

The complaint

Ms K, Ms T and a limited company, M, complain about how Aviva Insurance Limited handled the escape of water claim made on their property owners insurance policy.

M owns the leasehold property to which this claim relates. Mr S is a director of M and has made representations in this complaint for and on behalf M.

References to Aviva include its agents.

What happened

The details of the claim are well known to both parties, so I won't repeat them again here. Instead, I'll summarise the background.

In December 2021, there was an escape of water at the property because of a leak from another flat in the building. At the time, Ms K, Ms T and M insured the property with Aviva under a property owners insurance policy. And there was a tenant at M's property, Ms J.

Mr S notified Aviva of the escape of water claim and submitted an estimate for the work by a contractor, who I'll call L, for £3,188.94 and another contractor, who I'll call F, for £3,680. L was the contractor used by M to carry out the works.

As the estimates provided by Mr S were assessed by Aviva's surveyor to be excessively intrusive and overstated for the limited damage shown in the photographs, further investigations took place.

As a result of these investigations, Aviva declined the claim based on a breach of the policy condition relating to fraud. It also avoided the policy from 12 December 2021 and retained the premiums. The reasons for this are set out, in summary, below.

- No evidence has been given to Aviva of a repair to the source of the leak, or what the source of the leak was.
- The amount of work set out in L and F's estimates to reinstate the property has been exaggerated. And the cost of the works L and F have quoted for are more than 7 times the amount Aviva would expect it them cost.
- The photos from after the repairs were complete show markings on the ceiling consistent with the water stains present prior. On balance, it's satisfied this shows the ceiling wasn't replaced and was instead stain blocked and painted over. Therefore, the works set out in the estimate from L haven't been carried out.
- Initially, when asked about this by the loss assessor, Ms J said the works carried out by L were stain blocking and emulsion to the ceiling only. And, although Ms J altered what she'd told Aviva, this was only after the claim this had been questioned and L had said he was going to speak to her. It considered Ms J's comments to the loss assessor were contemporaneous and likely to be the most accurate so could still be relied on. Particularly given the inconsistencies between the later information provided by Ms J at different times after this and what L told it.
- Mr S told Aviva payment had been made to L for £3,188.94 and gave it evidence of

the same, dated 2 February 2022. However, this was false. No original of the evidence Mr S had supplied for this payment was available when requested.

Mr S was unhappy with Aviva's actions and raised a complaint for M, but Aviva didn't change its mind. So, Mr S brought the complaint to this Service for an independent review. He explained the declined claim has had a significant impact. To put things right, he'd like the policy reinstated (and any avoidance removed from external records), the claim covered and compensation for the inconvenience caused. Mr S is also unhappy with Aviva's service.

An Investigator reviewed matters and was, ultimately, satisfied Aviva had acted fairly and reasonably.

M didn't agree and raised points in support which are, in summary, set out below.

- This was a legitimate claim reported in good faith which has ultimately affected the ability to get further insurance.
- Mr S has been able to satisfy himself he's been totally honest with his responses to all queries raised.
- There have been occasions where claims haven't been made. This isn't the behaviour of a policyholder who seeks to defraud an insurer.
- L supports what Mr S has said regarding the estimate, works carried out and payment.
- The directors of M are not local to the property, so they haven't themselves seen the damage or reinstatement work. And Mr S relied on what he was told.
- Despite the way Mr S settled L's invoice, it wasn't done knowingly or recklessly in order to gain a material advantage. He mistakenly told Aviva he'd paid in full assuming it would speed things up. The broker explained - the anomalies in the payments to L when compared with the estimates are explained as L is regularly used for work and maintenance and various payments on account are made. Here, two payments have been made that reconcile with the estimate and a second job at the same property for hallway redecoration.
- Ms J didn't have the conversation Aviva has suggested with the loss assessor.

The matter has now been passed to me for a 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 recognise I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this and it reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I've given careful consideration to all of the submissions made before arriving at my decision and I'm satisfied I don't need to comment on every individual argument to be able to reach what I consider to be a fair outcome.

Having done so, I must explain to Ms K, Ms T and M I consider the Investigator reached a fair outcome in this matter and I agree with the reasons set out for their outcome. So, I won't be asking Aviva to do anything more to put things right. I'll explain why.

The starting point of any claim made under an insurance policy is the contract between the customer and the insurer - the policy document.

The relevant term in the policy document is set out below. I'll refer to this as the fraud condition.

'If a claim made by You or anyone acting on Your behalf is fraudulent or fraudulently exaggerated or supported by a false statement or fraudulent means or fraudulent evidence is provided to support the claim. We may:

- (1) refuse to pay the claim,*
- (2) recover from You any sums paid by Us to You in respect of the claim,*
- (3) by notice to You cancel the policy with effect from the date of the fraudulent act without any return of premium.*

If We cancel the policy under (3) above, then We may refuse to provide cover after the time of the fraudulent act. This will not affect any liability We may have in respect of the provision of cover before the time of the fraudulent act.'

I'm satisfied Aviva had fair and valid concerns about the estimates submitted for payment and whether the works had been carried out, as claimed. So, it was reasonable for it to undertake investigations and request further information from Mr S to satisfy itself about those concerns.

Aviva have relied on the points outlined above to determine there has been a breach of the fraud condition. This includes – but isn't limited to – exaggeration of the works required and amount of the estimates, falsified evidence, untrue statements, inconsistencies and missing evidence (including originals of the copies already provided). And I don't consider the explanations given by Mr S overcome the points relied on by Aviva.

Based on the evidence provided, I'm satisfied it's more likely M has made a claim which satisfies the fraud condition. As a result of Aviva being satisfied the fraud condition had been breached, it was fairly and reasonably able to take the action it did. Therefore, I don't consider it'd be appropriate for me to interfere with Aviva's decision to refuse this claim, avoid the policy and retain the premiums.

I note Mr S says Aviva told him the claim would be paid and then went back on this. He also states Aviva failed to inspect the property when it said it would. And this supports his complaint the claim should be paid, or a compromise reached on the outcome of this matter. I don't see things the same. The mistaken confirmation and cancelled visit were both after Mr S's contractor had carried out the works. So, these points don't change this decision.

Finally, I recognise Mr S also complains about the service received and time this matter has taken. However, when taking all the circumstances into account, I don't consider Aviva should be required to take any action to fairly and reasonably settle this part of the complaint.

My final decision

My final decision is I don't uphold this complaint against Aviva Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask M and Ms K and Ms T to accept or reject my decision before 20 February 2024.

Rebecca Ellis
Ombudsman

