

The complaint

Mr M complains that Aviva Insurance Limited (Aviva) caused a delay, and failed to fully repair a broken window when he claimed under his home buildings insurance policy.

What happened

Mr M says the outer pane of a window at the front of his house was broken. He says he assumes this was the result of vandalism. He called Aviva to make a claim the same day and was told he couldn't claim for 'malicious intent' unless he could identify who broke the window. Mr M says he couldn't find reference to this requirement in his policy booklet.

Three to four weeks later Mr M says he tried to claim again. He provided a police reference number, which he says showed the damage was treated as vandalism. Aviva then accepted his claim, without needing to know who had broken the window. During this time Mr M says the shattered glass was pushed outwards and gradually fell out due to the wind.

After Aviva's repairer had replaced the outer pane of glass Mr M says he noticed the external seal was damaged. He says the seal was intact prior to the window being smashed. Because of this he says the seal is no longer weatherproof. He wasn't satisfied with the repair or the incorrect information he'd been given and so complained to Aviva.

In its final complaint response Aviva says the window gasket couldn't have been damaged by the window breaking. It says it's made of toughened safety glass. This means there are no sharp edges when it breaks, so the gasket couldn't have been damaged. Aviva says its policy excludes any gradually occurring damage including that caused by wear and tear. It says its repairer has advised that the condition of the gasket will not affect the integrity of the double-glazed unit.

Because Aviva didn't think the gasket damage was claim related it declined to replace it. Mr M didn't think he'd been treated fairly and referred the matter to our service. Our investigator upheld his complaint. She didn't think there was sufficient evidence for Aviva to decline the gasket damage from Mr M's claim. She says any repair Aviva carries out must fully rectify the damage and endure for a reasonable time.

Our investigator wasn't satisfied that Aviva could reliably tell from photos that the gasket wasn't damaged as a result of the window breaking. She says the images show the gaskets from adjacent windows in good condition. She also says that a damaged gasket could result in water ingress, heat loss and increased noise levels. Our investigator didn't think Aviva had repaired the damage fully and says it should now do so. In addition, she says because of the inconvenience Mr M was caused by Aviva's delay in repairing the damage in full, and for having to raise his claim twice, it should pay him £200 compensation.

Mr M accepted our investigator's findings. Aviva didn't. As an agreement wasn't reached the complaint has been 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.

Having done so I'm upholding Mr M's complaint. Let me explain.

It's for the insured to show they have suffered a loss (fire, flood, storm etc) if they can do so then the insurer must, generally speaking, pay the claim unless it can reasonably rely on a policy exclusion not to.

Aviva doesn't dispute that Mr M is covered for the damage that was caused to his window. It has carried out a repair to the outer pane of glass. I think this is fair. But it's clear from the photos he provided, that damage remains on the bottom section of the gasket, in the window that has been repaired.

As our investigator explained we expect Aviva to carry out lasting and effective repairs. I don't think it has here. From the photos the lower window gasket is visibly damaged. Aviva's repairer says the window is watertight. But there's a clear difference between the undamaged sections of gasket and the section that's damaged. The damaged section is now more exposed to the elements and could conceivably result in issues later on. I don't think it's unreasonable that Mr M expects the gasket to be replaced.

If the gasket had been damaged as a result of a gradual cause, as Aviva indicates, I think it's probable that other gaskets would show some signs of damage or wear. But they don't. It's not entirely clear how the damage to the gasket occurred. I acknowledge what Aviva says about the hardened glass not breaking with a sharp edge. But I think Mr M makes a fair point that damage could've happened due to movement in the remaining broken glass in the weeks it took to process his claim.

Having considered this evidence I think it's more likely than not that the gasket damage is linked to the window being broken. This occurred either at the time of the incident, at some point leading up to the repair as Mr M indicates, or when the repair took place. It should, therefore, be included as part of a lasting and effective repair.

I've listened to the call Aviva provided when Mr M first made his claim. The agent tells him he can't claim under a malicious damage cause as he didn't know who caused the damage. Similarly, he couldn't claim under an accidental damage cause as it wasn't known how the damage was caused. The agent asked Mr M if he'd reported the matter to the police. He said he had. But as this crime wasn't considered a high priority he'd completed a form online. The call recording ends after around 18 minutes. This is before the call ends.

From what I heard Aviva told Mr M the damage wasn't caused by an insured event. So, he wasn't covered under his policy. Aviva was aware he'd reported the matter to the police. Mr M later provided a crime reference number. He still didn't know who had caused the damage. But it's apparent Aviva was prepared to accept the claim at this point, despite this. I note that Mr M wasn't asked to provide a crime reference number during the call recording. Based on this evidence it's not clear why the claim was declined initially.

I don't think it was fair that the repairs to Mr M's window were delayed. Similarly, I don't think Aviva treated him fairly when it failed to ensure its repairer carried out a lasting and effective repair. Mr M describes how he's had to make numerous calls and was "fobbed off" by Aviva's agents. He says the business failed to acknowledge his explanation of how the damage was caused. He maintains that he didn't say the damage resulted from a sharp edge, as it believed he had.

Having considered all of this I don't think Aviva treated Mr M fairly when declining to replace the damaged window gasket. It should now complete this repair. In addition, I don't think it treated him fairly when initially declining his claim and for the delays in arranging the repairs. To compensate Mr M for the hassle and inconvenience he was caused - I agree with our investigator that it should pay him £200.

My final decision

My final decision is that I uphold this complaint. Aviva Insurance Limited should:

- arrange for the repair to the damaged window gasket; and
- pay Mr M £200 compensation for the hassle and inconvenience it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 May 2024.

Mike Waldron
Ombudsman