

The complaint

Mr T and Mrs R complain about Aviva Insurance Limited's ("Aviva") handling of their claim, including its decision not to pursue recovery of its costs, under their home buildings insurance policy.

What happened

Mr T and Mrs R say a small fire occurred at their home in March 2023. This was caused by a National Grid electricity cable. They contacted Aviva to make a claim, which was accepted. After a few days power was restored, and Aviva paid for the fire damage repairs. Mr T and Mrs R don't think it's fair that they had to pay their policy excess. This is because the fire was the responsibility of the National Grid.

Mr T and Mrs R want Aviva to pursue the recovery of the claim costs from the National Grid. They say their insurance premium increased at renewal as a result of this claim. They want the claim to be removed from the records. Mr T and Mrs R says they have spent a lot of time trying to obtain information and progress matters with the National Grid themselves. They ask that Aviva apologises for the inconvenience caused and pays for their time dealing with this matter. In addition, they want their insurance premium to be reduced, and the policy excess refunded.

In its final complaint response dated 7 August 2024 Aviva says the prospect of a successful recovery of its claim costs was low. So, once this had been assessed it didn't pursue this option any further. Aviva says Mr T and Mrs R's insurance broker was responsible for the premium. This issue was dealt with in July 2023. It acknowledged some delays in responding to emails and provision of a settlement letter. It also says its agent dealing with the recovery matter caused some delays. Aviva apologised and paid £200 compensation.

Mr T and Mrs R didn't think Aviva had treated them fairly and referred the matter to our service. Our investigator didn't uphold their complaint. She didn't think the business had done much wrong. But she agreed that the £200 compensation Aviva had paid for its avoidable delays was fair.

Mr T and Mrs R didn't accept our investigator's findings. They asked for an ombudsman to consider the matter.

It 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.

Having done so I'm not upholding Mr T and Mrs R's complaint. I'm sorry to disappoint them but I'll explain why I think my decision is fair.

cost recovery

I can understand Mr T and Mrs R's frustration. The fire they experienced was the result of a problem originating on National Grid equipment. For this reason, their expectation is that the National Grid should pay for the damage. The claim record could then be removed, and they would get the policy excess payment back. I've thought carefully about whether Aviva has treated Mr T and Mrs R fairly here.

Mr and Mrs R's policy terms say:

"We can take legal action at our expense and for our benefit, but in your name, to recover any payment we have made under the policy. We can negotiate, defend or settle in your name any claim made against you."

This is a common term used in insurance policies. It essentially means that it's for Aviva to decide whether to attempt recovery of its claim costs. It doesn't need Mr T and Mrs R's permission. But this doesn't mean it can act in anyway it chooses. It must still treat Mr T and Mrs R fairly.

In its final complaint response Aviva says contact was made with the National Grid to obtain a fire report from the incident. It says this wasn't received and incorrect information was sent instead. However, in August 2023 it received contact from a representative of the National Grid. In its email it says the fire was *"on balance the result of chronic resistive heating within National Grid's cut out"*. But that to be liable for the cost of the claim the National Grid would need to be shown to be negligent. The representative refers to case law it says is applicable to these circumstances. In essence what this says is that there was no way the National Grid could've identified an issue with its network, which could've prevented the fire.

In its complaint response Aviva confirms that it appointed its solicitors to consider this information in the absence of the fire report. The solicitors thought the prospects of recovery were poor. It explained that unless court proceedings were issued it was unable to compel the National Grid to release any documents. Given the low claim value (£1,940, less the policy excess), the strength of the evidence presented, and the case law discussed, it says there was insufficient prospect of success to warrant proceeding with the recovery.

Ultimately Aviva is liable for any costs it incurs in pursuing recovery of any claim costs. As discussed Mr T and Mrs R's policy gives Aviva the right to consider the risk and decide whether it wants to proceed or not. In this case Aviva, on the advice of its legal experts, concluded the chances of a successful recovery were poor. So, although I understand Mr T and Mrs R's concerns. I don't think Aviva treated them unfairly when it relied on its policy terms to act as it did.

I've thought about Mr T and Mrs R's comments that they shouldn't have to pay their policy excess. Again, given the nature of this incident I can understand their frustration. But their policy excess is considered an uninsured loss. This is always payable in the event of a claim being made. The excess amount is confirmed in their policy schedule and explained further in their policy booklet. If a recovery of the claim costs was successful Mr T and Mrs R could potentially request that their excess payment be refunded by the National Grid. But as discussed, a recovery wasn't pursued. So, as a claim has been made, and this has been settled by Aviva, the excess payment is a requirement of the policy terms and conditions.

I've thought about Mr T and Mrs R's comments that it's unfair for a claim to be recorded against their policy in these circumstances. It's clear they weren't responsible for the fire. But how a claim is recorded depends on whether the insurer incurs costs in dealing with a claim. In this case the claim costs couldn't be recovered. This means the full cost has been met by Mr T and Mrs R's policy, less their excess payment. So, although I'm sympathetic to the situation they find themselves in, I don't think Aviva has treated them unfairly here.

premium increase

Mr T and Mrs R complained that their premium increased as a result of this claim. I can see they used an insurance broker to obtain cover. The broker used a panel of insurers and offered cover based on the quotes provided. From what I can see Aviva wasn't initially selected by the broker to provide Mr T and Mrs R's insurance cover at their renewal in 2023. Another provider was chosen. I can see that Mr T and Mrs R's concerns were considered in a complaint response from the broker on 31 July 2023.

The Financial Conduct Authority (FCA) dispute resolution of DISP rules set out what complaints we can consider. The rules say that a referral must be made to our service within six months of the final complaint response. In this case Mr T and Mrs R were required to contact our service by the end of January 2024. But they didn't make contact until July. This means I can't consider this complaint issue here.

service and costs

I've thought about Mr T and Mrs R's comments that they spent a great deal of time and effort dealing with the parties involved and in trying to obtain a fire report. I've read their timeline of events and the correspondence that was exchanged. I've no doubt Mr T and Mrs R were in contact with various parties with the aim of obtaining a fire report. This was in the hope that Aviva would successfully recover the claim costs. However, it was their decision to do this. I don't think it's reasonable, and certainly not a requirement of the policy for Aviva to pay for Mr T and Mrs S's time.

I understand Mr T and Mrs R don't think Aviva acted swiftly enough to progress matters. But recovery of costs in such circumstances can take a long time. Aviva did act to obtain the relevant information, which proved difficult. It appointed its solicitors when it received a substantive response from the National Grid's representative. Ultimately its legal experts didn't think it was likely that a recovery would be successful. So, I don't think Aviva treated Mr T and Mr R unreasonably in the action it took.

That said there were some emails that Aviva failed to respond to. Aviva has also highlighted a delay in its solicitors contacting Mr T and Mrs R to request information. This was avoidable and most likely caused a delay in Aviva's decision not to pursue recovery. This caused Mr T and Mrs R inconvenience and frustration. I think it's fair that this is acknowledged. But I'm satisfied the apology and £200 compensation Aviva already provided is fair. So, I won't ask it to pay anymore.

In summary I don't think Aviva treated Mr T and Mrs R unfairly when it relied on its policy terms and decided not to pursue a recovery of the claim costs. I don't think it treated them fairly given the delayed information request and lack of email responses. But it's done enough to put this right with the apology and compensation payment. So, I can't fairly ask it to do any more.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr T to accept or reject my decision before 17 April 2025.

Mike Waldron
Ombudsman