of her mortgage company. She said points raised about how Aviva looked into her complaint hadn't been considered either. Miss S also raised concerns about what happened when the policy was sold, and the questions she was asked at that time.

I issued a provisional decision on the complaint last month. In summary I said:

Miss S has made a number of points about the sale of this policy and the questions she feels she should have been asked at that time. However, that isn't something I'm considering in this decision. What I'm looking at is whether her claim was fairly turned down by her insurer – Aviva. Any concerns Miss S has about the sale of the policy will need to be separately considered against the seller of the policy (which wasn't Aviva).

In considering the claim decision I've taken into account the relevant rules and industry guidelines which say Aviva has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably. And I've looked at the terms and conditions of Miss S's policy. These exclude from cover:

"Claims where the initial dispute or series of incidents leading to a claim on this policy happen before this cover starts or after it comes to an end as shown on your schedule. You

can only make one claim for all disputes arising from the same incident”.

I've thought about how that applies here. It's not in dispute Miss S did complain about her neighbour leaving items on the communal landing in 2016. However, she's told us the issue was resolved at that time by the action the local authority took and what subsequently happened was unconnected to it. But I don't think that's supported by other evidence.

In particular I've reviewed the correspondence between Miss S and the local authority. When she raised this issue again in October 2020 she described this as a “recurring Health and Safety issue of keeping items on communal area by [her neighbour] that has been previously several times complained about but evidently not dealt properly with”. She went on to say “I have repeatedly complained of the same issue”.

The following month Miss S reiterated her concerns saying “please be advised that in the light of the repeated failure of your organisation to deal with this long ongoing issue I withhold any further service charge payments until this complaint and the long ongoing issue is correctly, productively and effectively dealt with”. And in correspondence with a local councillor the same month she highlighted an “ongoing failure to address health and safety effectively and appropriately leading to ongoing issue of breach by tenants who have happily getaway with such breach for years”.

I appreciate there appears to have been a period of time after 2016 when Miss S didn't raise concerns about the neighbour leaving items in the communal area. But given Miss S's comments I think what then happened was a recurrence of the previous issue (and connected to it) rather than being an entirely new event. As a result I don't think Aviva acted unfairly in concluding the first in the series of incidents leading to Miss S's claim took place before her policy started.

Miss S says the service charge issue was separate to this. I don't agree with that either. I appreciate she doesn't appear to have withheld service charges as a result of what happened in 2016. But her decision to subsequently do so was clearly connected to her frustration with what she saw as the lack of action to address the neighbour issue by the local authority.

As I've said when she informed the local authority of her decision to withhold payment of service charge she said it was because of this “long ongoing issue”. And the wording of the policy excludes from cover claims where the “initial dispute...leading to a claim on this policy” occurred before the policy started. I don't think Aviva did anything wrong in saying her concerns about service charges as they relate to either the local authority or her mortgage provider were linked to something that happened prior to the start of her policy.

However, I don't see how the same can apply to her concerns about the concierge service. I've not seen evidence of Miss S raising this issue prior to March 2020. And this appears to be entirely unrelated to the problems with her neighbour. Her concerns about the concierge stem from difficulties with parcel delivery and a lack of response to her contact about that. So I don't see Aviva can rely on the exclusion for events that took place before the policy started to turn down this element of her claim.

It will therefore need to reconsider it against the remaining policy terms to see if this is something that falls within the definition of an insured event set out in the policy and, if it does, whether it also meets the other terms and conditions for cover to be provided.

Miss S has also raised concerns about how Aviva considered the complaint she made following the decline of her claim. I don't think it's in dispute Aviva didn't send a final response addressing the complaint within the timeframe it's allowed under the relevant rules.

However, where a business isn't able to do that the rules require it to send a response explaining the position and informing a complainant they can now refer the complaint to us. Aviva did that at the end of March. And it did then provide a detailed response to her complaint on 26 April 2021.

But I do think Miss S will have been caused some understandable distress and frustration at having part of her claim turned down for the wrong reasons (particularly when she referenced this issue on a number of occasions in her correspondence with Aviva). In recognition of this, and the fact this wasn't picked up as part of the complaints process, Aviva should pay Miss S £150.

Responses to my provisional decision

Miss S said the legal expenses insurance was sold as a standalone policy (rather than being alongside her home insurance as I'd suggested). She queried how she should pursue a complaint about the sale of that insurance. She also said Aviva had turned down the whole of the claim she made. She questioned why I'd suggested this had only been turned down in part.

Aviva also responded. It said the issues with the concierge related to a service that should be provided under Miss S's lease. It thought this was another incident in a series of connected incidents about a lack of obligations under the lease being performed (which had led Miss S to withhold payment of her service charge). As the claims Miss S had made were about disputes over the landlord's failure to meet their obligations it didn't agree they were separate and unconnected. So I need to reach a final decision.

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.

First, I appreciate Aviva did turn down the claims Miss S made in their entirety and I don't believe I've suggested otherwise. What I've concluded was Aviva acted reasonably in turning down the claim as it related the neighbour dispute and services charges. But I didn't think it had done so in respect of the concierge issue. And that's why I thought this part of the claim should be reconsidered against the remaining policy terms.

Turning to the points Aviva has made about this, I appreciate the neighbour and concierge problems do both relate to Miss S's lease and whether the landlord is complying with their obligations under it. But the question is whether the concierge issue can reasonably be said to be caught by the policy term which excludes "*Claims where the initial dispute or series of incidents leading to a claim on this policy happen before this cover starts...*".

As I explained in my provisional decision, I've not seen evidence of Miss S raising the concierge issue prior to the start date of her policy; she doesn't appear to have raised it until March 2020. And I can't see there's any connection between this issue and the problems with her neighbour. If the problem with the neighbour had never taken place Miss S would still have had the same difficulties with the concierge. So I don't see Aviva can reasonably argue the neighbour problem was one of a series of incidents which led to her claim for the concierge issue. And I don't think it can turn down her claim on that basis.

I also note the comments Miss S has made about this policy not being taken out alongside her home insurance. However, the policy in question is the one she took out in 2017. The documentation she's provided in support of her position is a renewal from September 2021. Nevertheless, I appreciate the policy appears to be one which allows you to select the cover you need so it may be that when first taking this out Miss S didn't choose the home insurance option.

But I don't think that makes a difference to my findings. The key issue here isn't whether the policy was taken out alongside home insurance or as a standalone product but that it wasn't Aviva which sold it to Miss S. So any concerns she has about the sale aren't something it's responsible for and will need to be pursued as a separate complaint against the business that is. If Miss S is able to provide our investigator with further information about that he may be able to assist in asking the business involved to look into that complaint.

Putting things right

Aviva will need to reconsider the claim relating to the concierge against the remaining policy terms to see if this is something that falls within the definition of an insured event set out in the policy and, if it does, whether it also meets the other terms and conditions for cover to be provided. It will also need to pay Miss S £150 to recognise the distress she was caused by what it got wrong.

My final decision

I've decided to uphold this complaint. Aviva Insurance Limited will need to put things right by doing what I've said in this decision. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 25 June 2022.

James Park
Ombudsman