

The complaint

Miss S complains Aviva Insurance Limited unfairly declined a claim and cancelled her buildings insurance policy.

What happened

In summary, Miss S held a buildings and contents insurance policy with Aviva. She made an escape of water claim in December 2022. Aviva accepted it, its agent visited and took photos, and it opted to cash settle it as it considered there to be pre-existing damage.

It considered the reinstatement works would cost roughly £8,800 in December 2022. It provided Miss S with a scope of works to obtain quotes from local builders. She provided quotes, but Aviva had some concerns – it said they included non-claim related work, were excessive, and not in line with the scope it provided to her.

It also had concerns with the contents claim. It said the replacement items Miss S was claiming for were of higher quality than those present during the initial visit and Miss S didn't have proof of purchase, or ownership, amongst other things. And Miss S disposed of items without its consent, despite it making clear an inspection was required, which prejudiced its position.

Therefore, Aviva put the claim on hold. It wrote to Miss S in July and August 2023 outlining its concerns, asking her to respond to alleviate those and substantiate her claim. It sent another agent out to the property in the meantime, in August 2023.

The visit resulted in the scope of works being amended, and costs increased to £14,259.57. But as Aviva wasn't satisfied with Miss S' response(s) to its concerns, it declined the claim, cancelled the policy (retaining the premium), and referred to a fraud condition. It considered Miss S exaggerated her claim to gain financially.

Miss S didn't think this was fair. She said, broadly, Aviva moved the goalposts, she dealt with several agents, and she provided it with all it needed to support her claim. Further, she said Aviva had all the information it needed following the initial visit where photos were taken of the buildings and contents, and she was merely asked to provide links to like for like replacement items – which she did. She thinks Aviva should pay her claim and compensate her for the distress caused and for loss of earnings.

I issued a provisional decision on 14 October 2024 which said:

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

I acknowledge I've set out the complaint in less detail than Miss S has presented it. I assure her (and Aviva) I've read and understood everything. In my decision, I've focused on what I consider to be the key points I need to think about. I don't mean any discourtesy by this; it simply reflects our Service's informal nature.

Having done so, I'm broadly in agreement with the Investigator's reasoning; I am also not satisfied Aviva declined this claim fairly and reasonably when relying on the fraud condition. But I've reached a different conclusion on what I consider to be a fair and reasonable way for Aviva to put matters right. As the claim involves both the buildings and contents, I'll address each in turn.

Buildings

All parties accept Miss S had a valid claim – water escaped internally from a burst pipe in the loft which damaged several areas (but not all rooms). Aviva opted to cash settle it which ultimately the policy allows it to do. A key reason for this was due to pre-existing issues allowing rainwater in overtime.

I find its conclusion that there were pre-existing issues is supported by photos of the property, comments from its agent's following visits which I'll return to later, and Miss S' own quotes which set out the requirement for works – including external works to guttering, soffits, rendering, and large-scale plastering in rooms not impacted by the escape of water. Therefore, it follows that I am satisfied Aviva's decision to opt to cash settle the claim was a fair and reasonable one.

In December 2022, Aviva said the reinstatement works would cost about £8,800. Miss S provided local contractor quotes as part of the validation process for Aviva to consider whether its initial scope of works was fair, or if more needed to be done. Miss S' expectation of what needed to be done was evidently different to the initial £8,800 of works Aviva had scoped for.

There was a great deal of back and forth regarding the quotes Miss S provided, and the buildings claim halted due to Aviva's overall concerns with the validity of the claim (largely due to the contents claim). Then, later, Aviva made a further visit to the property in August 2023. What followed was an amendment to its original scope, with costs increased to £14,259.57. This represents a significant uplift from its initial figure reached in December 2022. So, while Aviva considered Miss S' quotes were unreasonable, I think this uplift in costs supports her initial concerns regarding the scope and what needed to be done.

Later in August 2023 (prior to Aviva's second visit), Miss S suggested Aviva instruct its own contractors to progress the claim following the rejection of her quotes from local contractors. I don't find this is the response I'd expect to see from someone intentionally exaggerating their claim for financial gain. Aviva has pointed out Miss S' eagerness to get on with the works, and rightly so given the claim had been running for about nine months at this point.

Aviva were ultimately there to visit, inspect the claim-related damage, make enquiries, and – in this case – provide Miss S with a fair and reasonable cash settlement amount to indemnify her. And while it found her quotes to be excessive, amongst other things, by August 2023, it had reached a cash settlement amount it considered was fair – which is what its liability was limited to. I find it should have therefore settled the buildings claim in August 2023 following its visits, enquiries, and reaching a cash settlement amount.

I note it has said Miss S prejudiced its position by starting works several months into the claim. But I don't agree. I say this because it visited the property in December 2022 (before Miss S started works), and again in August 2023, and was able to reach what it considered to be a fair and reasonable settlement on the claim.

I acknowledge Miss S will argue £14,259.57 wasn't the correct amount to reinstate her buildings back to its pre-loss position. But it's important I explain this figure should only represent works to put right the claim-related damage. I've noted comments from Aviva's agent following the August 2023 second visit which said:

"I have now reviewed the schedule and amended accordingly in respect to what was noted on my site visit & cross reference of [Aviva's first attending agent's] initial inspection. Its worth mentioning that I have not included any works within the lounge or bedroom above, as per [Aviva's first agent's] initial instruction / observations that these had not been affected by the EOW.

...

It is clear through the readings obtained that the areas which would have been affected by the escape of water at the time of the incident, which are now showing as dry. There were areas where readings were taken showing high level of moisture, however this was to the low front bay window and wall area below the bay and the rear dining room wall, reveal and low level surrounding area. It was apparent this was pre-existing and due to defects to the external render. My pictures will illustrate gaps to the window and patio lintel and creasing tiles, which has been allowing driving rain to ingress and cause penetrating damp for a period of time".

Aviva's agent also said there were various cracks from the corner of windows which showed movement and gaps allowing water in. And the render had been installed down to the ground, with no gap, allowing water to breach up from the surface level. They concluded these defects were contributing to the ongoing damp issues Miss S raised.

So, I'm persuaded Miss S' property evidently had pre-existing issues she was responsible for paying to repair. These works would fall outside the contract of insurance – and therefore wouldn't be scoped for – as Aviva weren't responsible for paying for these repairs.

Overall, I find Aviva's revised figure of £14,259.57 was reached fairly and reasonably following an inspection carried out by someone suitably qualified to establish the claim-related damage, the pre-existing damage, and the cost of works Aviva were responsible for paying for. Miss S' own quotes do not persuade me to agree Aviva's settlement figure was wholly unreasonable. I say this because – for example, her 15 January 2023 quote totalled £22,000 when removing the external works. And this £22,000 included works such as large-scale plastering and installation of wood flooring in all rooms that I am not satisfied Aviva were responsible for paying for given what I've set out above.

So, in summary, I find Aviva's cash settlement amount of £14,259.57 was reached fairly and reasonably. I find it should have cash settled the buildings claim in August 2023 when it considered it had reached a fair and reasonable settlement and communicated this to Miss S. So, I intend to require Aviva to pay her this amount, plus compensatory interest.

Contents

In December 2022 Aviva attended Miss S' property. The buildings and contents were inspected, and photos were taken. A follow up email to Miss S said:

"There are limited contents effected and I have made a note of these, please provide me with replacement costs – like for like".

A short time later, Aviva asked for additional information about replacement items such as carpets, a toaster, microwave, a fridge freezer (including contents) and rugs, and any other items that were Beyond Economical Repair (BER).

This suggests that following the first visit the agent was aware of the BER contents and required Miss S to provide a list of replacements she considered were like for like. And Miss S did what she was asked.

Miss S then went on to dispose of many of the items. I find that was fair and reasonable. Aviva had inspected the items (or had the opportunity to), the items were of no use in their water damaged condition, some were causing a bad smell, Miss S' property isn't extensive to the point she could easily restore them, and there was no apparent reason to keep them.

Then, in March 2023, so about three months later, Aviva told Miss S it wanted to attend the property again. It seemed the second visit was largely due to its agent wanting to go through the buildings scope with Miss S. A return visit proved difficult for Miss S to facilitate, despite Aviva's best efforts. But the visit did take place in August 2023 as I mentioned above.

Aviva had concerns following this inspection. It was concerned Miss S had disposed of her items, included more contents items not previously claimed for, and thought her claim was more likely than not exaggerated. It decided to decline the claim and cancel the policy based on a fraud condition. I don't find this was fair and reasonable. I'll explain why.

As set out above, I find it was fair and reasonable for Miss S to dispose of some items in the circumstances. While Miss S may not have substantiated her claim for all the items, not substantiating a claim is not in itself fraud. Most of the items Miss S claimed for are visible in photos taken by Aviva, what is being claimed for is in keeping with the size of Miss S' home and household, and her profession (for example: a computer, a chair, a sofa, a lamp, and a table). Nor do I find the like for like replacement items she requested are unexpected, or of particularly high value. Therefore, it follows I'm not satisfied Aviva has shown Miss S acted in any way fraudulently.

As I don't find it was fair and reasonable for Aviva to decline the claim and cancel the policy, it should reinstate the policy and reconsider the claim. In doing so there are, in my view, two elements; namely what has been substantiated, and what hasn't been.

Aviva should pay Miss S for the items which have been substantiated, such as carpets, a toaster, a microwave, a fridge freezer (and contents) and a rug (disposed of by Aviva). I further note its agent, on 19 May 2023, told Miss S they did accept electrical items in the kitchen were saturated and they advised at the time of their initial visit these would be replaced and asked Miss S to provide costs for these. The items I've set out above (the toaster, microwave, fridge freezer (and contents) are in keeping with this email. Therefore, I find Aviva should include compensatory interest on these items, from the date Miss S provided a list of like for like replacement items, to the date of settlement as it ought to have settled this part of her claim then.

I find it reasonable for Aviva not to pay Miss S for the unsubstantiated items based on the information currently available to it. The onus is on Miss S to prove her loss, and for some items she hasn't done so, despite likely being able to. For example, she has claimed for an Apple computer which she says she bought using an old bank

card. There is no photo of this computer, the inspection didn't comment on it, and Miss S doesn't have a receipt.

There is therefore no direct evidence she had it. To attempt to substantiate her claim, Miss S could, for example, approach her bank (even if the account is now closed) for evidence she paid for it. Or she could look into whether her Apple account has a record. Similarly, Miss S says some of the items she claimed for were bought online, so it seems likely there will be a digital footprint of her purchases somewhere. Aviva should consider Miss S' claim for the unsubstantiated items further and in line with the remaining policy terms, upon receipt of further evidence from Miss S.

The overall claim handling

I've reviewed the overall handling of this claim. And I find much of the delays, issues, and challenges Miss S faced were the result of the ongoing claim validation process over several months. There were also delays while Aviva made reasonable efforts to request Miss S facilitated another visit to progress and conclude the claim.

Overall, I find Aviva's concerns here were justified which led it to making further enquiries with Miss S which the policy allows it to do. There was a genuine dispute here over the buildings and contents aspect of the claim – with aspects of the contents claim still outstanding as the result of the requirement on Miss S to prove her loss. So, even though matters here were delayed considerably due to the validation process, it follows I am not persuaded that compensation is appropriate here.

My provisional decision

For the reasons I've given above, I intend to uphold this complaint and require Aviva Insurance Limited to:

- Reinstatement the policy and settle the buildings claim by paying Miss S £14,259.57. It should include simple interest at 8% per year, from 23 August 2023 when it communicated this amount to Miss S, to the date of settlement.
- Settle the contents items such as carpets, a toaster, a microwave, a fridge freezer (and contents) and a rug (disposed of by Aviva) in line with the remaining policy terms. It should include simple interest at 8% per year, from the date Miss S provided like for like replacement costs for these items, to the date of settlement.
- Reconsider the remaining contents items Miss S is claiming for in line with the remaining policy terms upon Miss S providing information to prove her loss: and
- Remove reference to fraud or cancellation from this policy from any internal or external databases."

Responses to my provisional decision

Miss S accepted my provisional decision. But she said payments for alternative accommodation remain unpaid despite providing Aviva with receipts. She also said her premiums for other insurance policies increased as the result of the fraud marker, and she thinks Aviva should cover her lost earnings due to the claim delays, and its failure to facilitate prompt repairs.

Aviva said while it did attend the property, contents items claimed for were not mentioned at this time, nor did its agent recall seeing some, and they weren't in photos. But it agreed its initial claim decision and reference to fraud was unfair. So, it agreed to reinstate the policy, but said it wouldn't pay for contents items Miss S hasn't been able to substantiate.

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.

Miss S has said in response to my provisional decision she had concerns with the amount Aviva reimbursed her for alternative accommodation, and payments regarding the same remain outstanding. It's my understanding Miss S was in alternative accommodation for a period. She provided Aviva with some receipts, and Aviva reimbursed roughly £800 based on the claim notes, in June 2023.

The requirement for alternative accommodation over the claim period, and the amount reimbursed by Aviva regarding the same didn't form part of Aviva's final response to this complaint, the Investigator's view, or my provisional decision. My provisional decision focused broadly on Aviva's claim decision, reference to fraud, and the cancellation of this policy.

Further consideration needs to be given to Miss S' alternative accommodation concerns in line with the policy terms. Therefore, it follows that I've decided not to address these concerns within my decision. Miss S will need to provide her specific concerns to Aviva with supporting evidence for it to consider in line with the remaining policy terms. If Miss S is dissatisfied with its response, she could refer this specific complaint point back to our Service later as part of a new complaint.

Miss S has also said the premiums for other insurance policies with different providers increased as the result of the fraud marker. I've already set out Aviva must remove reference to fraud or cancellation from this policy from any internal or external databases. Miss S should then be able to contact the other providers once this has been removed to resolve her concerns regarding the premiums. I find it's reasonable for Aviva to provide Miss S with a letter confirming the same if she asks for one, to assist her with contacting her other insurance providers.

Miss S has also said Aviva should cover any lost earnings as the result of claim delays and its failure to facilitate prompt repairs. I respectfully disagree. As I set out previously, I am satisfied much of the delays were the result of the requirement for Aviva to make further enquiries and for Miss S to facilitate another visit which proved challenging despite Aviva's best efforts. There was a genuine dispute here over the buildings and contents claim. In fact, aspects of this claim remain outstanding to date as the result of the requirement on Miss S to prove her loss. So, it follows I don't find requiring Aviva to cover Miss S' lost earnings or compensate her would reach a fair and reasonable outcome here.

In concluding, I see no compelling reasons that persuade me to deviate from the outcome I provisionally set out. I am not satisfied Aviva reached a fair and reasonable conclusion on this claim for the reasons I've set out above. My decision doesn't require Aviva to pay for *all* contents items Miss S has claimed for. I set out why I was satisfied it was fair and reasonable to require Aviva to settle some of the items, but equally why Miss S must do more to prove her loss for the claim to progress to settlement. Therefore, I will go on to set out what it must do now to put matters right.

Putting things right

For the reasons given above, I don't find Aviva acted fairly and reasonably when declining this claim when relying on the fraud condition and cancelling the policy. Therefore, it must do the following to settle this complaint:

- Reinstate Miss S' policy and settle the buildings claim by paying her £14,259.57. It should include simple interest* at 8% per year, from 23 August 2023 when it communicated this amount to Miss S, to the date of settlement.
- Settle the contents items such as carpets, a toaster, a microwave, a fridge freezer (and contents), and a rug (disposed of by Aviva) in line with the remaining policy terms. It should include simple interest at 8% per year, from the date Miss S provided like for like replacement costs for these items, to the date of settlement.
- Reconsider the remaining contents items Miss S is claiming for in line with the remaining policy terms upon Miss S providing further supporting information to prove her loss: and
- Remove reference to fraud or cancellation from this policy from any internal or external databases.

My final decision

My final decision is I uphold the complaint. I now require Aviva Insurance Limited to settle this complaint in line with my instructions above.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 27 November 2024.

Liam Hickey
Ombudsman