

The complaint

Mr G complains on behalf of his business, a dentist's practice and a limited company, that Aviva Insurance Limited hasn't offered a fair settlement for a claim made under his business protection insurance policy.

Where I refer to Aviva, this includes its agents and claims handlers.

What happened

Mr G made a claim to Aviva after his dentist chair was broken. He purchased the chair for approximately £75,000 and it had built in equipment required for procedures such as implants. Without the chair, he was unable to conduct his business.

Once Aviva had inspected the chair and was considering the claim, Mr G purchased a cheaper chair for £24,000 under a finance agreement. Whilst he wasn't able to perform all procedures that his previous chair enabled him to, it allowed him to continue to see patients and mitigate his losses.

Mr G wants Aviva to pay him the cost of his original chair and his lost income as a result of not having the chair. Aviva made an offer which Mr G wasn't happy with, so he contacted our service. And since that time, there's been further negotiations between the parties. Aviva's current position is that it will do the following:

- Reimburse the cost of a like for like chair to the original, on receipt of an invoice for payment. As Mr G had concerns about how he'd pay for the £75,000 chair up front, Aviva has said it will pay the supplier of the chair directly once Mr G submits an order.
- Pay the cash value of the temporary chair, provided that it can keep the chair as salvage.
- Consider the business interruption claim provided that Mr G can evidence his losses. As Mr G has expressed concern about providing patient details to Aviva which would breach GDPR and client confidentiality, Aviva has said it will accept redacted information.

Our investigator felt this offer was in line with the policy's terms and fair in the circumstances of the complaint. So he didn't think Aviva needed to do anything more here. But Mr G didn't agree, so the complaint has been passed to me for 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.

I'd like to reassure Mr G that whilst I'm aware I may have condensed some of the complaint points in far less detail and in my own words, I've read and considered everything he's told

us. I'm satisfied I've captured the essence of the complaint and I don't need to comment on every point individually, or possibly in the level of detail he would like, in order to reach what I think is a fair outcome. This isn't meant as a discourtesy, but it simply reflects the informal nature of our service.

Damaged chair

From the information provided, it appears Aviva accept that the claim for the damaged chair falls within the policy's cover. What's in dispute is the proposed claims settlement, as Mr G wants a cash settlement. So I've looked at what the policy terms and conditions say it will cover.

Under the property damage section, which covers both buildings and contents, it says:

"Basis of Claim Settlement

(a) If Property Insured...is destroyed We will pay for its rebuilding or replacement by similar property in a condition as good as, but not better than or more extensive than, its condition when new.

(e) We will not pay under this clause

(i) until You have incurred the cost of replacing or repairing the property."

Aviva has offered to reimburse the cost of a like for like replacement chair once Mr G has purchased one. I'm satisfied this is in line with what the policy says it will cover. Given the substantial cost of the chair, I can understand Mr G's concern about paying for it himself initially. So I'm pleased to see that Aviva has made a fair suggestion of paying the supplier directly once Mr G has ordered it.

But there's nothing in the policy to say that Aviva will make a cash settlement of the claim and I think the offer Aviva has made is fair. So whilst I appreciate this is Mr G's preference, I can't fairly ask Aviva to do something that the policy doesn't provide for.

Business interruption

The terms and conditions of Mr G's policy say that it will cover business interruption as a resulting of property damage, defined as:

"Option A – Loss of Income

The amount payable will be:

(1) the amount by which the Income falls short of the Income which would have been received during the Indemnity Period due to the Damage

(2) any additional expense You incur to prevent or limit the reduction in Income during the Indemnity Period due to the Damage. We will not pay more than We would pay under (1) above.

(3) auditors' or accountants' charges reasonably incurred for producing and certifying details of a claim under this Section less any savings during the Indemnity Period in respect of business charges or expenses payable out of Income which reduce or stop due to the Damage."

The section of cover has the following conditions:

“Claims Procedures

It is a Condition Precedent to Our liability that You will

- (a) take any action reasonably practicable to minimise any interruption of or interference with The Practice or to avoid or diminish the loss.*
- (b) at Your expense, provide Us with*
 - (iii) books, records and documents We require to assess Your claim.”*

Mr G has put together a list of treatments and procedures he was unable to carry out during the period that he had no chair, as well as the procedures he’s been unable to carry out without the functions of his original chair. But Aviva says this isn’t sufficient to evidence his claim and I’m inclined to agree.

In the first instance, it’s for a policyholder to prove their claim and the policy terms reflect this. So the responsibility lies with Mr G to evidence his claim and he needs to provide, at his own expense, his books and records showing the appointments he had lined up that he had to cancel. I appreciate he doesn’t want to breach any data protection and confidentiality requirements, but Aviva has said it will accept redacted copies. And I’m satisfied this is fair.

I’ve asked Mr G to provide proof of his earnings over the six months leading to his claim. This would enable Aviva to see what his turnover was before and after the damage to his chair. But Mr G hasn’t provided this on the basis that it wouldn’t reflect what he could’ve been earning at the time of the loss; as he says he was due to take on more clients as a result of Covid restrictions placed on non-private practices.

Whilst I sympathise with Mr G, he needs to provide some evidence to substantiate his loss – not just a list he’s put together himself. As he hasn’t done so, it’s not unreasonable that Aviva hasn’t been able to make an offer for this part of his loss. As quoted above in point 3 of the loss of income cover, there is potentially funding under the policy to incur reasonable costs of an accountant to certify his claim and he may want to discuss this possibility with Aviva.

Aviva has offered to pay for the temporary chair, under point 2 of the loss of income cover. This is on the basis that Mr G replaces the original chair with a like for like version and releases the temporary chair to Aviva as salvage. I’m satisfied this offer is in line with the policy cover and fair in the circumstances of the complaint.

Delays

And finally, whilst I appreciate Mr G is unhappy with the length of time his claim has taken, I can’t fairly hold Aviva responsible for these delays when Mr G is yet to provide the information it needs to settle the claim. Once the information set out above is provided, I’d expect Aviva to settle the claim in line with its offer in a timely manner.

My final decision

Overall, I’m satisfied Aviva has made a fair offer.

So my decision is that, subject to Mr G providing the information required from him, Aviva Insurance Limited should settle the claim in accordance with its offer.

Under the rules of the Financial Ombudsman Service, I’m required to ask P to accept or

reject my decision before 21 November 2022.

Sheryl Sibley
Ombudsman