DRN-3675662

The complaint

Mrs J complains about Aviva Insurance Limited (Aviva) under her home emergency policy, about how they dealt with a leak at her property and damage to flooring.

References to Aviva include their agents who provide services and deal with claims under the policy.

Mrs J didn't complain within the six-month period under which consumers normally have to complain to this service if they're unhappy at a final response issued by a business to a complaint (for the final responses issued by Aviva in November 2018 and January 2021). But Aviva agreed to our considering Mrs J's complaint to this service.

This decision only covers those issues raised by Mrs J in her complaint to this service in December 2021, and Aviva's subsequent final response issued in February 2022. It doesn't cover other issues raised by Mrs J since that point, for example issues with a basin, fridge and external pipework. Similarly, the decision considers the issue of distress and inconvenience to Mrs J to that point.

What happened

The details of this case are well-known to both Mrs J and Aviva, so I'll set out the key aspects of what happened.

In April 2018 there was a leak in the kitchen at Mrs J's property. It took several visits before Aviva's engineers diagnosed the source of the leak as coming from pipework under the kitchen floor (eventually using thermal imaging to do so). But rather than digging up the floor to repair the leak, Aviva re-routed pipework, having isolated the original pipework. However, Mrs J wasn't happy with the quality of the work carried out, so complained to Aviva. Aviva appointed a surveyor (B) to assess the issue. In their report in November 2018, B concluded the work was of poor quality and set out the work needed to remedy the issues identified. Based on B's report, Aviva offered Mrs J a cash settlement to cover the repair work needed, but she didn't accept it.

However, the problems continued with the floor being damp. A second report from B in November 2019 confirmed the continuing issues (although it concluded the issue was caused by a separate leak, rather than the original leak). B concluded the floor would need to be taken up, dried and re-laid.

The problems continued, and B produced a further report about the issues in July 2021. Aviva also considered the issues in response to complaints raised by Mrs J following the original leak and the ongoing issues. Aviva issued final responses to these complaints at various points, including November 2018 and in January 2021. The latter offered to carry out repair work to the affected floors (including alternative accommodation during the repair work) as well as £1,500 in compensation for inconvenience caused to Mrs J. Aviva also advised Mrs J about the process she could follow to pursue a claim for the impact she said the ongoing issues had on her health. Aviva also suggested Mrs J seek legal representation in this respect.

In December 2021, B attended Mrs J's property to install drying equipment, as part of the reinstatement work to the flooring. But when they returned to collect it, B said it had been damaged and there was an attempt to prevent them leaving the property. B said they'd advised Mrs J about dust, from the damaged flooring but from their inspection they thought the property was fine. Because of what B said happened, Aviva said they wouldn't carry out any further work at the property. Given this, they offered Mrs J a cash settlement of £3,120 to enable her to complete the rest of the work.

Unhappy at Aviva's response, Mrs J complained to this service. The main point of her complaint was that Aviva hadn't fixed the cause of the leak and would no longer attend her property, only offering a cash settlement for her to engage her own contractors to complete the repair work. Mrs J also said she'd suffered health problems caused by the dust from the temporary flooring and had to find temporary accommodation. She'd also been without a washing machine for two years and had to move the fridge out of the kitchen into the garage. The ongoing stress of the situation had also affected her health. She wanted Aviva to fix the moisture/leak properly by moving the underground pipe in the kitchen to overground, as well as ensure the floor was dried before putting down a membrane before the leveller. Then to fit new kitchen flooring.

As Mrs J had complained to this service first, our investigator asked Aviva to consider the issues raised by Mrs J. In their final response, issued in February 2022, Aviva confirmed an increased cash settlement offer of £3,828 (compared to the settlement they'd previously offered in January 2021). They said the figure didn't include VAT, so if Mrs J engaged a contractor to complete the work that was VAT registered, they'd add VAT to the settlement figure on production of a VAT invoice. In addition, Aviva awarded Mrs J £1,500 for the inconvenience she'd suffered (making a total of £5,328).

Our investigator then considered Mrs J's complaint, but didn't uphold it, concluding Aviva didn't need to take any further action. She noted Aviva had accepted liability for the damage caused to the floor at Mrs J's property, but the issues had been ongoing for some time – despite Aviva's efforts to resolve them. Given the difficulties between Mrs J and Aviva's contractors, she thought it was appropriate for Aviva to seek to settle the claim by way of a cash settlement. She thought Aviva's offer of £3,828 (excluding VAT) and £1,500 compensation was fair and reasonable.

Mrs J disagreed with the investigator's conclusions and requested an ombudsman review the complaint.

In my findings I concluded Aviva hadn't acted fairly in offering Mrs J a cash settlement for her to engage a contractor to complete the repair work. I did so because the issues had – at different times – been present for some four years. I noted Aviva accepted responsibility for the damage to Mrs J's flooring and offering a cash settlement – as an alternative to completing the work through their own appointed contractors – was common in the insurance industry.

However, given the specific circumstances described by Mrs J, particularly her health issues and the impact the situation had on her, I wasn't persuaded this was fair and reasonable. This was for several reasons, including Mrs J's significant health and wellbeing issues. While not able to say they were a direct result of the issues with the leak and the damage to her flooring, I thought the situation would have significantly worsened them. Given that, I didn't think it fair or reasonable to expect Mrs J to have to find and engage a contractor to carry out the work needed to fix the problems. And given the issue had been ongoing for so long, particularly as Aviva accepted responsibility for the damage, I thought it reasonable to expect Aviva to fix the problems, rather than Mrs J having to take on that responsibility.

While there were clearly issues between Mrs J and Aviva's contractor, I didn't think they precluded Aviva appointing a different contractor to carry out the work needed to reinstate the flooring (if Mrs J would prefer that option).

On the issue of compensation for the inconvenience to Mrs J, I thought the impact on her had been significant and substantial. I thought Aviva had recognised this, when awarding her £1,500 in compensation. The figure was in line with what we'd expect, so I thought the offer was fair and reasonable.

Because I reached different conclusions to our investigator, I issued a provisional decision to enable both parties to consider matters further. This is set out below.

What I've provisionally decided – and why

I'd first want to reassure Mrs J that I sympathise with what she's told us about her health issues and the evidence she's provided about those issues and the impact they've had on her and her wellbeing. I appreciate how distressing this is for Mrs J in the difficult circumstances she's described about the leak, how Aviva have responded to it and the associated problems at her property. I've borne this in mind when deciding whether Aviva acted fairly towards Mrs J.

The key issue in Mrs J's complaint is that Aviva haven't fixed the problem of the leak and the associated moisture that's affected her property since it first arose back in 2018. Mrs J maintains Aviva should have fixed the issue properly and wants them to do so, relocating the pipe from underground to overground and fitting a new kitchen floor. For their part, Aviva say they've tried to address the issues and have offered Mrs J a cash settlement so that she can engage a contractor to complete the repair work. They've also offered compensation for the inconvenience she's suffered.

I've considered both views carefully, including the information and evidence provided by both Mrs J and Aviva in support of their cases. Having done so, on balance I've concluded Aviva haven't acted fairly in offering Mrs J a cash settlement for her to engage a contractor to complete the repair work. I'll explain the reasons for coming to this conclusion.

Looking at the history of the case from the time of the original leak in 2018, it's clear Aviva haven't provided the quality of service Mrs J should have expected. Aviva's case notes, together with the reports from B, indicate continuing issues with diagnosing the leak and fixing it. B's reports also indicate problems with the quality of the repair and reinstatement work carried out, for example the quality of the pipework and the work to repair and reinstate the flooring. While it's not clear whether the issues have all arisen from the original cause of the leak (or from other causes) the issues have – at different times – been present for some four years. Aviva accept responsibility for the damage to Mrs J's flooring. So, the issue I've focused on is whether they've done enough to put things right.

While Aviva's approach has taken different forms, they most recently appointed B to carry out the repair and reinstatement work to replace the flooring. However, in December 2021, based on B's views, they said they wouldn't be prepared to carry out any further work because of difficulties they say they had with Mrs J. For her part, Mrs J has said she isn't happy with aspects of the behaviour of Aviva's contractors (Aviva's case notes support this). Given these issues, Aviva's view is that it's reasonable to offer Mrs J a cash settlement, based on the scope of work required, for her to engage her own contractor to carry out the work. Offering a cash settlement – as an alternative to completing the work through their own appointed contractors – is an option common in the insurance industry (though most typically for household insurance).

However, given the specific circumstances described by Mrs J, particularly her health issues and the impact the situation has had on her, I'm not persuaded this is fair and reasonable. I say that for several reasons. Firstly, it's clear that Mrs J has significant health and wellbeing issues. While I'm not able to say they're directly the result of the issues with the leak and the damage to her flooring, I think the situation will have significantly worsened them. Given that, I don't think it's fair or reasonable to [now] expect Mrs J to have to find and engage a contractor to carry out the work needed to fix the problems with her flooring. Secondly, that the issue has now been ongoing (on and off) for so long, particularly as Aviva have accepted responsibility for the damage to Mrs J's flooring. Given that, I think it's reasonable to expect Aviva to fix the problems, rather than Mrs J having to take on that responsibility – given the additional stress that is likely to cause her. While there are clearly issues between Mrs J and Aviva's contractor, I don't think they preclude Aviva appointing a different contractor to carry out the work needed to reinstate the flooring (if Mrs J would prefer that option to a cash settlement).

The second key issue is the level of compensation for the inconvenience Mrs J's suffered. She's described the stress it's caused her (and to a family member living with her). She's also described the impact of, as she's described it, being without a washing machine as well as having her fridge moved to the garage at her property. Taking these factors into account, I think the impact on her has been significant and substantial. I think Aviva have recognised this, when awarding her £1,500 in compensation. The figure is in line with what we'd consider to be a very significant impact on a consumer, over a prolonged period. As such, I think Aviva's offer is fair and reasonable. So, I won't be asking them to pay a higher sum.

My provisional decision

For the reasons set out above, my provisional decision is that I uphold Mrs J's complaint in part. I intend to require Aviva Insurance Limited to:

- *appoint a different contractor to carry out the work needed to reinstate the flooring at Mrs J's property (if Mrs J would prefer that option to a cash settlement).*
- *Pay Mrs J £1,500 in compensation for distress and inconvenience.*

Aviva Insurance Limited must pay the compensation within 28 days of the date on which we tell them Mrs J accepts my final decision. If they pay later than this, they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Aviva responded to say the option of appointing a different contractor to repair the floor wasn't available, as they only worked with B to rectify damage – they didn't work with any other companies. As B had stated they wouldn't return to Mrs J's property, Aviva didn't have any other contractor they could appoint to replace Mrs J's floor.

Mrs J responded to say she accepted the provisional decision conclusion that Aviva should appoint a contractor to complete the work. But she didn't agree with the amount of compensation. She said Aviva's handling of the situation had profoundly affected both her mental health and her physical health, particularly her medical condition. She thought the latter had been made worse by what had happened and had affected her life expectancy. She wanted the repair work completed before the issue of compensation was considered.

Mrs J also made further representations and provided information about the situation at her property and the impact on her, including her health. This included photographs of the property and items affected by the situation (including a recording about issues affecting a basin and with pipework). Mrs J also described how she'd been affected personally by conditions at the property, as well as the impact on her son.

Mrs J also said she felt she had been treated differently (and discriminated against) because of her race.

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.

My role here is to decide whether Aviva have acted fairly towards Mrs J.

Considering Aviva's response first, I'm not persuaded it's fair and reasonable to say they can't appoint [another] contractor to carry out the necessary repair work, for the damage they've accepted is their responsibility. In my provisional decision, I said that while a cash settlement was a generally accepted approach to settling a claim in the insurance industry, the specific circumstances of Mrs J's case meant this wasn't fair and reasonable. Particularly the impact on her health and wellbeing. Nor do I think it's reasonable, as Aviva said in their response, to say they only work through B to rectify damage, so they didn't have any other contractor they could appoint. I'm not persuaded by this view, so my view on this issue hasn't changed. Which is that Aviva should engage a different contractor – either through B or directly - to carry out the necessary work in accordance with the scope of work I've seen.

Turning to Mrs J's points, I'd first want to reassure her I've looked at all the representations, evidence and information she's made in response to my provisional decision. I recognise the very difficult circumstances she's in, allowing her longer to gather further information and evidence for her response.

I appreciate what she's said about the impact of the situation at her property, particularly on her physical and mental health and wellbeing. She's provided photographic and other evidence of those impacts, which I have no reason to doubt. But there's no evidence to support what Mrs J has said about the impact on her health from conditions at the property. As I've noted above, Aviva have previously advised Mrs J about the process she could follow to pursue a claim for the impact she says the ongoing issues have had on her health. I also recognise what Mrs J has said about undergoing tests to assess her condition. Aviva also suggested Mrs J seek legal representation in this respect.

In the circumstances, given these factors, while I have every sympathy with Mrs J's situation, I still think £1,500 is a reasonable amount of compensation for the undoubted distress and inconvenience she's suffered.

In her response, Mrs J also referred to issues with a basin at her property and what appears to be external pipework at the property. Also, a fridge not operating properly. I'm not aware these particular issues have been raised with Aviva (or that they've considered them and responded to Mrs J). Accordingly, as I set out earlier, they aren't issues I can consider as part of this complaint.

I've also considered what Mrs J has told us about how she feels Aviva treated her differently (and discriminated against her) because of her race. I appreciate what Mrs J feels, but this service can't make a finding on whether an act or omission is discriminatory under the provisions of the Equality Act 2010, only a court can do this. However, as the Act is relevant to Mrs J's complaint, I've taken it into account when considering whether Aviva acted in a fair and reasonable way. I've considered whether Mrs J was treated any differently than would a policyholder of a different race in the same circumstances. Looking at what happened, I've not seen anything to indicate that Mrs J's race played a part in the way she has been treated - although I accept that Aviva hasn't acted fairly and reasonably.

Taking these considerations into account, my final decision remains unchanged, for the same reasons set out in my provisional decision.

My final decision

For the reasons set out above, my final decision is that I uphold Mrs J's complaint in part. I require Aviva Insurance Limited to:

- appoint a different contractor to carry out the work needed to reinstate the flooring at Mrs J's property.
- Pay Mrs J £1,500 in compensation for distress and inconvenience.

Aviva Insurance Limited must pay the compensation within 28 days of the date on which we tell them Mrs J accepts my final decision. If they pay later than this, they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 26 October 2022.

Paul King
Ombudsman