

## **The complaint**

Mr and Mrs B complain about the settlement offered by Aviva Insurance Limited following a claim on their buildings insurance policy.

## **What happened**

In June 2022 there was a leak of water under the kitchen floor in Mr and Mrs B's home. This caused extensive damage to the kitchen and to the floors in the dining room, hall and lounge. They made a claim on the policy and Aviva appointed contractors to deal with it. The contractors visited soon after to assess the situation.

Mr B contacted Aviva to get permission to cut out some of the kitchen base units to help with the drying process. The contractors arranged for dryers and a humidifier to be used to dry out the property.

In August 2022 the contractors discussed the costs for replacing the damaged items and in September there was a phone call where they advised Mr and Mrs B they would be making a cash offer on behalf of Aviva to settle the claim.

The cash offer was confirmed as £4,557.48, together with £1,414.54 to cover the cost of the electricity used in the drying process.

Mr and Mrs B were unhappy with the offer. They arranged for a surveyor to inspect the property, obtained quotes for a replacement kitchen and flooring, and in late September they made a complaint to Aviva.

On 29 September 2022 Mr and Mrs B wrote to Aviva saying if they didn't receive a satisfactory offer within 10 days they would instruct their own contractors to do the work.

In the absence of a reply, Mr and Mrs B's contractors proceeded with the work.

On 28 October 2022 Aviva sent a response saying

- it maintained the offer of a cash settlement, for £4,632.48 (a small increase on the previous figure)
- it would pay £1,414.54 for the electricity costs
- it would offer £250 compensation.

Mr and Mrs B didn't accept the settlement offer and referred their complaint to this Service. They say if they hadn't arranged for the builders to carry out the work they believe they would still be waiting for it to be done. They accept they must cover the cost of any 'betterment' but do not consider the settlement offer was fair.

Aviva arranged for a review of the settlement offer and made an increased offer of around £14,000 but Mr and Mrs B didn't accept this as they say it's still well below the actual cost incurred, which is around £33,000.

Our investigator said Mr and Mrs B had replaced the whole kitchen but it wasn't clear why all of the kitchen units had to be cut out, and Aviva had advised against carrying out work without its agreement. He thought Aviva's offer, including the compensation of £250, was fair.

Mr and Mrs B disagreed and requested an ombudsman's decision. They made a number of points, including:

- All the downstairs rooms in their house were severely affected by the water damage and they struggled living in the house for nine months until the work they had to arrange and pay for was completed.
- The individual from the contractors who made the offer only made a short visit to assess the damage and another brief visit in the later stages of drying to check the drying progress. They never felt confident he fully grasped the amount of work required.
- He assumed the kitchen units were supported on adjustable legs but these were old units with wood frames going all the way down to the floor, so when the leak happened the wood was saturated and the units were ruined.
- The old units were solid wood, so were better quality than the replacements they have installed, which are made from MDF. They didn't want to replace the kitchen but due to the level of damage had no choice.

I issued a provisional decision saying I intended to uphold the complaint. I set out my reasons as follows:

*The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.*

*I'd expect the settlement to put the customer, as far as possible, back in the position they were in before the loss or damage. Where repairs are being done, that means carrying out an effective and lasting repair.*

*The policy includes cover for damage caused by an escape of water from a pipe. The policy terms say Aviva may choose to settle the claim as follows*

*We can choose to settle your claim by:*

- replacing;
- reinstating;
- repairing; or
- payment.

*Replacement will be on a like for like basis or based on the nearest equivalent available in the current market.*

*If we are able to replace property, but we agree to make a cash settlement, we will only pay you what it would cost us to replace the item as if it were new.*

*Taking into account the above points, I'd expect Aviva to ensure either that a lasting repair was done, putting Mr and Mrs B back in the position they had been in, with a fully functioning kitchen and the damaged floors repaired, or make a cash payment that allowed them to do that. I don't consider Avia has done this.*

*While it was open to Aviva to make a cash offer, it would need to show the offer was reasonable. The original offer was very modest and Aviva hasn't shown this was a realistic*

*amount. I think the fact that Aviva made an improved offer in May 2023 confirms that the original settlement wasn't a reasonable one.*

*While the policy terms say a cash settlement may be based on what it would have cost Aviva, that wouldn't be fair in these circumstances. Aviva failed to make a realistic offer or attempt to carry out repairs itself. Mr and Mrs B were put in a position where they had little choice but to arrange the work themselves and so they had to pay what the contractors charged them. It wouldn't be fair for them to be out of pocket in these circumstances.*

*I've considered the evidence Mr and Mrs B have provided and find it more persuasive. They have explained that they photographed and evidenced the whole process and gave Aviva and its contractors every opportunity to undertake the work. In the absence of any real progress they arranged for and paid a surveyor to provide an independent report. The report is detailed, sets out the basis on which the repairs should be done and the level of cost involved. It explains why all the kitchen units had to be cut out. And the report allows for some betterment and makes a deduction for that. Aviva hasn't provided an equivalent report to contradict this one.*

*I appreciate Aviva did carry out a review and make an improved offer. But that was done after the work had been done and without the benefit of an on-site inspection. So I don't think it carries the same weight as the surveyor's report. It had the opportunity to arrange a proper survey at the time of the incident but decided not to do so.*

*Aviva says it offered a review by another surveyor but Mr and Mrs B refused this. This was only made very late on and by that time the work had all been done. Mr and Mrs B didn't reject it out of hand but said, as the matter was being considered by the ombudsman, they would see what this Service had to say.*

*Taking into account all of these circumstances, I think it would be fair for Aviva to reimburse Mr and Mrs B for the costs they have incurred.*

*Aviva has acknowledged some delays and poor service and offered compensation. Mr and Mrs B were caused unnecessary distress and put to considerable inconvenience, having to instruct a surveyor and then arrange for the work to be done. They were left in very difficult living conditions for months. There would have been some disruption in any event as a result of the incident but this was made much worse by the way the claim was handled. Taking into account the level of distress and inconvenience caused and the time period involved, I think a higher payment would be fair.*

I said that to put things right, I intended to direct Aviva to make the following payments:

- £33,000 to cover the costs incurred, together with interest from the date they paid those costs to the date of payment at 8% a year simple\*.
- £1,414.54 for the electricity costs
- compensation of £500 for the distress and inconvenience caused.

### **Replies to the provisional decision**

Mr and Mrs B have accepted the provisional decision.

Aviva has not replied.

## **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.

Mr and Mrs B have accepted the provisional decision. Aviva hasn't replied or provided any further comments for me to consider. In the absence of anything new for me to consider I see no reasons to change my provisional decision. It remains my view that Aviva should settle the claim by making the payments set out in the provisional decision.

## **Putting things right**

To put things right for Mr and Mrs B, Aviva should make the following payments:

- £33,000 to cover the costs incurred, together with interest from the date they paid those costs to the date of payment at 8% a year simple\*
- £1,414.54 for the electricity costs
- compensation of £500 for the distress and inconvenience caused.

\* If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs B how much it's taken off. It should also give Mr and Mrs B a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

## **My final decision**

I uphold the complaint and direct Aviva Insurance Limited to pay the compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 28 March 2024.

Peter Whiteley  
**Ombudsman**