

The complaint

Miss P complains about Aviva Insurance Limited's ('Aviva') response to a claim she made on her property owners insurance policy for malicious damage.

As some of Miss P's dissatisfaction is about the actions of Aviva's appointed agents and Aviva have accepted responsibility for the actions of those agents, in my decision any reference to Aviva should be interpreted as also covering the actions of their appointed agents.

What happened

The background to this complaint is well known to Miss P and Aviva. Rather than repeat in great detail 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.

Miss P notified Aviva on 3 March 2023 that she wanted to claim against her property insurance policy. The claim was accepted. Miss P accepted an offer to sell her property on 14 March 2023. An agent of Aviva's (a loss adjuster) visited the property on 20 March 2023. Miss P exchanged and completed the sale of her property on 19 April 2023.

Miss P later raised a complaint with Aviva. She was unhappy with the service received, claim delays and the settlement offered. Aviva partially upheld the complaint and offered £1,300 compensation for the service provided. Remaining unhappy, Miss P referred her complaint to our Service for an independent review.

Our Investigator recently recommended that the complaint be partially upheld. As the dispute remains unresolved, it was referred to me for a decision. I recently sent both parties a copy of my provisional, intended findings. 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.

I'm sorry to hear about the health problems Miss P has been living with. I'm also sorry that Miss P has been the victim of crime, regarding the damage to her property.

Responses to the provisional decision

Both parties confirmed receiving the decision. Miss P responded in detail, but her comments don't change the decision I'd intended to reach. I won't respond to her comments in equal detail, but will address the main points below:

- Miss P is correct that the policy didn't require her to tell Aviva she was selling the property. But it stands to reason, that if the property was worth more in a repaired condition, sharing this information with Aviva could only be a positive thing in the interests of expediting the claim. I find her comments about not doing so because she 'risked being prosecuted for blackmail' to be a hypothetical scenario that is neither realistic nor persuasive.
- Miss P has referred to the time Aviva took to accept liability. As explained in my earlier findings, there are two key relevant time periods in this complaint: 1- the initial response *prior* to the sale and 2- Aviva's actions *after* the sale. Miss P has said: "*I was also not in a rush to sell the house if damages had been corrected, I would have waited for the highest offer.*" But this ignores that Aviva agreed to cover the cost of an invoice provided by Miss P whilst claim validation was ongoing - prior to the sale of the property. Miss P still chose to sell the property in the condition it was in.
- Miss P refers to Aviva conceding they made 'many mistakes' during the claim. But the letter Miss P has referenced is in relation to the period *after* the sale had already taken place. Aviva acknowledged delays in responding to the complaint in November 2023 and a period between 8 June 2023 and 7 September 2023 when their loss adjuster wasn't in contact with Miss P. I still find the compensation offered is within the appropriate award category.
- Our Service's role here is that of a complaint handler, not a claim handler. If Miss P has any invoices for works carried out prior to the sale of the property, as per my direction, she can provide these directly to Aviva.

As no new evidence or arguments have been presented that would materially impact the outcome of this complaint, I find no fair or reasonable reason to deviate from my earlier findings. They form the basis of this, my final decision.

The scope of my decision

My decision will primarily consider the response of Aviva to this claim event. This includes the service provided, time taken and their communication. Miss P has said that she had to sell her property for less than it was worth due to Aviva's actions. I will only go on to consider any consequential loss Miss P says she's suffered if I find any failings on the part of Aviva between the notification of the claim (3 March 2023) and the sale of the property (19 April 2023).

As Aviva have offered Miss P £1,300 to recognise service failings and delays, I will consider whether that offer goes far enough to recognise the impact on Miss P and to put things right. In a recent response, Miss P has referred to Aviva covering the cost of any increased property insurance premiums. That issue would first need to be raised with Aviva as a complaint before our Service could investigate. I won't be addressing this point in my decision.

My findings below cover the initial early stages of the claim, and then the period from the property sale information being shared (19 April 2023) until the final response letter dated 5 August 2024.

Claim notification until the property sale

Miss P didn't notify Aviva that the property was for sale. They became aware on 19 April 2023. No persuasive explanation has been provided by Miss P that would explain why she

didn't make Aviva aware sooner. It'd have been in her best interest to have the property in the best condition possible for selling, to maximize its' value.

I find that following the claim notification, Aviva carried out appropriate and proportionate claim validation checks, given the nature of the claim/damage. The Insurance Act 2015 allows for a reasonable investigation into claims before settlement. I find that these initial claim validation checks didn't cause unnecessary or avoidable delays in the early stages of the claim.

Miss P didn't communicate to Aviva that there was any urgency regarding repairs due to the pending sale. I also note that Aviva requested Miss P submit a quotation for repairs needed on 4 April 2023. This quote was received on 11 April 2023 (£12,386) and Aviva approved it on 13 April 2023.

Having carefully reviewed the evidence, I'm not persuaded at all by Miss P's argument that Aviva's poor handling of the initial claim forced her to sell the property. She's said:

"I could have pulled out anytime before or delayed the sale if Aviva had confirmed liability sooner"; and

"I did try to push for an answer from them on this before making a final decision to go ahead with the sale. I was not in a position to keep the house in the state it was in while waiting for an answer from Aviva which in the end was not given until May 2024. Had I not sold the house it would have been left rotting until the time which could have led to structural issues and I did not feel I had any choice but to sell"; and

"I was in no rush to sell prior to this but the state of the house and not being able to pay for the repairs left me with no choice."

But the evidence undermines this and shows that Miss P accepted an offer to sell the property 11 days after the discovery of the damage – before Aviva had even visited the property - and she didn't make Aviva aware that a sale was even happening until after it had completed.

Had there been significant delays or uncertainty, I might be minded to accept that Aviva's actions left Miss P with no option other than to sell the property to prevent its' deterioration. Instead, I'm more persuaded by Aviva's position: *"Insd's decision to sell premises in damaged condition was made in infancy of claim and before [redacted by Ombudsman] attendance"*.

I find that Miss P did not take any reasonable mitigation steps to limit her loss of sale value, give Aviva a fair opportunity to respond to the claim prior to completing on the sale of her property, or make Aviva aware of the timeframes she was working to. It follows that I don't need to make any findings on what the value of the house would've been in a repaired condition – as I've not found any failings on the part of Aviva's initial response to the claim that mean they are responsible for the consequential loss (decreased sale value) that Miss P is claiming. I'll return to this point, later in the decision.

For fairness and completeness, I've also considered if any other mitigation can apply here to enable a fair and reasonable complaint outcome. I've thought about the personal health difficulties Miss P has described and that it seems she wanted to break her ties with the property following the discovery of the crime. But I don't find that these are mitigating factors.

The service provided after 19 April 2023

Aviva have already conceded that the service provided after they were made aware of the property sale was extremely poor. It's clear they let Miss P down. There were months that passed with nothing progressing on the claim and multiple communication failings. This goes against the intention of ICOBS 8.1.1.

Whilst I don't wish to detract from the impact on Miss P, I find the offer of £1,300 is within the appropriate compensation bracket and is in line with our published guidelines.

<https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience>

I note in an email to Aviva dated 16 September 2024, Miss P indicated that she'd accept £1,400. Although I won't be directing Aviva to increase their offer, this is still in the same compensation bracket as the offer already made.

Aviva's offer

In this part of my decision, I'm considering the claim settlement offer of £8,289.56 made on 2 August 2024. It was formed of:

- the reduction in market value (£5,000),
- other repair costs (£657);
- loss of rent for 45 days (£2,250)
- 8% simple interest per annum (£632.56)

Aviva deducted from the offer, the policy excess and explained that their working assumption was the uninsured losses at the property exceeded the security deposit Miss P had retained from her tenant. Miss P didn't accept that offer.

Our Investigator recommended that Aviva calculate the reduction in the value of Miss P's property and pay the lowest of either that reduction or what the cost of repairs would be. This would be in keeping with how wider industry might settle this type of claim following a sale where repairs weren't carried out.

However, whilst it could be argued that Aviva including a £5,000 loss in value award is a concession that they accept liability for that 'loss', for me to direct Aviva to increase any loss in value award, I'd have to be persuaded - on balance, that they were responsible in the first instance – and I'm not persuaded. I've not found any significant failings in Aviva's initial response to this claim that sufficiently persuades me they're directly responsible for Miss P having to sell the property in an unrepaired condition or they were afforded a fair opportunity to carry out repairs as claim validation checks were ongoing.

I have noted that terms 7.4.3 and 7.4.3.1 (page 17) of the policy terms set out: *'We will not provide cover if You...do not incur the cost of replacing or repairing the Property Insured...'* But in the specifics of this complaint, I don't find that this means Aviva don't have to pay any part of the claim – as they'd already agreed to settle the referenced invoice. The value of repairs may well have been higher - had repairs begun - but the sale of the property prevented this occurring. That was a decision taken by Miss P and I don't find that Aviva are liable for any loss of value suffered when selling the property.

I've set out below what Aviva will need to do to put things right.

Putting things right

Under our fair and reasonable remit, (DISP 3.6.1) I find that the fairest way to resolve this dispute is as follows:

- Aviva will need to pay Miss P the offer of £1,300 they previously offered to recognise their service failings.
- Based on the available evidence, the quote provided for repairs is the value of £12,386. This is the value of repairs that Miss P provided, and Aviva agreed to.
- Miss P seemingly chose not to have most repairs carried out and decided to sell the property in an unrepaired condition. Miss P refers to her buyer spending upwards of £100,000 on repairs, but the evidence shows she submitted an invoice for £12,386 which was approved after Aviva had already visited the property.
- Aviva will need to re-calculate the settlement figure of £12,386 and add the loss of rent (£2,250) they agreed (unless this has already been paid to Miss P). On this total amount, they will need to add relevant interest (8% simple per annum) from a date one month after first notification of the claim, until the date claim settlement is made to Miss P. They can fairly deduct the policy excess from the settlement.
- I'm satisfied Miss P has been afforded a fair opportunity to provide further supporting evidence that she had any other repairs (covered under the policy) carried out prior to the sale of the property and she has failed to do so. However, for fairness, if she now has any evidence of further outlay, she can provide these invoices/proof of payment directly to Aviva for their consideration.

Subject to reasonable proof of her outlay, and if those costs would've been covered by the policy, 8% simple interest per annum would need to be calculated from the dates of those invoices/proof of payment until the date settlement is paid to her. For clarity Miss P should not be doubly indemnified if these repair costs were originally part of the quote for £12,386 that she provided.

My final decision

My final decision is that I partially uphold this complaint. Subject to Miss P accepting the decision before the deadline set below, Aviva Insurance Limited will need to follow my direction as set out under the heading '*Putting things right*'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 14 May 2025.

Daniel O'Shea
Ombudsman