

The complaint

Ms M is complaining about the way Aviva Insurance Limited has managed a claim she made on her buildings and contents insurance policy.

What happened

In June 2023 Ms M contacted Aviva to say water was coming into her house which she said she thought was coming through a window in her loft during a storm. During the call, Aviva became aware of four undisclosed claims. Ms M disputed this. She says Aviva only asked her about claims in the last two years when she took out the policy. She also said one of them wasn't a claim, but damage caused by her previous insurer's contractor. Aviva said it would have doubled the premium had it known about these claims. So it said it would only pay for 50% of the claim.

Aviva later said there wasn't evidence there'd been a storm at the time of the claim. And it didn't believe the window was damaged by the weather but had failed due to wear and tear. So it said it wouldn't cover the damage to the window, but it agreed to pay 50% of the cost of rectifying the internal damage and damage to Ms M's contents.

Ms M has raised several complaints over the course of the claim journey. In particular, she's complained about the following:

- She maintains that it was unfair Aviva is only paying 50% of the claim settlement.
- She doesn't think Aviva's claim settlement offer is a fair reflection of her losses. She says one of Aviva's call handlers told her Aviva would pay the claim in full if she paid the additional premium.
- She thinks Aviva's agents who attended the property have racially discriminated against her in the way they treated her and the decisions they made.
- She said some of Aviva's call handlers were rude and dismissive to her.
- She said Aviva didn't dry out her property at the start which left her and her fiancé living in a damp and mouldy house. She said they both suffered from asthma and, living as they were, had had a significant impact on their health. She thinks Aviva should have arranged alternative accommodation for them.
- She said there were significant periods of inactivity on the claim. She said it took Aviva two months to send out someone to inspect the property. She's unhappy Aviva initially said there wasn't a storm and only changed its stance after a long period of her disputing this. She didn't think it took the claim seriously.
- Aviva continually ignored her reasonable adjustment by not sending correspondence in large writing, even though it knew she was partially sighted.
- She was unhappy with the settlement as she thinks it's unfair Aviva was requiring her to provide proof of purchase for all the items. She said she frequently offered to provide the receipts of the items, but Aviva's call handlers said she didn't need to provide them. But, by the time it did ask for the receipts, she no longer had them.

Aviva acknowledged it caused some delays and there were times it didn't reply to some emails. And, in total it said it would pay Ms M £600 in compensation. But it maintained it was entitled to reduce the settlement value by 50%. It also said, due to the amount Ms M was

seeking in contents and that she'd said she'd disposed of all the contents, it was entitled to ask for proof of ownership.

Our Investigator partially upheld this complaint. In summary she said the following:

- She thought Aviva was entitled to reduce the settlement by 50%. She said Aviva had shown it had asked Ms M to disclose any claims she'd made in the last five years (i.e. not two years) and Ms M failed to disclose four claims. Ms M had said she believed Aviva had doctored the telephone call recording, but the Investigator didn't think there was anything to support that. And she was satisfied Aviva had fairly shown Ms M had paid half the premium she would have paid had she disclosed the claims.
- She hadn't seen anything to show Aviva had said it would pay the claim in full if Ms M paid the additional premium. She said Aviva did say any future claims would be paid in full if Ms M paid the additional premium.
- She hadn't seen anything to show Aviva's call handlers had been rude and dismissive.
- She'd seen that there were significant delays in the handling of the claim. She said the first two inspections weren't detailed. And she said Aviva didn't complete a schedule of works until February 2024. She said this meant Ms M was living in a damaged property and this would have added to her distress. She said she couldn't say these delays caused her health conditions, but it's likely it would have contributed towards them.
- She acknowledged Ms M's concerns that Aviva had racially discriminated against her. But she said, having looked at the available evidence she didn't think Aviva had done so. Nor did she think Aviva had acted unfairly or unreasonably.
- Aviva said in September 2023 that, once it validated the claim, it would look to consider the drying costs and Ms M would need to provide evidence such as her utility bill for June/July 2022 and June/July 2023. But she didn't think Aviva had done this.

So the Investigator thought Aviva should increase the compensation to £1,000. And she said it should consider any increased drying costs Ms M could show she incurred.

Ms M didn't agree with the Investigator, largely reiterating what she'd set out before. Aviva didn't say whether it agreed with the Investigator or not.

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've come to the same conclusion as the Investigator and I'll now explain why.

I should first set out that I acknowledge I've summarised Ms M's complaint in a lot less detail than she's presented it. Ms M has raised a number of reasons about why she's unhappy with the way Aviva has handled this matter. I've not commented on each and every point she's raised. Instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy about this, but it simply reflects the informal nature of this Service. I assure Ms M and Aviva, however, that I have read and considered everything they've provided.

As I said, Ms M has raised several different complaint points and I shall look to address them separately.

Proportional settlement

The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a

misrepresentation when taking out a consumer insurance contract. The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is – what CIDRA describes – as a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it's entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

I've thought about what happened in this case.

Ms M first took out the insurance policy on the telephone in May 2022. I've listened to this telephone call and she was clearly asked to disclose any claims she'd had in the last five years. She disclosed one, but Aviva has shown her claims record said that she'd made five claims in the preceding years.

Ms M has disputed this for two reasons. Firstly she says Aviva only asked her to disclose claims in the last two years, which she says she did. She also disputed one of the incidents was a claim as she said it was for damage caused by her previous insurer's contractor.

I've considered Ms M's comments, but I still think Aviva was fair in saying she made a qualifying misrepresentation. The call recording clearly says Ms M had to disclose claims made in the previous five years. And I've not seen anything to show this call recording has been doctored as Ms M is purporting to have happened. Secondly, I can see Aviva spoke with Ms M's previous insurer who confirmed Ms M had made the undisclosed claims. I note Ms M has said she was disputing one of incidents with her previous insurer, but she's ultimately not provided anything to show she didn't make these claims.

As I said above, the relevant test is what would a reasonable person do in the same set of circumstances. Aviva asked Mr M to disclose claims in the last five years and I cannot fairly conclude a reasonable person wouldn't know to disclose the claims Aviva said weren't disclosed. So it follows that I think she did fail to take reasonable care to not make a misrepresentation.

Aviva has shown it would have charged a higher the premium had it known the true facts. So I think it was fair for it to consider Ms M had made a qualifying misrepresentation.

Aviva has treated the qualifying misrepresentation as careless and I think that's fair. As I said above, CIDRA says, as Aviva would have charged a higher premium if Ms M hadn't made the misrepresentation, it will have to consider the claim but it can proportionately settle it.

Aviva has shown Ms M paid 50% of the premium she would have paid had she disclosed all of the claims. CIDRA says it only has to pay 50% of the claim value in these circumstances and I think that's fair. So I don't think it was unreasonable for Aviva to say it would only pay 50% of the claim.

Aviva's liability on the claim

Ms M says her property was damaged by a storm. She's unhappy that Aviva initially denied there was a storm and that she says she had to fight to get it to agree to pay the claim. But I don't think Aviva handled this aspect of the claim unfairly.

The terms of the insurance policy cover Ms M for loss or damage arising from a storm. However, the terms of the policy also set out that it won't cover loss or damage that happens gradually – i.e. it's down to wear and tear. Aviva initially said to Ms M it didn't believe there was a storm, but also thought the damage occurred to the window gradually and the high rainfall simply highlighted this damage.

In thinking about this, I've asked myself three questions:

1. Were there storm conditions as defined under the terms of the insurance policy?
2. Is the damage claimed for consistent with damage a storm typically causes?
3. Were the storm conditions the main cause of the damage?

The terms of the policy don't define what a storm is. So I've thought about what a reasonable definition of a storm is. A storm is generally considered to be a period of violent weather – i.e. more than just a period of high winds and rain. I've considered the relevant weather station data to Ms M's property which suggests the wind speeds peaked at around 26mph in the weeks preceding Ms M reporting the claim. I don't think this would be considered violent winds. Given this, I don't think it was unreasonable that Aviva initially said there wasn't a storm.

I understand Ms M later provided a video of the weather at the time which showed significant rainfall and lightening. Following this, Aviva said it was willing to agree that there was a wet storm on the day in question. So I don't need to further consider whether there was a storm on the day in question. But I don't think Aviva's consideration here were unreasonable and it was entitled to make the enquiries it did.

I don't think it's unusual for a storm to cause roof damage or internal water damage. So I think the damage is consistent with something a storm *might* cause. So I'm satisfied the answer to questions (1) and (2) is "yes". This also isn't now in dispute. The issue is whether the storm was the main or dominant cause of the damage.

Aviva has provided photographs of the window where water has come through and I haven't seen anything to support that the window was damaged by the storm. It seems it's started to fail due to gradual wear and tear. I can see Aviva said from early on in the claim the window wasn't covered by the policy and I think that's fair as I haven't seen anything to show it was damaged by an insured event. So I don't think Aviva was liable to cover the damage to the window and it was Ms M's responsibility to rectify that.

Aviva has said it will cover 50% of the internal damage which I think is more than fair as I'm not convinced it was covered under the terms of the policy. Firstly, it's important to note that Ms M didn't take out accidental damage cover which is what normally covers damage in these cases. So, for the policy to cover the claim under storm cover, it needs to be shown that the storm itself was the main reason the damage occurred, or if something else caused

it – i.e. was the storm the proximate cause of the damage.

Ultimately, windows such as the one the water entered the property through are designed to prevent water coming through even in times of high levels of rain. Had the window been in good condition, it's reasonable to assume the internal damage would not have occurred. It seems to me that it's the poor condition of the window that has allowed rain to enter the property and I think this was the main reason the property has suffered further damage.

However, Aviva has agreed to cover the claim and having done so I think it should honour this and a complainant shouldn't generally be worse off by referring their complaint to our Service. And, having done so, it had a duty to do so in a fair and reasonable way.

Delays in the claim

As the Investigator has set out, it took Aviva around eight months to put together a schedule of works from when Ms M first reported the claim for what was essentially a simple claim. As I said above, there was a period of time where Aviva needed to validate the policy and the claim. And this meant the claim didn't progress straight away. But, as I said, Aviva was entitled to carry out these investigations.

However, I think it should have handled the claim much better once it said it would settle the claim for the internal damage and contents. I can see there were two incomplete and poor assessments carried out at the start which caused a number of months delay. There was around two months from when Aviva instructed a loss adjustor until the loss adjustor did anything material on the claim. There were also times where Ms M had asked for updates and callbacks, but she didn't receive these.

Aviva has accepted this and said it would pay £600 in compensation. I've now thought whether this is fair compensation.

It's clear Ms M's property was damaged and these delays meant Ms M and her fiancé had to live in a damaged property for significantly longer than they should have done. However, I'm also not persuaded the property was damaged to the extent they said it was. They've set out that the property was damp and mouldy with damaged walls. But I can see Aviva's initial contractor took moisture readings and these didn't reveal above normal levels of moisture, other than in the ceiling. I also don't think the photos show the property was in a significantly poor condition.

I'm conscious Ms M has set out that her and her fiancé have had significant health concerns throughout the claim and journey and I was sorry to hear that. And I naturally sympathise with the situation they've found themselves in. But I don't think I can fairly say that Aviva's delays have caused these health concerns. That said, the delays would clearly have caused significant further distress and inconvenience on top of what was already happening and I agree it's likely the condition of the property will have exasperated the conditions. Given this, I do think a significant compensation award is warranted. And I don't think £600 is sufficient. The Investigator thought Aviva should increase its compensation to £1,000 and I think that's fairer and in line with what I would have awarded.

I'm aware Aviva also said it would consider any increased costs Ms M can show she incurred in drying the property at the start. And it said if she can provide evidence such as her utility bill for June/July 2022 and June/July 2023 then it would consider this. I can see it's acknowledged their contractor didn't install dehumidifiers when it should have done. So I think it's fair that Aviva covers any increased costs Ms M can show she incurred as a result of drying out her property.

Claim settlement

Ms M has complained about the way Aviva has settled the claim – especially the amount it said it would pay to settle her contents claim. But I don't think it's acted unreasonably here.

In particular, Ms M is unhappy that Aviva is asking her to provide evidence of the damaged contents which she feels is unfair.

It's a general principle of insurance that a consumer has to demonstrate their loss. So insurers are entitled to require consumers to evidence any losses incurred. But I would also expect insurers to take a pragmatic approach when assessing a contents claim as it's not always going to be possible for a consumer to evidence each and every damage or lost item.

But, in this case, Aviva has said that the amount Ms M was claiming was disproportionate to the amount of water ingress that took place. And she's said she'd disposed of all the damaged contents. So I don't think it's unreasonable it's asked her to evidence the losses in this case.

I understand Ms M said she'd disposed of a large number of items because they were damaged. But, I would have expected her to discuss this with Aviva *before* she disposed of everything to understand what she would need to do. She provided Aviva with a lot of photos but most of the photos were of boxes and didn't show what was contained within them. So I don't think it's unreasonable based on this for Aviva to ask for evidence to substantiate the losses Ms M is claiming for. And, from reviewing the claims file, I'm satisfied Aviva has assessed the claim fairly based on the evidence it has.

I note Ms M has said she offered to provide receipts sooner, but Aviva said she didn't need to provide them. And when it later asked for them they were already disposed of. However, I haven't seen anything to support Aviva said this to her. But, even if the call handler did say this, there wasn't a long period of time between then and when Aviva did ask for evidence. And I would have expected Ms M to retain the evidence in knowledge she was making a significant contents claim. So I don't think she's lost out even if Aviva did provide misleading information, which I don't think it did.

General customer service

Ms M has suggested that Aviva's contractors have racially discriminated against her as she says that can be the only explanation for how they communicated and treated her.

I should first set out that it's not our role to say whether a business has acted unlawfully or not – that's a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things into account including relevant law and what we consider to have been good industry practice at the time. So, although it's for the Courts to say whether or not Aviva has breached the Equality Act 2010, we're required to take it into account, if it's relevant, amongst other things when deciding what's fair and reasonable in the circumstances of the complaint.

The Equality Act 2010 ('the Act') is relevant here and I've thought how it applies in Ms M's case. The Act prohibits several types of discrimination – such as direct and indirect discrimination and victimisation – and the relevant protected characteristic here is race.

I've considered what Ms M has said but I haven't seen anything to show Aviva treated Ms M differently because of her race. I don't dispute it caused delays – as I set out above – but I can also see that there were frequently strong differences of opinions between Ms M, Aviva

and its contractors. But I don't think what Aviva said to Ms M was unreasonable or it said anything it wouldn't have said to someone else in the same situation.

Ms M has also said that several of Aviva's call handlers were rude and dismissive to her. Aviva have provided copies of the telephone calls she had with Aviva, but I haven't seen anything to support that Aviva's call handlers didn't act in a professional way. I recognise Ms M didn't always agree with what the call handlers were saying and was unhappy they wouldn't agree with her, but this doesn't mean they were rude or dismissive. And I'm satisfied the call handlers acted in a fair and reasonable way.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Aviva Insurance Limited to do the following to put things right:

1. Increase the compensation it said it would pay to £1,000. It should pay this to Ms M directly if it hasn't already done so.
2. Cover any increased costs Ms M can show she incurred as a result of drying out her property. It should add 8% simple interest per year from when Ms M paid it until she gets them back*.

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

I make no further award.

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

Guy Mitchell
Ombudsman