

## **The complaint**

B, a resident's association, complain that Aviva Insurance Limited hasn't made a fair settlement offer for a claim under their Property Owners insurance policy.

This complaint concerns a block insurance policy, taken out by B, that covers a property converted into flats. The dispute in this case concerns one specific flat, lived in by Person A. But for ease of reading, I'll refer only to B as the complainant.

## **What happened**

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

In July 2021, B made a claim for flooding to a ground floor flat following a storm. Aviva accepted the claim and instructed its loss adjusters.

A scope of works was agreed between the loss adjusters and B's loss assessor. And B was asked by Aviva to source tenders.

B says they struggled to locate contractors who'd be available to do the work. And it wasn't until a year later, in July 2022, that they provided the tenders. The lowest tender obtained was for £118,854.

Aviva said the quotes were too high. Its loss adjuster obtained a surveyor's cost analysis of the tenders which put the repair costs at £60,513 based on what Aviva would pay its network of approved repairers.

B didn't think Aviva's figures were realistic for the area in which the insured property resides. And items of repair had been removed which were previously agreed by Aviva within the scope of works. But Aviva said this was its final offer for the repair works.

B also claimed for alternative accommodation under the policy from November 2021 when they moved out of the property. Aviva agreed to pay 12 months of rent amounting to £39,000, but as the property still isn't repaired due to the dispute over the claim settlement, B doesn't think this is fair.

B raised a complaint, the key points of which are:

- Aviva's cash settlement for the building repairs is too low and should be increased to the amount of their tender plus an increase for inflation given the time that's passed.
- Person A is still in alternative accommodation as Aviva has failed to make a fair settlement offer, so it should continue to pay these costs.
- Aviva should pay for the storage fees of Person A's contents.
- Aviva agreed to pay the costs of B's surveyor but hasn't to date.

- Aviva has caused delays in progressing the claim and has caused distress and inconvenience, which B should be compensated for.

Aviva declined the complaint. It said its final settlement offer for all heads of cover was £100,000 (which represents £60,513 for repairs and £39,000 for alternative accommodation). As B remained unhappy, they brought their complaint to our Service.

Our Investigator was satisfied Aviva had made a fair offer towards the building repairs. He said as B had wanted to use a contractor of their own choice rather than accept Aviva's offer to repair, Aviva could limit the settlement to the amount it would've paid its network of repairers.

But our Investigator was persuaded Aviva had caused some delays, so he recommended it pay an additional five months of alternative accommodation, 17 months of storage costs, the cost of B's surveyor, and £350 compensation.

B didn't accept our Investigator's recommendations, their key reasons why being:

- They never discussed with Aviva, or decided, that they wanted to use a contractor of their own choice. And Aviva has never offered to carry out repairs, only to cash settle the claim.
- If Aviva had planned to cash settle the claim using its surveyor's cost analysis to determine the cost of repairs, they've questioned why it asked B to source tenders. This caused a year delay whilst they tried to obtain quotes, only for Aviva to come up with its own figures.
- Aviva's initial surveyor quoted £88,885 for the repair works, but this was later reduced to £60,513 with no explanation.
- Aviva removed items from the scope of works after this had been agreed between its loss adjuster and B's loss assessor – and it had failed to explain this.
- Whilst Aviva say its network of repairers could do the works for £60,513, it has refused to provide the details of the contractor who would complete the works for that amount or offer them to carry out the works.
- The increased alternative accommodation payment and storage costs doesn't go far enough as Person A is still unable to return to the property.

Aviva also didn't agree with our Investigator, saying:

- It didn't cause any delays. It didn't consider a site visit to be necessary but accepted to do so several months later. After which, it maintained its previous settlement offer.
- B caused delays throughout the claim.
- It considered six months alternative accommodation to be sufficient but offered 12 months to account for unforeseen delays. It doesn't agree to pay any more than that.
- B has indemnity for storage costs under their contents insurance policy. When Aviva asked for details of this, it wasn't provided. So it said it would need to know where the shortfall is with the other insurance policy to ensure B doesn't receive double

recovery.

- Whilst it initially agreed to cover the cost of B's surveyor, it had concerns over the work conducted. It said the surveyor's schedule was overstated and some elements seemed to be fabricated. But it would agree to pay a contribution towards the cost on this occasion.

As the complaint remained unresolved, it was passed to me to decide. And I issued the following provisional decision

### **My provisional decision**

We've received very detailed submissions from both parties. I've summarised some of the key points, but I haven't set everything out in full. We provide an alternative dispute resolution service and our role is to provide an impartial review, quickly and informally. I use my judgement to decide what's fair, based on the main crux of a case. So, while I've considered everything, I won't comment in detail on every single point. Instead, I'll focus on the key points that are relevant to the outcome I've reached.

#### *Building repairs*

The terms and conditions of B's insurance policy gives Aviva the discretion to settle a claim by the method it chooses, including by cash payment.

Where an insurer chooses to settle a claim in this way, rather than by repair or replacement, the amount should reflect the cost to its customer of getting a repair done or replacing an item and putting them back in the position they were in before the loss or damage – not the cost to the insurer, which is likely to be cheaper, unless a repair or replacement has been offered and the customer insists on a cash settlement.

In this case, Aviva says it was clear from the outset of the claim that B wanted to use their own contractors to carry out the repairs. But B say this isn't correct. So I've asked Aviva for further evidence. And it's referred me to an email from B's loss assessor to the loss adjuster dated 3 September 2021, which says:

*"We had planned to move out the contents this week but until we have got the client into some temporary BnB she needs it to stay at the house. Once we have her accommodation sorted we can get a surveyor to draw up the scope and we will get a fee quote to you in next few days for that so we are ready to push on when the contents are emptied."*

Aviva has also drawn my attention to the following comments made in the site visit notes dated 30 July 2021:

*"Assessor to have surveyor undertake an inspection and draft scope of works before tendering. Insured to forward details of alternative accommodation costs."*

I don't find either of these quotes to be definitive in the way Aviva has suggested.

I've also asked Aviva to provide me with evidence that it offered B the option for a repair or replacement under the policy, but it hasn't done so. And having reviewed all of the available evidence, I've seen no communication to B or its agent that reflects that Aviva ever offered its own repairers to do the work, or explained the impact of B using their own contractor.

Based on the information available, I'm not satisfied that Aviva offered B the option for a repair or replacement under the policy. Nor am I satisfied that B insisted on a cash settlement so that they could use their own contractors.

Whilst the loss assessor's email and comments made at the site visit indicate that B was intending to instruct their own surveyor to draw up the scope of works and obtain tenders, there's nothing to suggest that they wanted a cash settlement under the policy or weren't prepared to accept a repair. If Aviva interpreted it that way, I would've expected it to highlight to B the options available to them and to make them aware that if they wanted to use their own contractors, Aviva would only be willing to pay the amount it would cost it to repair or replace. I can't see that it did this.

I'm also mindful that B struggled to find contractors who were available to do the work, and it took a year to provide Aviva with tenders. I think this shows B didn't have anyone specific in mind to carry out the repairs, and I'm persuaded they would've been open to the option of using Aviva's contractors had they known this was a possibility which would've potentially avoided this delay – and removed administration to arrange the tenders.

For these reasons, I don't think Aviva can fairly insist on limiting any cash settlement to the amount it would pay a contractor to do the works. The amount it offers needs to fairly reflect what B will pay a contractor to put them back in the position they were in prior to the loss or damage.

Aviva has made an offer of £60,513 but this appears to relate to what it would pay to have the repairs carried out. There's no information to show me that B could hire a contractor to complete the scope of work in full for this amount, taking into account the area in which the insured property is located.

B has obtained a tender which puts the repair works at £118,854. Aviva says this is based on B's surveyor's scope of works which included items unrelated to the claim and works to timber floors / joists when they're in fact concrete.

However, it's not clear to me why the scope of works was previously agreed by Aviva, and B were given authority to obtain tenders based on it, if Aviva didn't agree with it. I've been provided with an email from Aviva's loss adjuster to B's loss assessor dated 1 March 2022 which says:

*"I confirm that the scope can go out to tender and await the results as soon as possible."*

As such, I don't think Aviva has acted fairly by trying to re-negotiate a scope of works it previously agreed to – and which has specifically been tendered for. So taking into account what's fair and reasonable, I don't think it would be right for Aviva to depart from the scope of works as it had this information available previously if it wished to object.

Other than starting the claim afresh and directing both sides to agree on a scope of works – which wouldn't be ideal to B or Aviva given the time that's passed – I'm mindful that the fairest way to resolve this complaint is to direct Aviva to pay the lowest tender of £118,854 because it's based on the scope of works Aviva initially approved and reflects the cost to B to have the repairs carried out by their own contractors.

Alternatively, if Aviva believes it can carry out the works to the sum of £60,513 or simply, a lower cost than B has been quoted for, *and* it can assure an effective and lasting repair is carried out in line with the previously agreed scope of works, I would see no objection to

handing this back to Aviva to carry out the repairs in line with the policy terms providing it could do so within a reasonable period of time.

If Aviva persists with a cash settlement, I'm also mindful to award 8% simple interest from August 2022 – which I consider to be when Aviva was in a position to make a settlement offer – until the date that the settlement is paid, to reflect any increase in the cost of works due to inflation.

#### *Alternative accommodation*

The terms and conditions of B's insurance policy say it will cover the cost of reasonable and necessary alternative accommodation where the insured property cannot be lived in as a result of damage covered by the policy.

Aviva says that based on the scope of works required to repair the insured property, it estimated a six-month period of repairs where alternative accommodation would be required. But it offered 12 months of rent, accepting some initial challenges regarding resources.

Despite Person A remaining in alternative accommodation several years later, Aviva says it's not prepared to pay anything more as the delays are as a result of B refusing to accept a reasonable settlement.

If I was in agreement that B had refused a reasonable settlement, I may have agreed with this but, as I've explained above, I'm not satisfied Aviva had made a reasonable settlement offer. It didn't offer B a settlement which reflected what they'd have to pay a contractor to reinstate the property to the condition it was in prior to the loss. And because of this, Person A remains in alternative accommodation due to the ongoing dispute.

So it follows that I think Aviva should pay the cost of the alternative accommodation from the date Person A moved out of the insured property in November 2021 until six months after a cash settlement has been made in line with this decision. This allows B six months to have the repairs completed which I'm satisfied is a reasonable period of time. If Aviva decides to carry out the repairs itself, then alternative accommodation should be paid up until an effective and lasting repair has been implemented.

#### *Storage costs*

Person A is insured separately for their contents, which I understand has been in storage since November 2021. Aviva says the reason it didn't offer to cover the storage costs was because this should've been met by the contents insurance policy. But that it will consider any shortfall in cover if details of the policy are provided.

I think that's fair. If the contents insurance hasn't paid the storage costs in full and B requires Aviva to contribute towards this, it's reasonable for Aviva to have details of the policy so that it can liaise directly with the other insurer to establish what has been covered already. I can't see that Aviva has received the policy information, so I don't uphold this part of the complaint.

If B provides this, Aviva should consider covering any shortfall. As this matter is ongoing, I'll leave this to B and Aviva to engage further and should B remain unhappy with the outcome, they can raise a separate complaint to our Service at that time.

#### *Surveyor's fees*

Aviva says its usual practice is to pay the reasonable costs incurred by its policyholders for surveyor's fees. It doesn't deny that it told B it would meet these costs. But it says the loss adjusters had concerns with the work conducted by the surveyor as it appeared they'd done little to actually provide a helpful schedule relating to the works required; some of the elements listed were overstated and the others seemed to be fabricated. It's now agreed to pay a contribution.

Whilst the loss adjusters may be of the opinion the schedule wasn't helpful, B has still incurred these costs and they're required to pay them. And, as I've explained above, Aviva agreed to the surveyor's scope of works and no concerns were raised at the time the schedule was provided from the information I've seen. So I'm not persuaded it's fair to leave B out of pocket for work which was undertaken on the understanding Aviva would pay.

### *Compensation*

For the reasons I've set out above, I'm not satisfied this claim has been handled fairly and I agree with our Investigator that B should be compensated for the distress and inconvenience they've experienced as a result.

### Putting things right

Based on the information I've seen so far, I intend to uphold this complaint and direct Aviva to:

- Settle the building repairs claim for £118,854 plus 8% simple interest from August 2022 to the date it's paid, *or* carry out an effective and lasting repair under the policy within a reasonable period of time;
- Pay the cost of Person A's alternative accommodation from November 2021 to six months after the date the building repairs claim settlement is paid to B, *or* until an effective and lasting repair has been carried out by Aviva under the policy;
- Pay B's surveyor's fees previously agreed to.
- Pay £350 compensation.

### **Responses to my provisional decision**

B accepted the outcome of my provisional decision, but wanted to reiterate the following point:

- Whilst Aviva has suggested its not aware of the details of the contents insurance policy, the claim under it has been dealt with by the same loss adjuster that Aviva has appointed for the building insurance claim. So the loss adjuster is aware of the policy and that cover under it has been exhausted.

Aviva didn't respond.

### **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.

Whilst I appreciate B believe Aviva should already have access to the details of their contents insurance policy, I've seen no evidence to suggest this has been provided. Just because the same loss adjusting firm are handling both claims, it doesn't automatically mean Aviva has access to that information.

As neither party had any further submissions for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

### **My final decision**

For the reasons explained, I uphold this complaint and direct Aviva Insurance Limited to:

- Settle the building repairs claim for £118,854 plus 8% simple interest from August 2022 to the date it's paid, *or* carry out an effective and lasting repair under the policy within a reasonable period of time;
- Pay the cost of Person A's alternative accommodation from November 2021 to six months after the date the building repairs claim settlement is paid to B, *or* until an effective and lasting repair has been carried out by Aviva under the policy;
- Pay B's surveyor's fees previously agreed to.
- Pay £350 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask B and B to accept or reject my decision before 19 August 2024.

Sheryl Sibley  
**Ombudsman**