

The complaint

Mr W complains that Aviva Insurance Limited unfairly declined a claim he made under his home insurance policy.

Mr W is represented in his complaint by his brother. For ease, I'll refer to anything said by his brother as being said by Mr W.

Aviva is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of its agents. As Aviva has accepted it is accountable for the actions of the agents, in my decision, any reference to Aviva includes the actions of the agents.

What happened

In October 2022, Mr W took out a home insurance policy to cover a property which was previously owned by his father, who had recently passed away.

In December 2022, Mr W made a claim under the policy after an escape of water incident caused damage to several rooms in the house. Aviva arranged for drying works to be carried out and instructed loss adjusters to deal with the claim.

In February 2023, Aviva told Mr W it was declining his claim because he hadn't complied with a policy endorsement which required the heating to be left on at fifteen degrees centigrade.

Mr W was unhappy with Aviva's decision and raised a complaint. He said he'd taken a specific policy to cover the unoccupied property until probate was granted and the house sale was completed. No specific exclusions were highlighted when he took out the policy, nor were they detailed in any policy documents he'd received.

Mr W said the leak was due to a burst lagged cold water supply pipe in a sealed loft area above 300mm of insulation. The plumber who fixed the leak stated this could have happened in any house, regardless of heating being on, as loft insulation is designed to stop any residual heat loss and wouldn't have heated the burst pipe.

Aviva said the broker had sent Mr W a letter detailing the applicable policy endorsements and the cover level and was inclusive of the applicable escape of water excess. The utility bills Mr W had provided indicated that the usage was low and wouldn't have sustained daily heating up to 15 degrees centigrade, as was the policy requirement. It maintained its decision to decline Mr W's claim.

Mr W remained unhappy and asked our service to consider the matter.

I issued a provisional decision on 15 May 2024, where I explained why I intended to uphold Mr W's complaint. In that decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

Based on what I've seen so far, I intend to uphold Mr W's complaint, I'll explain why.

Aviva has relied on the following policy endorsement to decline Mr W's claim:

"In respect of Buildings and/or Contents, 6 escape of water and escape of oil, cover will be excluded unless You either:

Turn the water off at the mains and drain the water system including any water tanks, pipes and apparatus. Your Excess in respect of escape of water will remain as per the amount shown on Your Schedule.

OR

Ensure that the central heating system is in continuous operation 24 hours a day to maintain a minimum temperature of 15 degrees Centigrade (58 degrees Fahrenheit). Your Excess in respect of escape of water is increased to £2,500. This amount overrides the escape of water Excess as shown on Your Schedule and is in addition to any voluntary Excess chosen by You."

Aviva has acknowledged that Mr W wasn't made aware of this policy endorsement when he took out the policy over the phone. It says it attempted to contact Mr W the following day as the adviser realised they hadn't read the relevant wording to him. It says it left a voice message advising it would ring Mr W the following Friday, but it couldn't find any record of that call.

Aviva says it's aware the endorsement wording wasn't included in the documentation Mr W was sent when he took out the policy. As a result, it sent Mr W a letter with the endorsement detail on it on 26 October 2022.

Mr W says he didn't receive the letter dated 26 October 2022, so he wasn't aware of the policy endorsement at the time of the incident. He says the heating had been left on as recommended by an engineer who had serviced the boiler shortly after his father had passed away.

The energy bills Mr W provided suggest that the heating was left on. But Aviva says the gas usage was too low to have sustained a temperature of 15 degrees centigrade. Mr W says the engineer who serviced the boiler set the heating to provide adequate frost protection and advised the hot water would simultaneously be protected. However, recommendations for frost protection settings tend to be lower than 15 degrees. So, I think it's likely that the endorsement was breached.

It is concerning that Mr W wasn't made aware of the endorsement when he first took out the policy. It seems that the only information Mr W was provided with regarding the endorsement was the letter Aviva has referred to which was sent a few weeks later. Given the importance of the information it contained, I think Aviva should have done to make sure that Mr W was made aware of what steps needed to be taken to ensure there was cover in the event of a claim.

In Mr W's complaint to Aviva, he pointed out that the burst pipe was a cold water feed in a loft above 300mm of insulation. He believed the pipe would still have burst even if the temperature in the house had been kept at 15 degrees centigrade. However, Aviva doesn't seem to have engaged with this argument.

I asked Aviva to provide its comments on this, along with any evidence to support its position.

Aviva provided the following comment:

"The thickness of the insulation in the roof space would not make any difference to us in terms of required heating setting. If the water was not being turned off and drained we require that the central heating system is in continuous operation 24 hours a day to maintain a minimum temperature of 15 degrees Centigrade (58 degrees Fahrenheit)."

I appreciate Aviva didn't take into account the loft insulation when adding the endorsement to the policy and I wouldn't expect it to. However, it hasn't provided any evidence to show that the breach of the endorsement was connected to the escape of water event.

The relevant regulations say it is unreasonable for an insurer to reject a claim for a breach of a condition or warranty unless the circumstances of the claim are connected to the breach.

I'm persuaded by Mr W's argument that the pipe would still have burst even if the heating in the house had been kept at the required 15 degrees centigrade. The purpose of the loft insulation was to keep the heat inside the house. So, I think it's likely the cold water pipe in the loft would still have frozen and burst, even if the thermostat had been set to a higher temperature than it was.

Based on what I've seen, I don't think it was fair or reasonable for Aviva to decline Mr W's claim. So, I intend to tell Aviva to settle the claim in line with the policy's terms and conditions.

I understand the insured property has been sold, so Aviva will need to settle the claim by cash. To be clear, it wouldn't be fair for Aviva to limit the settlement to what it would have cost it if it had used its own suppliers to carry out the repairs as this option wasn't available to Mr W.

Mr W has also complained that he wasn't made aware of the £2,500 policy excess for escape of water claims. Aviva has confirmed this information wasn't provided to Mr W when he first took out the policy. The first time he was advised of this was in the letter he was sent a few weeks later.

It's not unusual for there to be a high excess for escape of water claims for unoccupied properties, due to the higher risk of these occurring and causing more significant damage. The higher excess was applied to the policy prior to the claim. So, I don't think it's unfair for Aviva to apply it when settling the claim.

However, if Mr W feels he has lost out because he wasn't given clear information about the policy when it was sold to him, he may wish to raise a separate complaint with the broker.

Aviva accepted our investigator's recommendation to pay Mr W £200 to compensate him for its poor communication with him. Mr W says he found dealing with Aviva very stressful. He spent a lot of time on the phone, and he often wasn't called back. I can also see there was a delay in reviewing documents Mr W had sent in.

It was very upsetting for Mr W to be told his claim was declined, having spent so much time and effort on it. This was at what was an already difficult time for him as he was also grieving the loss of his father and dealing with his estate.

I think Aviva's handling of the claim caused Mr W considerable distress, upset and worry as well as inconvenience. So, I think a total of £400 would more reasonably recognise the impact of its poor service on him."

I set out what I intended to direct Aviva to do to put things right. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses

Mr W's representative thanked me for taking the time to understand his and Mr W's points. He said he had nothing further to add.

Aviva provided a copy of the original policy document that was issued to Mr W on 3 October 2022, which doesn't show the endorsement and says the escape of water excess was £450. Aviva said the brokers had already acknowledged they had issued the incorrect documents and did not explain the escape of water endorsement which applied, the implications thereof and the increased excess. They did attempt to rectify this and left a message for Mr W and did promise to call him in a few days but there was no trace of this call.

Aviva said Mr W could have made contact with the brokers if he didn't receive a call as expected. The policy that was set up was correct, insofar as it included the endorsement wording. Aviva had no way of knowing that incorrect documents had been issued to Mr W. It felt the issue was with the brokers.

Aviva said it wouldn't request information regarding the depth of the insulation in the roof space. The policy would provide cover for damage caused by an escape of water, due to freezing, anywhere in the property, provided that the endorsement has been complied with. This is a standard applied to unoccupied properties when full cover is requested.

Aviva provided the following comments from its underwriters:

"Regarding the loft insulation this wouldn't have change [sic] the outcome of the claim because;

- 1. If the client had complied with the heating maintenance section of the endorsement and the pipe still burst due to weather then the insured would have adhered to the endorsement.*
- 2. The customer didn't know about the thickness of the insulation until after the claim had happened and therefore should still have complied with the endorsement.*
- 3. If the customer was aware of the thickness of the insulation and the heating being on would not have prevented this from happening, there is a question over the customer not making us aware."*

Aviva also commented that it was not unusual for an endorsement to be applied about the requirement for heating, to reduce the risks of bursts occurring in an unoccupied property. Mr W was aware of the requirement for heating, as he'd stated this had been recommended by the heating engineer. Aviva felt this should have put Mr W on notice that there may be a requirement under his policy and checked with the brokers.

Aviva said it did not accept the endorsement should be disregarded due to the depth of the insulation in the roof space. It questioned whether I would have disregarded the breach of the endorsement if a pipe had burst due to freezing in any other part of the property.

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.

The policy documents suggest that the broker arranged and administered the policy on behalf of Aviva. So, I'm not persuaded that Aviva isn't responsible for incorrect information being provided to Mr W when he took out the policy. But even if I accept Aviva's argument that this issue was with the broker, I still don't think it's fair for Aviva to decline Mr W's claim.

Regardless of whether Mr W was aware or ought reasonably to have been aware of the endorsement, I accept that it was breached. However, it is up to the insurer to show that a breach in a policy condition was material to the claim. If a policyholder hasn't met a policy condition, but it had no impact on the claim, it wouldn't be fair for an insurer to rely on the breach to decline the claim.

In this case, Aviva hasn't shown that keeping the heating on in the house at a temperature of 15 degrees centigrade would have prevented the cold water pipe in the loft from bursting. So, I'm not persuaded that it was fair for Aviva to rely on the breach of the policy endorsement to decline Mr W's claim. It follows that Aviva's comments haven't made a difference to the conclusions I reached in my provisional decision.

Putting things right

Aviva should:

- Cash settle the claim in line with the policy's terms and conditions and
- Add interest to the settlement at 8% simple* per year from the date the claim was declined until the date the settlement is paid and
- Pay Mr W £400 for distress and inconvenience.

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

My final decision

For the reasons I've explained, I uphold Mr W's complaint and direct Aviva Insurance Limited to put things right by doing as I've said above.

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

Anne Muscroft
Ombudsman