

The complaint

Mr M complains about Aviva Insurance Limited's delay in handling a claim for damage to his property.

Where I've referred to Aviva, this also includes any actions or communication by agents acting on their behalf.

What happened

Mr M is leaseholder of an apartment which he lets out to tenants. The apartment is covered by a block insurance policy, taken out by the freeholder, underwritten by Aviva. Mr M contributes towards the cost of the policy via his service charge. As the block policy covers damage to Mr M's leasehold apartment, in part, the policy is for his benefit.

In December 2021 there was a leak from the dishwasher in Mr M's apartment. This caused isolated damage to the surrounding floor and walls. Mr M made a claim to Aviva.

Due to the limited nature of the damage, and the tenant's circumstances, it was agreed by all parties that the repairs would be carried out after the tenant vacated in September 2022.

Following the tenant moving out, strip out works were undertaken. However, there were significant delays in the repairs being carried out, and these ultimately weren't completed until late June 2023.

Mr M complained to Aviva about the handling and delays in the claim. During this period, the property was uninhabitable, so couldn't be let out to a new tenant. As a result, Mr M didn't receive rental income for the durations of the repairs.

Aviva recognised that their handling of the claim had fallen short. They offered Mr M £650 compensation for this. However, they said the policy didn't cover Mr M's loss of rent, so they didn't agree to reimburse this.

As Mr M was unhappy with Aviva's position, he approached this service.

One of our investigators looked into the complaint. Initially she said that she thought the compensation was reasonable for Aviva's handling of things. But she said the policy covered loss of rent, so Aviva should consider this under the terms.

Aviva responded and said the policy terms didn't cover loss of rent for Mr M as a leaseholder.

The investigator revisited things and accepted the policy didn't provide cover for Mr M's loss of rent. But she still thought Aviva should pay this on a fair and reasonable basis, subject to any evidence Aviva needed from Mr M to calculate this. And she said Aviva should also add 8% simple interest to this from date of loss to date of settlement. But her view remained that separate to this, the compensation of £650 already offered by Aviva was reasonable.

Aviva didn't agree and maintained the policy didn't cover Mr M's loss of rent.

As an agreement couldn't be reached, the case was passed to me to decide.

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.

Firstly, I should explain that I don't intend on commenting on every event that occurred throughout the duration of the claim. I don't mean this as a discourtesy to either party, instead this reflects the informal nature of this service and my role within it. But I'd like to reassure both parties that I've considered all the information they've provided when reaching my final decision.

It isn't disputed by Aviva that Mr M's claim was handled poorly. As this isn't in dispute, I don't need to decide whether Aviva did or didn't handle the claim reasonably.

Aviva already recognises their claim handling fell short, including poor communication and that multiple avoidable delays occurred, which significantly prolonged the repairs timescale. Aviva offered £650 compensation for this. Having taken into account all the information provided, I don't think that amount as compensation overall is unfair for the poor handling, what happened and where the service provided by Aviva fell short. So, I won't be directing Aviva to increase the compensation for the distress and inconvenience caused to Mr M.

However, from when the property was stripped out in September 2022, to when repairs were completed in June 2023, the property was uninhabitable. This meant that Mr M was unable to let the property out to a tenant, and as a consequence, he lost rental income for this period of time.

In response to both Mr M's complaint to Aviva, and our investigator's assessment and recommendation to pay Mr M loss of rent, Aviva has responded to simply say it isn't covered under the policy, and therefore they haven't agreed to pay this.

Having looked at the terms of the policy, I agree that these don't provide loss of rent cover for Mr M as a leaseholder. Instead, it provides loss of rent cover to the freeholder. So, Mr M isn't able to claim under the policy terms for loss of rent, as this simply isn't covered. Therefore, I won't be directing Aviva to pay loss of rent under the policy terms.

However, my role and remit goes further than simply considering the strict application of the policy terms. My remit also extends to what I consider fair and reasonable in all the circumstances of a case. This means I can direct Aviva to pay something outside of the policy terms, if I think it is fair and reasonable in all the circumstances to do so.

Mr M accepts that loss of rent isn't covered under the policy, and I agree. And Mr M isn't asking for loss of rent from Aviva for the whole time the property was uninhabitable, because he already accepts the policy doesn't cover this. Instead, Mr M is asking for loss of rent outside of the policy terms and coverage, solely for the period in which avoidable delays were caused by Aviva. This is because he says it was as a result of those avoidable delays which resulted in the loss of rental income for that extended period.

I agree with Mr M's view and position on this. It wouldn't be fair or reasonable for me to direct Aviva to pay loss of rent for the whole repair period, as repairs always would have been needed, and there always would have been a loss of rent for that time because the policy doesn't cover it. But the claim was prolonged due to avoidable delays by Aviva, and this meant the lack of rental income was avoidably delayed and extended as a result.

Mr M says he would have expected the repairs to take around four to twelve weeks at most, to allow for drying, parts delivery (including any reasonable delays), repairs being carried out and subsequent snagging works. But instead, it took around nine months for repairs to be completed.

There isn't a way for me to calculate exactly how long the repairs should have taken. But the damage was relatively limited, and the repairs required weren't extensive. And I don't think Mr M's expectations for a reasonable repair timescale is unrealistic. Given the nature of the damage and repairs required, I agree at most it should have taken four to twelve weeks, rather than nine months.

With this in mind, I think there was likely a six-month avoidable delay period caused by Aviva's handling of the claim. And I think it would be fair and reasonable for Aviva to compensate Mr M for loss of rent for this six-month period.

Therefore, whilst not covered by strict application of the policy terms, I'll be directing Aviva to pay Mr M six months loss of rental income on a fair and reasonable basis outside the policy terms, subject to Mr M providing any information Aviva needs in support of the loss to calculate the exact amount (such as previous tenancy agreements etc to show the amount he would have lost out on).

Our investigator also said Aviva should add 8% simple interest on top of this amount from date of loss to date of settlement. However, whilst I think 8% simple interest should be added, I think it should be for a different time period. I'll explain why.

We'd normally add 8% simple interest to take into account the period a complainant has been without access to funds which they otherwise should have had.

The investigator said 8% simple interest should be added from date of loss, which was December 2021. However, Mr M's tenant remained in the property paying rent up to September 2022 when repairs were then started as agreed. Therefore, Mr M wasn't without rental income or the funds for the period December 2021 to September 2022. So, it wouldn't be fair or reasonable for me to award interest for that period.

Like I say (and Mr M already acknowledges), the repairs would always have taken some time to complete. Therefore, there would also have been a period without rental income, and I think four to twelve weeks is a reasonable timescale for the repairs to have been completed. So, Mr M wouldn't have been deprived of funds he otherwise should have had for that time either, consequently it wouldn't be fair or reasonable for me to direct 8% simple interest to be added for this period either.

Instead, for the reasons explained, I think there was a period of six months where there were avoidable delays in excess of that initial four-to-twelve-week repair period. So that six-month period is when I'm directing Aviva to pay loss of rent for (subject to Mr M providing any information required for Aviva to calculate this). So, it also follows, that Mr M was deprived of those funds for that six-month period too. Therefore 8% simple interest would need to be added.

However, each rental payment would have been paid monthly to Mr M. So, Mr M wouldn't have received that as a lump sum, and consequently hasn't been deprived of that full amount from the start of that six-month delay period to now. Therefore, I'll be directing Aviva to pay 8% simple interest on the reimbursement of each monthly rental payment for that six-month period, from when each monthly payment should have been received by Mr M to the date of settlement.

My final decision

It's my final decision that I uphold this complaint and direct Aviva Insurance Limited to:

- Pay Mr M for six months loss of rent, subject to Mr M providing any information Aviva needs in support of the loss to calculate the exact amount (such as previous tenancy agreements etc to show the amount he would have lost out on).
- Pay 8% simple interest* on the reimbursement of each monthly rental payment for that six-month period, from when each monthly payment should have been received by Mr M to the date of settlement.
- Pay Mr M the £650 compensation already offered, if they haven't already done so.

*If Aviva Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 March 2024.

Callum Milne
Ombudsman