

## The complaint

Mr K and Ms S complain about the way Aviva Insurance Limited handled a claim for damage to their property under their Residential Property Owners insurance policy.

## What happened

In March 2023, Mr K and Ms S' tenant was evicted from the property owned by them and insured by Aviva.

After gaining possession of the property, Mr K and Ms S made a claim for the damage caused by the tenant. Initially it seems they were communicating with their broker. And over the next couple of months they paid for repairs, such as to for a new gate and smoke detectors, which had been damaged by the tenant.

In October 2023, Aviva made an offer to Mr K and Ms S for what it considered to be the insured damage covered by their policy. It said the damage caused to the property by the tenant couldn't be considered as a single claim.

It accepted some damage was likely as a result of a storm. It also said it considered there to be some damage which would come under the peril of accidental damage. Across the property it said it thought there were six incidents of accidental damage, so it recorded six claims for those (seven in total including the storm claim). Aviva paid a cash settlement for the insured works, based on the invoices presented by Mr K and Ms S, but said the total excess deducted from the settlement was £1,750 (made up of seven excesses at £250 each).

It said Mr K and Ms S could make a claim for their lost rental income under a separate policy, but it wasn't the underwriter of that policy.

Mr K and Ms S complained to Aviva about how it had handled matters. They said (less the excess) they'd received around just £2,400 in settlement of the claim from Aviva. They said their losses, also factoring in mortgage payments and council tax bills, had actually been around £15,000. They also said Aviva had caused delays which had caused them financial hardship.

Aviva didn't agree to change its position. It said it had only been made aware of the claim in July 2023, and it didn't think it had caused any unreasonable delay in reaching the settlement of the claim. Unsatisfied with the response, Mr K and Ms S brought the complaint to the Financial Ombudsman Service. They said Aviva should have been aware of the claim earlier, as they'd informed their broker of the damage.

Our Investigator didn't think Aviva treated Mr K and Ms S unfairly. He said whilst they said their claim was for 'dilapidations', that isn't something that is listed as a 'one off' insured event under the policy. He was satisfied Aviva had fairly assessed the damage against its policy terms and applied excesses in line with that. He said he couldn't, as part of this complaint, look at any issues with the broker, and whether it should have, and didn't, inform Aviva of the claim at an earlier stage.

Mr K and Ms S didn't accept that outcome. They said '*dilapidations*' are specifically mentioned under the policy. They said the event they're claiming for is a single event, the non-payment of rent and associated property damage. So as that is a single event, only one excess should apply. They also said Aviva delayed settlement of the claim, which caused

financial hardship as they had to keep paying the mortgage and council tax on the vacant property over an eight-month period it couldn't be rented out.

Mr K and Ms S asked for an Ombudsman to consider matters.

### **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.

Mr K and Ms S argue that they should pay one excess on this claim, as they are claiming for a one-off single event. They say the one-off event they're claiming for is "*obviously the eviction of the tenants for non-payment of rent.*" And as the process takes months, any damage caused by the tenant isn't as a result of 'malicious damage' as defined by the policy, or general wear and tear, but "*are due to the eviction itself*".

I'm sorry to disappoint Mr K and Ms S, but I don't consider it is for them to define what is, and isn't, considered a one-off event in relation to the policy. It is largely up to insurers to decide what risks it wants to insure, and on what terms. The policy lists what it considers to be the perils (one-off insured events) it wishes to cover. I've checked their policy document and the circumstances they've experienced are not listed as a peril that is covered by the policy.

They've also said '*dilapidations*' which they're claiming for is specifically mentioned in the policy. I think matters have got confused. Mr K and Ms S hold a separate legal expenses and rental insurance policy, which has its own applicable policy terms. I have seen the policy document relating to that insurance policy and agree that it does mention '*dilapidations*', but I've considered this complaint against Aviva in the context of the property owners insurance policy. A complaint about the legal expenses and rental income policy – and any claim outcome given in relation to that policy - would need to be raised separately.

### Policy cover

Part of the damage to the property, where water damage was seen to walls, was considered by Aviva to be storm damage. Mr K and Ms S haven't raised any concerns in relation to that claim, or the excess applied. However, for completeness, having reviewed Aviva's notes and the photographs, I consider it made a reasonable decision in relation to this.

The policy does offer cover from '*malicious persons*'. Whilst that isn't defined, this Service would generally consider damage to be caused by a malicious person if they intended to do harm. If the property was damaged accidentally, through neglect or poor maintenance, we wouldn't usually consider this to be malicious.

I've reviewed the end of tenancy check-out report done on the property, as well as the photographs and quotes Mr K and Ms S provided. Having done so, I'm satisfied Aviva was reasonable in saying the damage wasn't caused by '*malicious persons*'. I consider much of the property to have been left very unclean, with floors, kitchen appliances and the bathroom all listed as being "very dirty" in the report. However, I think Aviva was reasonable to conclude this to be more likely caused by lack of care, rather than an intent to cause harm to the property.

Aviva identified, from reviewing information provided, six incidents it considered to be covered under its 'accidental damage' peril. They were in relation to:

- Broken stair spindle
- Debris removal

- Garden gate
- Smoke Detectors
- Cracked kitchen tile
- Damage to plasterwork in lounge

These were settled based on the invoices provided by Mr K and Ms S. Having reviewed the check-out report, I'm satisfied that Aviva has made a reasonable assessment that only those items listed above could be considered as 'accidental damage'. And as it seems to have settled those in full (before deducting the policy excess) I consider this a fair offer for those items.

I understand Mr K and Ms S are disappointed that six policy excesses have been applied in relation to that damage, such that the claim settlement was reduced significantly. However, in the circumstances of this case I don't consider Aviva has acted unfairly in applying them. The accidental damage affects different rooms of the property (and outside of the property). I don't think it would be likely that any of the incidents listed above would have happened at the same time as others. For example, I don't consider the damage to the garden gate could likely have happened at the same time that the stair spindle was broken. So, I think, on this occasion, Aviva is reasonable in treating each area of damage as a single insured event. And because I'm satisfied that is the case, it follows that it can fairly charge an excess for each incident. Having checked the policy schedule, I'm satisfied £250 was the correct excess level to apply.

#### Lost rental income and mortgage payments

I think it's helpful to clarify here when Mr K and Ms S residential property owner's policy will cover lost rent. The policy terms say it will do so when the property:

*"can not be lived in or if access to them is denied as a result of Damage insured under the Property Damage section"*

So as set out earlier, there are two different insured events operating, the storm one and the accidental damage one. But the property has to be uninhabitable due to damage caused by those insured events. The fact that the property couldn't be rented out due to the dirt and rubbish left by the tenant doesn't persuade me that it meant the property couldn't be lived in due to the insured damage – and so, I consider it reasonable that the policy didn't respond to this part of their claim.

As mentioned above, Mr K and Ms S have another insurance policy, set up by the broker, which is for landlord legal expenses and rent protection. I can't consider any claim Mr K made on that insurance policy as part of this complaint. Any issues relating to that would first need to be raised with the underwriter of that policy. Once it responds to a complaint (if it hasn't already) this Service could consider it, subject to our usual complaint handling rules.

#### Delays in settling the claim

I can see that Mr K and Ms S started works to their property as early as March 2023, when the tenants were evicted. But I can't see any evidence that it did raise a claim with Aviva before July 2023. So, I find Aviva isn't responsible for a delay between March and July 2023 in settling the claim.

As our Investigator set out, it's possible the broker, whom Mr K and Ms S were liaising with, made an error in not notifying Aviva, but I can't look at the actions of the broker. This complaint is only considering the actions of Aviva in applying the terms of its property owner's insurance policy.

Having received the claim in July 2023, Aviva appointed a loss adjuster to assess the photos, invoices and other information provided. It took around three months to reach a claim settlement. I appreciate Mr K and Ms S' property still hadn't been rented out at this

point, but I can't see that Aviva unreasonably delayed matters during that time. Mr K and Ms S have said they felt that Aviva dragged their heels in the hope they would give up, but I haven't seen any evidence of that; it seems to me it was considering the damage and then it went onto make, what I consider to be, a fair offer.

In any event, Mr K and Ms S say it wasn't until October that they were able to rent the property out, and it had been empty for eight months. But it seems to me, from their invoices, that most of the insured works were actually completed by around May 2023. This was before Aviva had recorded a claim on the policy. So even if I was satisfied there was any delay on Aviva's part between July and October 2023 –I'm not persuaded that would be the only reason why the property wasn't rented out until October 2023. And so, I don't consider it needs to pay compensation for lost rental income.

I realise this has been a distressing time for Mr K and Ms S, they've said having to evict tenants for non-payment of rent was incredibly stressful. I don't doubt that is the case. But I can only award compensation where I think a business' mistakes have caused them unnecessary distress and inconvenience. I can't award compensation for them having to go through the process of evicting a tenant or reinstating their property by cleaning and refurbishing it. As I'm satisfied Aviva made a reasonable offer to settle the damage and didn't cause unreasonable delays, it follows that I don't think it needs to be more to resolve this complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Ms S to accept or reject my decision before 20 November 2024.

Michelle Henderson  
**Ombudsman**