

## **The complaint**

Mrs W complains about how Aviva Insurance Limited have dealt with a claim for damage under a commercial buildings insurance policy.

Aviva are the underwriters of this policy i.e., the insurer. Part of this complaint concerns the actions of the Loss Adjuster ("LA"). As Aviva have accepted they are accountable for the actions of LA, any reference in this decision to Aviva includes the actions of LA.

## **What happened**

Mrs W is the leaseholder of a flat in a building which suffered water ingress. Aviva were the insurer of the building on behalf of the freeholder, and Mrs W's claim for repairing damage to her flat was directed to it in 2018.

By way of background, I'm aware that Mrs W has explained there have been maintenance issues with the building and this issue had in fact been going on since at least 2016. Investigations were undertaken on behalf of the freeholder as to the cause of the damage and once known, the claim for rectifying the water damage was for Aviva to resolve.

Aviva appointed the LA to deal with the claim on its behalf. Early in the claims process a recommendation was made to Ms W that it would be prudent for her to employ the services of a surveyor. A company, that I'll refer to as "G", was appointed. G went on to deal with the claim process, inviting tenders for the completion of the repair work and liaising with the LA.

It is the appointment of G which is of particular importance to this complaint as some of the repairs that were undertaken were allegedly, of poor quality. This caused issues with the newly laid flooring of the property becoming uneven. Mrs W wants the matter to be rectified.

Mrs W's position is the following:

- She was misled into entering into the mandate with G.
- She believes G was actually working on behalf the LA and therefore Aviva should be responsible for putting right the defects in the repair work
- The policy entitles her to have her flat returned to its original condition. Aviva has not fulfilled this responsibility.

I'm aware that I may have condensed some of Mrs W's complaint points in far less detail and in my own words. If there's something I've not mentioned, it isn't because I've ignored anything – I haven't. I'm satisfied I don't need to comment on every point individually, or possibly in the level of detail she would like, in order to capture the essence of the complaint.

Aviva's position is:

- It wasn't unreasonable for the LA to suggest to Mrs W that she appoint a surveyor. This was a high value claim and Mrs W was very specific as the standard and quality

she would accept in relation to the works to be completed.

- While the LA provided Mrs W with the contact details of G. It was made clear to her that it would be her decision whether or not she appointed it and that neither the LA or Aviva could guarantee or be responsible for the quality of its work.
- G dealt with the claim on behalf of Mrs W. It was the party that instructed the contractors that completed the works and therefore Aviva is not responsible for the quality of those repairs or for putting right any resulting defects
- The insurance claim was in effect 'cash settled' as Aviva did not contract to undertake the repair work itself. It paid the sums that were requested of it by G, on behalf of Mrs W and which were sufficient for the work to be completed correctly.

An investigator looked at the complaint and explained to Mrs W that he didn't think Aviva needed to do anything more. He was satisfied that it had fulfilled its liability under the policy and was not responsible for rectifying the alleged defects in the work completed.

Mrs W disagreed with the investigator and asked for an ombudsman to review the complaint. In doing so, she provided further considerable detail about what happened, reiterating in parts what had gone before.

The case 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.

Mrs W has made considerable submissions in bringing her complaint. And whilst I don't intend to respond in similar detail, I have read all her correspondence and taken it into account when making my decision. So, if I don't mention any particular point or piece of evidence it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. I hope Mrs W doesn't take this as a discourtesy; it is just a reflection of the informal nature of our service.

When considering what is fair in the circumstances, I need to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the time.

Mrs W was a beneficiary under the freeholder's building insurance policy. That policy, in respect of this claim, provides for the freeholder to be indemnified for any sums they become liable to pay due to damage to others property. So here that means Aviva will cover the sum required to put right the damage to Mrs W's property by the water ingress, instead of what otherwise would have happened if no insurance would have been in place which would have been for Mrs W to claim against the freeholder directly for any costs she incurred in putting right the damage.

There were different ways in which Mrs W's property could have been repaired and Aviva achieve its aim of settling its liability under the policy. Aviva could've instructed contractors to complete the repairs directly. The freeholder could have controlled the repair process, instructed contractors, and recovered any costs from Aviva directly. Or what I believe happened in this instance, Mrs W dealing with the claim, with assistance, and requesting costs be met by Aviva.

In the latter two options Aviva would be considered to be 'cash settling' the claim as it is not directly managing the repair process, just covering the costs of it. In these situations, an insurer would usually instruct a loss adjuster to make sure, on its behalf, that any costs claimed by those parties were reasonable in relation to repairing the damage caused. So the parties would need to run any costs or expenses via the loss adjuster for approval before they would be covered by Aviva under the policy. Policies also usually provide for the cost of a surveyor or another professional to be employed by the individual to represent them as it is recognised they won't necessarily have the skills or knowledge required to ensure damage is rectified appropriately and any necessary regulatory obligations are adhered to.

*Who instructed G and what was its role in the claim*

I have seen the mandate that Mrs W signed with G, which instructed it to act on her behalf.

I have also seen correspondence from G to Mrs W regarding the signing of the mandate which says the following: *"This confirms I am acting on your behalf and not the property manager or anyone else"*.

So I am satisfied that it was Mrs W that instructed G and it was made clear to her that it was working on her behalf and no one else.

Mrs W has said she was misled as to the capacity in which G would be acting. Initially she was led to believe this would be in the capacity as a project manager, as the mandate sets out. However, she later found out they were acting as a contract's administrator. I can see that Mrs W raised this directly with G and in correspondence it appears she agreed there had been a misunderstanding between them but agreed to continue with its services for the remainder of the claim.

I haven't seen anything which suggests that Aviva or the LA guided Mrs W as to the specific terms of the contract she entered in to with G and therefore I am satisfied that Mrs W instructed G of her own accord. Albeit at the suggestion of the LA that such assistance maybe helpful for her.

I have seen from the file that it was G that invited tenders for the repair work, and it was G that instructed the builders which later went on to the work which has allegedly resulted in issues with the flooring. While the mandate does set out that Aviva will be the party that pays for the works, I'm satisfied that G was the party that arranged the contracts for the repair works and did so on Mrs W's behalf.

In light of this, any dispute about the quality of the repair works is not for Aviva to remedy.

*Did LA make a recommendation and should that therefore mean Aviva is responsible for anything G went on to do, or the repair works it arranged.*

In correspondence with Mrs W the LA said *"In our previous discussions, I suggested that it would be prudent for you to have a qualified surveyor acting for you to both assist with the management of initial stripping works which may be needed to facilitate drying as well as compilation of a specification for reinstatement, obtaining of tenders from contractors and of course supervision of the repairs to ensure these are of acceptable quality. Insurers will be able to fund the surveyor subject to my agreement of their fee proposal. Please let me know if you wish to pursue matters via this route and whom you will be instructing. If you do not have someone with perhaps any insurance experience, please let me know and I will be happy to pass on details of surveyors I have dealt with to good effect previously"*.

I've seen in further correspondence after Mrs W asks for a recommendation, The LA

responds with the following: *"I am not able to recommend surveyors as we don't have a panel as such, I am however happy to pass over details of a surveyor whom you can approach with whom both I and ... have dealt with regularly and to good effect".* It further goes on to say *"I would obviously leave you to contact the surveyor and judge if you are happy to use their services".*

From the information available to me, I agree it was suggested to Mrs W that she might want to appoint a surveyor. But I don't think this was an unreasonable suggestion, this was a high value claim and Mrs W, by her own admission, had exacting standards but not the expertise to arrange and coordinate the repair of the property. Had Aviva or the freeholder controlled the repair process, then I think it's highly unlikely that Mrs W would have been able to have been involved in the claim process to the extent that she was.

Aviva has explained that G isn't a party that is usually contracted by the LA on its behalf to help complete repair works. In my view, the recommendation, as set out above, appears to be a personal one, by the agent of the LA, of a company that would be capable of assisting Mrs W with the claims process.

I not persuaded that a suggestion that Mrs W may find assistance in dealing with the claim helpful, follows through to mean that Aviva should be held liable for the actions of that company, G in this case. I think for the reasons set out, it was a reasonable suggestion to make and as I have concluded above, Mrs W was made sufficiently aware it was separate to Aviva and it was her decision to enter into the arrangement with it.

*Does Aviva making the payments mean it should be responsible for putting right the alleged defects or should it have an interest in ensuring that are done correctly*

Aviva didn't undertake the repair works itself, it simply paid the cost for the repair works to be undertaken, and in doing so discharged its liability under the policy.

I understand why Mrs W thinks that Aviva should have an interest in the repair works being undertaken correctly and the policy entitles her to her flat being returned to her in its original state, which hasn't happened.

On a strict reading of the policy terms, Aviva has had an interest in the work being done correctly as that is its liability. And, that is what it has paid for - the cost requested by G for the works to be completed by the builder. The assumption is that these are then undertaken adequately. However here, I don't think that interest extends so far as Aviva subsequently getting involved in third party contract where it has had no involvement, in order to ensure any alleged defects in the resultant work are remedied.

It is unfortunate there appears to be issues with the flooring and as Mrs W has said, her flat hasn't been returned to her in the condition it was. Aviva's liability extended to paying for the cost for the work to be done. The fact there are now alleged issues with the quality of that work, in this case, is not the responsibility of Aviva as it did not contract directly for the works to be undertaken. It will be a matter that needs to be resolved between Mrs W, G and the other party that were contracted to undertake the repairs.

*Has a fair settlement been made*

As I mentioned in the summary of this complaint, I'm aware of the background Mrs W has explained about the ongoing issues with the building and that she is dealing with many parties to get those wider issues resolved. However, my consideration here only extends to the water damage claim that Aviva were the insurer for resulting from the initial water ingress identified in 2016.

Mrs W has been very clear that she hasn't accepted any payment in full and final settlement of the claim. However, that isn't something which impacts on the decision I need to make here. I'm not aware of anything, aside from the disputed defective repair works, which for completeness I have found it is not responsible for, that Aviva hasn't paid for that would be related to this insured event.

As far as I have seen, Aviva has made payments to enable claim related damage to be repaired, and where necessary, it has reimbursed Mrs W for related costs she has incurred. It also appears that due to the breakdown in relationship between Mrs W and G, the LA was notified it would be waiving its fee from that point onwards. Aviva did however pass this money onto Mrs W as in any event, it would have been a cost she was entitled to have covered under the policy. I think this was a reasonable action to take.

I understand there have been further issues at the property however these, or any damage that resulted from them, are not subject to my consideration in this decision.

Aviva stopped insuring the property in 2017 and therefore anything which happened after that time would be for the new insurer to deal with.

### *Summary*

Having considered everything, I'm not persuaded that Aviva can be held liable for the alleged defective repairs that went on to cause issues with the flooring at Mrs W's property. I'm satisfied that Mrs W entered into a separate arrangement with G to deal with the claim process on her behalf and therefore it was not Aviva that arranged the repairs. I don't think Aviva has acted incorrectly and therefore I don't uphold Mrs W's complaint.

### **My final decision**

My final decision is that I do not uphold Mrs W's complaint against Aviva Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 19 December 2024.

Alison Gore  
**Ombudsman**