

## **The complaint**

C, a company, complain about Aviva Insurance Limited's settlement of a claim they made under their property owner's insurance policy.

## **What happened**

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

C is represented in making this complaint by a former director. For ease of reference, I'll refer to comments made on C's behalf as coming from C.

C owns and lets out homes. They have a property owner's insurance policy underwritten by Aviva which covers seven properties.

They made a claim in March 2023 after a tenant moved out of one of the properties and they discovered an escape of water. There was damage to a bathroom and the wall between the bathroom and the adjoining bedroom.

Aviva accepted the claim. C then called Aviva to discuss the speed at which the repairs might be carried out – they had tenants lined up to move into the property in the near future and wanted to be able to honour their commitment about the moving-in date.

I'll say more about that call in the section below. Suffice to say for now that the upshot was that C had the work carried out themselves with a view to invoicing Aviva for the cost of the repairs.

Once the work was completed, C sent Aviva two invoices – one for plumbing work at £100 and another for the other repair work at £5,860.

Having assessed the claim, Aviva actually paid out a settlement of £4466.56 to C. They said this was less than the full claim value because they thought C's costs were excessive.

C made a complaint to Aviva about the settlement figure and about poor communication and service.

Aviva admitted that C had received poor customer service, as a result of a mix up between themselves and their loss adjuster. And they paid C £100 in compensation. But they maintained that the decision on the settlement figure was correct.

C weren't happy with this and brought their complaint to us. Our investigator looked into it and didn't think Aviva had done anything wrong.

C disagreed and asked for a final decision from an ombudsman.

Because I also disagreed with our investigator's proposed outcome, I issued a provisional decision. This allowed both C and Aviva an opportunity to provide further information or evidence and/or to comment on my thinking before I come to my final decision in this case.

## My provisional decision

In my provisional 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.

C’s representative in this case – their former director – owns the company that carried out the larger part of the repairs (their invoice was for £5,860). Whilst that adds to the complexity of this case, it hasn’t been cited by Aviva as a reason to settle the claim at the lower amount. So, I’m regarding it as irrelevant in terms of my decision.

I don’t think there’s any dispute about the way C’s policy works and/or the principles which should be applied by insurers when cash-settling a claim.

In short, Aviva can fairly settle any claim for damage to a property in a number of ways. They may choose to have the repairs carried out by their own contractors. Or they can offer a cash settlement, allowing the policyholder to get the work done themselves.

We take the view that where a claim is cash settled, the insurer is usually entitled to pay only what it would cost them to have the work done by their own contractors *if* they (the insurer) were willing to do the work, but the customer nonetheless chooses a cash settlement.

Conversely, if the insurer chooses to cash settle – and chooses not to deploy their own contractors – then they should pay the reasonable costs the policyholder incurs by hiring contractors at the market rate.

Of course, in most cases, there is some discussion between the insurer and the policyholder before any repairs are carried out.

And that means the insurer can make it clear to the policyholder what the consequences are likely to be *if* the policyholder chooses to go with the insurer’s contractors. And what they’re likely to be *if* the customer chooses to take a cash settlement and have the work carried out themselves.

In this case, a discussion took place over the phone between Aviva and C’s former director (their representative in this case) *before* the repairs were carried out. I think all parties are agreed that it’s what was said in this phone call (on 21 May 2023) that is crucial in terms of determining this case.

Having listened to the recording of that call, I think it’s clear that C’s representative decided to carry out the repairs through his own company, rather than wait for Aviva’s contractors (which might have put back the start date of the next tenancy).

Normally, that would mean that Aviva would be entitled to cash settle the claim on the basis of the cost they (Aviva) would have incurred by using their own contractors.

As an aside, I can see Aviva have calculated that cost (at £4,466.56) without including VAT – presumably because the company that in fact carried out the repairs isn’t VAT registered and didn’t charge VAT. So, they haven’t paid C what it would have cost them to get the repairs carried out in any case. With VAT included (as it would have been), the cost comes to £5,359.87.

However, that's not important, because in this case, I'm satisfied C's representative only made the choice to carry out the repairs himself, through his own company, because of the information given to him by Aviva's agent during the phone call of 21 May 2023. And whilst I wouldn't say that information was misleading, I *would* say it wasn't complete. I'll explain why.

I think the parties will agree that the agent told C's representative that he had the choice to wait for Aviva's contractors or do the repairs himself. It's also clear the representative was concerned that the tenancy would be delayed if he waited for Aviva's contractors.

Aviva's agent didn't do anything to allay those fears. I suspect because she thought it very likely that the repairs wouldn't be completed in time for the next tenants to move in as scheduled if the repairs were left to Aviva's contractors.

The representative also very clearly said that he was also concerned that Aviva would settle the claim in full. At this point, the agent said she had to tell the representative that there might be a "*limit of liability*" on the claim.

She explained that Aviva were entitled to review any invoice. And they *might* think some of the costs weren't reasonable.

At this point, the representative says he'd like Aviva to appoint someone else to do the work in that case, because it was important C weren't left to make up any shortfall. He said he didn't want any delay, but it was also important for the claim to be paid in full.

The agent then explains that Aviva would review any costs and compare them to what their own contractors would charge for the same work. She said the representative had provided two quotes which were similar, so "*hopefully, it will be good to go*", although she couldn't guarantee it. And she said the internal team were to review the claim the following day and she'd call back to let the representative know the outcome.

I can't see any record of a phone call from Aviva to the representative the following day. If Aviva (or their agents) did make that call, then Aviva can provide me with a recording or record of it in response to this provisional decision.

In the absence of any further evidence or information, I'm currently of the view that the representative left that call intending to do the repairs through his own company. And that he did so because he thought that if he provided evidence that all of the proposed repairs were necessary and they were charged at reasonable commercial rates, then Aviva would very likely pay the claim in full after reviewing it.

Aviva haven't said that any of the repairs weren't necessary and/or weren't claim-related. So, it appears they were satisfied that the escape of water caused the damage that was repaired.

Their stance is that the representative's company's rates for those necessary repairs were unreasonable, in that they were higher than the rates their own contractors would have charged.

This brings me back to the phone call of 21 May 2023. What Aviva's agent knew – or certainly should have known – and the representative didn't seemingly know – is that insurers like Aviva can almost always get discounted rates for repair work. This is

because of the amount of business they generate and/or because of their relationships with their own suppliers and contractors.

The representative went for a cash settlement because he knew all the repairs would prove necessary and claim-related – and he knew he would charge the work at a reasonable commercial rate.

Or at least, he was willing to back his own judgement and take that (very small, as he likely saw it) risk. He was also encouraged in that belief by Aviva's agent's statement that because the two quotes provided were very similar, "*it should be good to go*".

He was advised by Aviva's agent that when they reviewed the invoices they'd compare them to the costs which would have been charged by their own contractors. He was not advised though that those contractors' costs were likely to be at a discounted rate.

I suspect that, although she didn't say so explicitly, Aviva's agent didn't want the outcome of the call to be that Aviva were asked to carry out the repairs. That may well have led to a quite difficult conversation about how soon that was likely to happen.

If she had been entirely clear about how Aviva would cost the work (at their discounted rate), I believe the representative would have asked Aviva to do the work or allow him to do the work but exceptionally, in all the circumstances, at a non-discounted cost.

And I suspect Aviva would have agreed to that. I say that because C's policy also covers loss of rent. And if the tenants hadn't moved in on time (facilitated by the speed at which the representative's company did the repair work), Aviva may well have ended up paying out much more on this claim – to cover loss of rent - than the full repair costs (as per C's invoice).

Given the relatively small difference between the repair costs in the original invoices provided by C and the costs calculated at Aviva's contractor's discounted rates, I'm inclined to believe that the representative's company's rates for the work are reasonable and broadly in line with commercial market rates for the work.

In summary then, as things stand - and assuming I receive no further compelling information or arguments from the parties – I'm minded to uphold C's complaint, for the reasons set out above.

I'm also minded to require Aviva to pay the claim in full (as per the costs in the invoices provided by C). Given that C have been deprived of that additional money since the claim was settled, I'm minded to require Aviva to add interest at 8% simple to that payment, calculated from the date the claim was originally settled to the date the additional payment is made.

I'm also minded to require Aviva to pay C a further £150 in compensation for the inconvenience C has experienced due to Aviva's failure to settle the claim appropriately in the first place."

### **The responses to my provisional decision**

C haven't responded to my provisional decision. I assume that's because they agree with it or, at least, have nothing to add.

Aviva *have* responded. They confirmed that they can't find any record of a call back to C's representative, as was promised, on the day after the call on 21 May 2023.

They also say that whilst they still have reservations about whether the claimed costs were excessive, they largely take my point about the outcome of the call on 21 May 2023. And they therefore agree to settle the claim in full (adding interest on the additional payment) and pay C £150 in compensation.

### **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.

I still don't agree with Aviva that C's representative's costs were potentially excessive. They appear reasonably close to Aviva's contractor's costings, given the discount that will no doubt have been applied. However, that's of no consequence given that Aviva have agreed to pay the claim in full.

And because Aviva have agreed to do that, I have no reason to change my mind about the outcome of this case. I'm grateful for Aviva's very reasonable review and consideration of the reasoning set out in my provisional decision.

I would like to emphasise that I certainly was not suggesting in my provisional decision that Aviva's agent *intentionally* misled C's representative during the phone call on 22 May 2023.

I think this was more a case of crossed wires, in which Aviva might just have gone a little bit further to ensure C's representative was fully aware of what might happen if he did go ahead with the repairs – and to put him in a position to make a fully informed decision.

### **Putting things right**

Given that Aviva have agreed the outcome set out in my provisional decision, I have no reason to change it.

I set out in my provisional decision what I was minded to require Aviva to do to put things right for C. And that's repeated again below.

### **My final decision**

For the reasons set out above and in my provisional decision, I uphold C's complaint.

Aviva Insurance Limited must:

- settle the claim in full, as per the invoices provided by C;
- add interest at 8% simple to the additional payment they now make to fully settle the claim – calculated from the date the original settlement payment was made to the date the additional payment is made; and
- pay C a further £150 in compensation for the inconvenience caused by Aviva's failure to settle the claim in full at the first opportunity.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 31 October 2024.

Neil Marshall  
**Ombudsman**