

The complaint

Mr O, Mrs O and Mr O (2) complain about the claim settlement offered by Aviva Insurance Limited following a claim they made on their commercial property investors insurance policy.

Some of Mr O, Mrs O and Mr O's (2) dissatisfaction relates to the actions of agents acting on behalf of Aviva. As Aviva accept they are responsible for the actions of their agents, in my decision any reference to Aviva should also be interpreted as covering the actions of their agents.

Mr O, Mrs O and Mr O (2) used a representative when presenting their claim and complaint. As Mr O initially brought this complaint to our Service, for ease, in the remainder of my decision I will mainly only refer to him.

What happened

The background to this complaint is well known to Mr O and Aviva. Rather than repeat what's already known to both parties, in my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

Following damage to Mr O's let out property, he made a claim under his insurance policy with Aviva. Mr O's tenant moved out of the property and into alternative accommodation ('AA') whilst repair works were ongoing as no toilet facilities were available. Aviva accepted a claim for buildings damage. They also accepted the other part of Mr O's claim – but chose to settle it based on what loss of rent would've been for the period of repairs, rather than the cost Mr O incurred paying for AA.

Mr O raised a complaint and as he remained unhappy with Aviva's response, he referred it to our Service for an independent review. Our Investigator considered the complaint and recommended that it be upheld. As Aviva didn't accept, the complaint was then referred to me for a decision.

I recently sent both parties a copy of my provisional decision. As the deadline for responses has now passed, I've considered the complaint for a final decision.

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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

Responses to provisional decision

Only Mr O responded to my provisional decision. In summary, he said that the policy doesn't specify circumstances whereby indemnity is limited to loss of rent and that it was difficult to think of a scenario where costs of alternative accommodation would be covered. Finally, Mr

O referred to this only being a claim for alternative accommodation costs.

None of these points change the decision I'd intended to reach. If Mr O felt the terms were ambiguous, he had the option of contacting his broker or the insurer for clarity prior to agreeing to cover the costs of alternative accommodation. This was an indemnity policy, and the additional costs Mr O has incurred were avoidable and not the responsibility of Aviva.

As outlined in the provisional decision, if Mr O was contractually obliged to cover alternative accommodation costs, I'd have expected the policy to respond as such. A policy holder can present a claim as they might want to, but it doesn't follow that the policy needs to respond to that loss, if the business can show it has responded to the claim in line with the policy terms - for the reasons I've already explained.

Overall, as no new evidence has been provided that materially changes the outcome I'd intended to reach, I find no fair or reasonable reason to deviate from my provisional findings, and they form the basis of this, my final decision.

Have Aviva fairly and reasonably responded to the claim in line with the policy terms?

The relevant policy terms:

"R1 Alternative Accommodation and Loss of Rent

In the event of any DAMAGE as insured hereby resulting in a Residential Building or residential portion of a Commercial Building insured hereby being uninhabitable or access being prevented to such property Section A includes for each dwelling either:

a) Rent Receivable as defined in Section B1

b) the reasonable additional cost of comparable accommodation incurred by the lessee or owner for any resident including pets which normally live in the Building

c) a cash allowance not exceeding 25% of the amount payable under b) above until the said property is habitable or accessible."

In my opinion, the policy terms clearly set out that they will respond to indemnify Mr O through either A (loss of rent), B (AA) or C (a cash allowance). The policy won't respond to a loss with a combination of A, B and C.

Whilst I acknowledge the positive action of Mr O in agreeing to reimburse his tenant for AA, he wasn't obligated to do this legally or through any contract with the tenant. In summary, Mr O's consequential loss as a result of an uninhabitable property (no toilet) was loss of rent.

If he optionally chose to maintain his good relationship with his tenant by agreeing to cover their AA, that was his own goodwill gesture – and wasn't an inevitable consequential loss that the policy needs to respond to. I'm satisfied that by covering Mr O's loss of rental income, Aviva have fairly indemnified him in line with the policy terms.

To explain it simpler:

- Mr O couldn't fairly charge rent as per the tenancy agreement, as his tenant couldn't live in the property without toilet facilities.
- He can't charge rent as he can't fulfil his side of his contract with the tenant (to provide a habitable property) and incurs a loss.

- The tenant doesn't incur a rental outlay as a result.
- The tenant puts what they would've spent on rent towards AA.

Mr O's inevitable loss here was rental income. If he has chosen to incur a further loss through being decent to his tenant – that's a personal decision and not something Aviva need to indemnify him for under the policy.

If Mr O had demonstrated that he was contractually obligated to provide his tenant with AA, I might be minded to agree that Aviva need to reimburse him for his additional outlay - but he hasn't shown any such evidence.

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 Mrs O, Mr O and Mr O to accept or reject my decision before 6 April 2025.

Daniel O'Shea
Ombudsman