

The complaint

Mr M, on behalf of A, complains that Aviva Insurance Limited (“Aviva”) has unfairly handled a claim made under A’s commercial combined policy.

Any reference to Mr M, A, or Aviva includes respective agents or representatives.

What happened

The background of this complaint is well known to all parties and has been detailed at length elsewhere, so I’ve summarised events.

In 2019, A’s property was burgled. Mr M made a claim under A’s commercial insurance for various losses, including stolen cash, computer equipment, a passport and keys, damage to the property and a claim for business interruption.

Aviva considered the claim and offered to settle in part for the stolen cash, equipment, and damage. But didn’t provide any settlement for business interruption as it said the available evidence showed the company wasn’t profitable.

One of our Investigators considered the complaint under a separate reference. They said the settlements were fair, but directed Aviva to reconsider the loss of data and passport/keys that A was seeking to have covered, as well as reconsider the business interruption claim in light of new information about A’s income.

So, Aviva reconsidered matters.

- It said the loss of data wasn’t covered as the required section of the policy hadn’t been taken out, but even if it had, A wouldn’t have complied with its data backup condition. In addition, the property damage section of the policy specifically excluded “loss of data”. But Aviva said it would pay £400 for the cost of a specialist re-loading data from back up materials.
- It said the business interruption issue had arisen as a result of the lost data, so this was also not covered.
- It would reconsider the passport upon receipt of an invoice to show the cost of replacement. And keys were specifically excluded.

Our Investigator considered the complaint, and said:

- It was clear A had not taken out “Reinstatement of Data” cover, and that loss of data was specifically excluded from the cover he did have.
- The business interruption section of the policy specified that any claims would be excluded if they are not covered by the property damage section of the policy – which appeared to be the case here. He said if A had further information to support other factors caused the loss, these should be shared with Aviva.
- Aviva’s offer to reconsider the passport costs was reasonable, and he agreed with

Aviva that the keys were excluded in line with the policy.

Mr M disagreed, saying:

- He was still unhappy about the settlement of cash stolen from the property.
- The data lost included various types of data that impacted A's business. And he says this includes various instructions, recorded files, and procedures amongst other information that together form its system of manufacturing – so it shouldn't be considered just as "data".
- The invoice of the passport had already been shared with Aviva.

Our Investigator didn't change his mind. And said the matter of the cash had been considered under the previous reference so he could not comment on this further. So, the matter has been passed to me for an Ombudsman's 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.

Having done so, I'm upholding this complaint in line with the reasons given by our Investigator previously. I'll explain why.

Loss of data

- A's policy covers it for various types of loss or damage.
- It's not in dispute that the burglary that took place left A without various types of data that it has said are integral to its business.
- A's policy includes "*Reinstatement of Data*" as an optional cover. And given the type of loss in question – a loss of data – it seems reasonable to me that Aviva would consider the matter under that section.
- It's not disputed that A never took out this optional cover. So, it follows there's no cover under it. Aviva has said even if A had taken this cover, it failed to meet a condition of backing up data, but given it simply never took the cover I don't think I need to consider this further.
- Mr M had indicated the claim for loss of data should fall under the "*Property Damage*" section of the policy. Under this section a specific exclusion states:

*"We will not indemnify You in respect of...
(15) (a) Loss of Data"*

- This satisfies me that there's no claim for loss of data under this section.
- Mr M has described the extent of the data lost forms a system which should be considered more than data. But at its crux, this is all still lost data, so this hasn't changed my mind.
- Aviva has since offered £400 to Mr M that it says would cover the cost of re-loading data from back up materials. I think this is fair and reasonable in the circumstances.

Business interruption

- For business interruption claims, A's policy states:

“We will indemnify You in respect of any interruption or interference with The Business resulting from

- (i) Damage to property used by You at The Premises for the purpose of The Business occurring during the Period of Insurance caused by any of the following Contingencies and*
 - (ii) provided that such Damage is not excluded by the Property Damage Section of this policy.”*
- For the reasons I’ve given above, the damage in question that seemingly has interrupted the business here is the loss of data. And this is excluded by the property damage section of the policy.
 - For this reason, I’m satisfied this claim has been fairly declined in line with the policy terms and I’m not directing Aviva to do anything further.

Passport/keys

- Aviva has agreed to reconsider the costs related to the passport upon receipt of evidence of the passport being obtained. Our Investigator has directed Mr M to provide this to Aviva directly. So, Aviva should reconsider this matter and answer it swiftly upon receipt of the evidence. I understand Mr M has said he submitted this historically to Aviva, but for a pragmatic resolution even if this is the case I would ask he resends it.
- Mr M hasn’t objected to our Investigator’s findings on the keys, so I won’t repeat the policy wording in full here. But in summary, the policy excludes damage to vehicles or accessories on or attached to them under the property damage. So, I think Aviva’s direction to Mr M to seek cover under his motor insurance is a reasonable one.

My final decision

Aviva Insurance Limited has already made an offer to pay £400 to settle the complaint and I think this offer is fair in the circumstances. So, my decision is Aviva should pay £400.

Under the rules of the Financial Ombudsman Service, I’m required to ask A to accept or reject my decision before 15 December 2022.

Jack Baldry
Ombudsman