

## **The complaint**

Mr B complains about Aviva Insurance Limited (“AIL”) and their decision to proportionately settle the claim he made on his home insurance policy following an escape of water at his property.

## **What happened**

The claim and complaint circumstances are well known to both parties. So, I don’t intend to list them chronologically in detail. But to summarise, Mr B held a home insurance policy, underwritten by AIL, when his home was damaged significantly by an escape of water in December 2022. So, he contacted AIL to make a claim.

AIL accepted Mr B’s claim. But when validating it, they discovered Mr B had an undisclosed previous building insurance claim. And they explained that had Mr B disclosed this claim at the inception of the policy, his premium price would’ve increased. So, as Mr B had only paid 77% of the premium he should have, AIL reduced their settlement proportionately, to 77% of the total repair cost. Mr B was unhappy about this, so he raised a complaint.

Mr B didn’t think AIL’s reduction was a fair one, due to the significant financial impact this would have on him due to the extent of the damage. Mr B explained his failure to disclose the claim was a genuine mistake and he didn’t think the reduction in settlement was fair considering this. So, he wanted AIL to increase their offer and cover 100% of the claim.

AIL responded to the complaint in January 2023 and didn’t uphold it. They thought the settlement reduction to 77% was fair, considering the non-disclosure of a previous claim. And they set out next steps regarding the claim itself that Mr B had agreed with the claim handler. So, they didn’t think they needed to do anything more. Mr B remained unhappy, so he referred his complaint to us.

Mr B’s complaint wasn’t referred to our service within the six-month time limit. But Mr B submitted his exceptional circumstances for this deadline which our service provided to AIL. And having considered these, AIL consented for our service to consider the complaint.

Our investigator looked into the complaint and didn’t uphold it. They thought AIL had acted fairly, and in line with The Consumer Insurance (Disclosure and Representations) Act 2012 (“CIDRA”) when proportionately settling the claim. And they explained why any concerns Mr B had about the alternative accommodation benefit included within his policy would need to be directed to AIL first, and then considered by our service separately. So, they didn’t think AIL needed to do anything more on this occasion.

Mr B didn’t agree, providing comments setting out why. These included, and are not limited to, his concern about the premium increase AIL relied on to calculate the proportionate settlement, considering the subsequent increase in premium following the claim this complaint relates to. And Mr B explained that, had he disclosed the claim from 2020 and received the premium AIL would have quoted, he wouldn’t have chosen the policy with AIL altogether, as his renewal quote with his previous insurer was cheaper. So, he didn’t think it was fair for AIL to be allowed to rely on this premium when reducing the settlement.

Our investigator considered Mr B's comments, but their view remained unchanged. Mr B continued to disagree and so, the complaint has 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.

Having done so, I'm not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Mr B. I recognise the escape of water itself caused significant damage, that cost a significant amount to repair. So, when Mr B discovered AIL were reducing their settlement proportionately by 23%, I can appreciate the worry and anxiety this would have added to an already very difficult situation for him and his family. And as Mr B felt this reduction was caused by a genuine mistake, I can understand why he'd view the reduction as unfair and choose to raise a complaint.

But for me to say AIL should do something differently here, for example increase their settlement to cover 100% of the repair costs, I first need to be satisfied AIL have done something wrong. So, I'd need to be satisfied AIL failed to act in line with the terms and conditions of the policy, and relevant applicable law, when choosing to proportionately settle the claim. Or, if I think they did act within these, I'd need to be satisfied AIL acted unfairly in some other way. In this situation, I don't think that's the case and I'll explain why.

But before I do, I think it would be useful for me to set out exactly what I've been able to consider, and how. I recognise Mr B has concerns about the service AIL provided him and his family regarding the alternative accommodation benefit on his policy. But I can't see that this complaint has been raised directly with AIL and in line with the rules and regulations we work within, set by the industry regulator, AIL must first be given a chance to respond to Mr B's complaint within their own complaint procedure. So, this hasn't been considered within my decision.

My decision instead focuses on the complaint point addressed in AIL's complaint response issued in January 2023, which centres around the proportionate settlement of Mr B's claim. And our service has a clear and defined approach on complaints such as this, which fall in line with the expectations set out in CIDRA.

CIDRA explains that a customer must take reasonable care to ensure they don't misrepresent the information they provided to a business when taking out an insurance policy. And if a customer doesn't do this, CIDRA then sets out what actions an insurer is able to take, should the misrepresentation be a qualifying one.

In this situation, Mr B has accepted he failed to disclose a previous home insurance claim he made. While I appreciate why Mr B feels the circumstances of that claim led to him not disclosing it to AIL at the inception of the insurance policy, I don't think this ultimately impacts the fact that Mr B did misrepresent the information he provided. I've seen the policy schedule which states Mr B had no previous claims in the previous five years, which is accepted was incorrect. So, I think there was a misrepresentation.

And I don't think I'm able to say Mr B took reasonable care to ensure he didn't misrepresent

this information, as I've seen the policy documentation clearly lists he had no previous claims, and that he had six years no claims discount, when I think he should've been reasonably aware this wasn't the case. And within the policy documentation, AIL make it clear to Mr B that he needed to ensure the information it included was correct, explaining a claim may be declined or partially settled if they discovered this wasn't the case.

I've then thought about whether I think the misrepresentation was a qualifying one. And by this, I mean that I've seen evidence to show that had Mr B provided the correct information, AIL would've done something differently.

In this situation, I've seen confirmation from AIL's underwriters that confirms had Mr B disclosed the previous claim, his premium would've increased by 23% to £308.93. So, I'm satisfied the misrepresentation was a qualifying one, as it had a material impact on the premium AIL would have charged.

AIL have deemed this qualifying misrepresentation to be careless, rather than reckless or deliberate. And considering Mr B's testimony provided to both AIL and our service, I'm satisfied Mr B's failure to disclose the claim was a genuine mistake, rather than anything more sinister. So, I think AIL were fair when making this determination.

In situations such as this, where a customer is deemed to have made a careless qualifying misrepresentation, CIDRA sets out what actions an insurer can take. And this includes settling a claim proportionately, in line with the premiums they would have been charged.

In this situation, Mr B paid 77% of the premium he should have. So, AIL have reduced the total settlement to 77%, falling in line with the premium Mr B paid compared to what he should have. So, while I do recognise how the 23% Mr B has needed to cover is for a significant amount due to the extent of the damage caused by the escape of water, I'm satisfied AIL have acted fairly and reasonably, in line with CIDRA and as our service would expect, when settling the claim as they have. Because of this, I don't think they need to do anything more on this occasion.

I understand this isn't the outcome Mr B was hoping for. And I want to reassure Mr B I've considered all the comments he's put forward, even if I haven't commented on them specifically. I recognise Mr B feels he wouldn't have taken out the policy with Aviva, had he disclosed his previous claim and they quoted him the premium he should have paid. And I do follow Mr B's train of thought about why this should be considered when thinking about whether a proportionate settlement is fair, considering he could've renewed with his previous insurer for less.

But crucially, I have no way of knowing for certain if this is the decision Mr B would've taken. And even if I did, the responsibility was on Mr B to take reasonable care to ensure the information he provided at policy inception was correct. And it was Mr B's mistake that led to AIL providing him with a premium quote that was for less than it should've been, had this mistake not been made. So, I don't think it would be fair to say that AIL should increase their contribution to settle the claim, as it wasn't their error that led to the situation Mr B now finds himself in.

### **My final decision**

For the reasons outlined above, I don't uphold Mr B's complaint about Aviva Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 October 2024.

Josh Haskey  
**Ombudsman**