

The complaint

The estate of Mrs C complains about the way Aviva Insurance Limited handled claims made on a commercial property insurance policy.

The estate is being represented in bringing this complaint by its executors, with Mr C being the main correspondent. They have also been represented at times by a loss assessor. For ease of reading in the decision I'll mostly only refer to Mr C.

What happened

I've provided only a brief background as the history of this claim is well known to both parties. In 2021 there was a fire in the property insured by Aviva. Aviva accepted the claim but felt that the property was underinsured, so it said it would apply a proportional settlement to the claim. Mr C said it was agreed, in 2022, that a cash settlement would be made. However, the cash settlement offer wasn't finalised until June 2024. Mr C complained to Aviva about delays in the claim. He felt Aviva had changed its approach to the cash settlement and delayed the claim for over a year as a result.

In early 2024 there was some further damage caused to the building. Mr C felt this might have been as a result of a storm. This had cost an extra £7,600 in additional asbestos removal as a result. However, Aviva said the policy wouldn't respond as at the June 2023 renewal, owing to the property's continued unoccupied status, the cover had been reduced to respond only to Fire, Lightening, Explosion, Aircraft (FLEA).

Mr C complaint and Aviva responded to the complaint with a final response letter on 5 July 2024. It accepted it had taken a long time to reach a settlement offer, but it didn't accept that it had caused unreasonable or unnecessary delays. It said the matter had been complex. Unsatisfied with Aviva's response Mr C referred his complaint to the Financial Ombudsman Service for an independent review.

Our Investigator felt Aviva had acted unfairly in saying there was any underinsurance; he recommended Aviva settle the claim in full. He also said he didn't think it was fair that Aviva had reduced cover for the property whilst the claim was ongoing. He thought the reason that the property was unoccupied, was because of the fire, and so it was unfair to reduce the cover in the circumstances. He said it should reinstate full cover and consider a claim for storm damage under the terms of the policy.

Mr C accepted the outcome. Aviva accepted part of the outcome; ultimately agreed to settle the fire claim in full, without applying any reduction for underinsurance. But it didn't agree it had acted unreasonably in relation to the FLEA cover.

Aviva said Mr C had made the decision not to reinstate the property, saying the property would be sold. It said it reduced cover as the building, being unoccupied and damaged, presented a higher risk. It also said the tenant's insurer had declined any cover for the fire claim, which had caused delay it wasn't responsible for.

As the matter wasn't resolved, it has come to me to decide. In March 2025 I issued a provisional decision on this complaint, setting out why I didn't think Aviva had acted unfairly in reducing the cover on the policy to FLEA only. As a result, I didn't think Aviva had acted unfairly in declining the claim for damage that might have been caused by a storm. I also didn't think Aviva should cover the cost of repairs as I wasn't persuaded it had caused Mr C a loss that otherwise wouldn't have been incurred. A copy of my provisional findings is below.

As Aviva has agreed to settle the fire claim in full, without applying any reduction for any underinsurance, I'm not going to consider this further in detail. I consider Aviva's agreement to pay the claim in full to be fair and reasonable, so I intend to decide it should pay the claim in full to resolve the complaint. My findings below will focus on the 2023 renewal and the reduction of cover to FLEA only.

Aviva, as an insurer, is entitled to decide what risks it wants to insure, and those it doesn't. Insurers use underwriting criteria to decide on the risks they're willing to insure and the pricing strategy it will apply to acceptable risks. This is commercially sensitive information that this Service can receive in confidence and won't be shared with complainants. Aviva says when a property is unoccupied, it will adjust cover when it is deemed the premises is at a greater risk of damage. It considers reducing cover to FLEA is fairly standard practice in the industry.

Our Investigator considered that it wasn't fair to reduce cover whilst a claim was ongoing, but I intend to reach a different outcome to that.

By the time of the 2023 renewal, the property had been unoccupied for around two years. Aviva said it was also aware that the insurer of the tenant of the property, had declined cover and it considered the prospect of reinstatement to be low. It said in line with its underwriting guidance, it considered the property to be at a high risk of damage, so it reduced the cover accordingly.

Having reviewed all of the comments, I intend to decide that Aviva didn't act unfairly in reducing the cover to FLEA at the 2023 policy renewal. Whilst I accept the claim was ongoing in 2023, I don't think this means Aviva has to maintain full cover on the policy if there is a material change to the risk that the property poses. There isn't anything to persuade me Aviva applied its underwriting criteria unfairly. So I intend to decide there was no storm damage cover in force when Mr C says the damage happened (which was after the 2023 renewal). As such Aviva didn't need to assess any claim for storm damage.

I also note Aviva said even if it had offered full cover in June 2023, it had included at that renewal a term that said "Should there be a change to the current Tenancy Agreement in force, we must be immediately advised, and we reserve the right to fully consider and review our position on Cover, Terms & Rates at that point".

It said in line with that term, Mr C told Aviva later in 2023 that the tenant had gone into liquidation. It said this would have also been a trigger for reducing the cover to FLEA. And that would still have been before any alleged storm damaged happened in January 2024. I think, if that had come to pass, it would have been reasonable for Aviva to do that. Again because of such a material change in the risk presented by the property. So overall I'm minded to decide Aviva acted fairly in firstly reducing the cover, and then not assessing any claim for storm damage under the policy.

I've thought about whether any delays in the claim mean I consider Aviva should be responsible repairs needed after the bad weather. Mr C says it cost around £7,600 for the

extra asbestos removal caused by the reported storm damage. But I'm not satisfied, based on what I've seen, that it was Aviva's delays that meant Mr C incurred a loss that might have otherwise been avoided. The claim had been ongoing for a long time by January 2024, but it was a large loss claim, with the added complexity of the tenancy agreement and another insurer involved, who ultimately declined cover for the tenant.

Whilst it did take time for a cash settlement to be worked through, I'm not persuaded that means Aviva should cover the extra costs Mr C says he incurred. I don't think Aviva caused avoidable delays so significant in the claim that would have meant Mr C would have been able to secure full cover for the property elsewhere by 2024, meaning any storm damage claim would have been covered. In saying that I'm mindful that it can often be difficult at best to secure full cover for a property which has been empty for more than a year. I'm also not persuaded that, but for any delay on Aviva's part, Mr C would have been able to sell the property before January 2024, so as not to incur that further loss.

I do accept that, with Mr C having brought a complaint to this Service, Aviva has now agreed not to reduce the claim settlement amount. But I'm not persuaded that it only offering a proportional settlement was the reason Mr C incurred the costs that he did to rectify what he considers to be the storm damage. Because I'd still have to be persuaded that a full cash settlement offer would have meant Mr C didn't incur the extra asbestos removal costs. And for the reasons set out above, I'm not currently persuaded that is the case. As such, I don't intend to require Aviva to compensate Mr C for this loss.

Aviva agreed with my provisional findings, it didn't add anything further. Mr C made the following points:

- There has been misunderstanding about their complaint, they haven't complained about the cover being reduced to FLEA. Their complaint is that Aviva's unnecessary delay of the claim meant the building was exposed over winter, which it wouldn't have been, had it settled the claim earlier.
- They had wanted to restore the building, the only reason they didn't was because Aviva unfairly applied an average clause to the settlement, meaning they had to sell the building in a much worse condition than it otherwise would have been in.
- When they did sell the property, it sold very quickly, so it would have been sold before January 2024, but for Aviva's delays.
- The huge emotional distress to the late Mrs C hasn't been considered by this Service. She died before the claim concluding which should never have been the case, even with a large fire claim.

Mr C was also confused by my comments that Aviva has now agreed to settle the claim in full, without applying any underinsurance. Our Investigator has confirmed to Mr C that in response to his assessment, Aviva agreed it would pay the amount it had originally deducted when it offered settlement on an average basis. Aviva had told this Service the amount to pay was £17,660.75. I think it's important to set out here that I haven't reviewed this amount itself, in order to determine whether this is the correct sum for Aviva to pay. That is because this has happened after the complaint was referred to this Service. So, if there was any issue over the calculation of this figure, I want to be clear that I haven't reviewed the quantum here, and Mr C would need to raise a new complaint to Aviva about that.

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 understand Mr C's comments on the FLEA cover, and that he didn't complain about it being reduced. The reason for covering that in such detail in my provisional findings was because our Investigator had asked Aviva to consider the claim as if storm damage was covered on the policy, as he felt it had unfairly reduced the cover. I didn't agree with that, for the reasons given above.

However, I also said in my provisional findings that I didn't think Aviva caused delays such that it was most likely the property would've been sold by January 2024. And having considered the comments, I'm still not persuaded that's most likely the case. Aviva was notified after June 2023 that the tenant had gone into liquidation. I'm not persuaded based on what I've seen that the building could have been sold before that time, even if I did accept that Aviva caused any delay in the claim. It is possible that Mr C might have been able to sell the property after that point, and before January 2024, he has said it sold quickly at auction. But I haven't seen enough to persuade me that was most likely, or that Aviva would've been in a position to settle matters much earlier than it did.

And whilst I've noted Mr C's comments on their hope to reinstate the property, I still consider that, with the tenant's insurer declining liability, even with Aviva not issuing a proportional settlement, it seems unlikely Mr C would've been able to carry out a full reinstatement of the property.

I've noted Mr C's comments on the late Mrs C; clearly this would have been a difficult time for all of the family, and not what they would have hoped for Mrs C's final years. But having reviewed matters again, I'm still not persuaded, owing to the complexity of the claim, that Aviva caused such a delay that but for its actions, matters would've been concluded before Mrs C died. And whilst I can understand the progress of the claim and the delay would've been upsetting, I also consider that Mrs C had a power of attorney acting for her during the claim, so she wasn't dealing with Aviva in relation to matters. It is also difficult to differentiate the upset caused by the fire, and the claim itself, from the impact of any errors that Aviva made. As Mr C knows, we can't award compensation for the upset caused in having to make a claim. So it follows that I'm not going to make an award for distress and inconvenience caused in the circumstances of this complaint.

My final decision

My final decision is that I direct Aviva Insurance Limited to settle the fire claim without applying any proportional settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs C to accept or reject my decision before 28 April 2025.

Michelle Henderson
Ombudsman