

The complaint

A charity, which I will refer to as K, complains about the handling and settlement of its commercial property insurance claim by Aviva Insurance Limited.

What happened

The background to the complaint is well known by both parties. So, the following is intended only as a summary. Additionally, although a number of individuals have been involved on both sides, I have largely just referred to K and Aviva for the sake of simplicity.

Despite a number of requests, unfortunately Aviva has not provided the Financial Ombudsman Service with all of the information we have asked for. The documents not provided include some we would normally expect to see as part of a respondent's file, but also relate to specific requests for information that our Investigators and myself have made. I consider that I am able to reach my decision without these documents, however I have had to make a number of assumptions around certain issues.

K operates a music band and had a commercial property insurance policy, underwritten by Aviva, which provided cover for K's buildings along with its instruments and other items. In 2019, K's premises suffered a fire, causing damage to the building and instruments, etc. A claim was made on the policy. The claim was accepted by Aviva and, over the following year, assessments were made of the level of damage and cost of repairing this.

Unfortunately, despite being specifically requested to provide this information, Aviva has not confirmed exactly what has been paid on the claim. However, I understand that, following K's request for this to be settled on an interim basis whilst discussions over the rest of the claim continued, Aviva settled the claim for the instruments at around £60,000 in late 2019.

A September 2019 tender report set out that the cost of reinstating the building would be just over £180,000 (just over £216,000 including VAT).

Given the sum insured for the building had been set at £177,849, Aviva considered that the reinstatement costs showed this would not cover the cost of rebuilding the property – which is what the sum insured ought to have covered. So, Aviva said K had not set the amount of the sum insured high enough, and considered K to be underinsured. Aviva said that this meant the most it was willing to pay toward this part of the claim was just over £154,000 – less costs already incurred. This offer was later increased to £173,467.

In June 2020, Aviva said that around £28,000 had already been spent on making the site safe, etc. It isn't clear if all of this sum included VAT. It also isn't entirely clear whether or how much of these initial works formed part of the items on the tender report (which referred, without any real specifics, to works "generally"). It does seem this amount included professional fees. And also, some costs were included which might be more closely associated with the contents element of the claim.

K was unhappy with this – including the costs/expenses Aviva had already paid, the lack of transparency and clarity (including over the definition of terms within the policy), and with

other aspects of the handling of the claim. And a complaint was made in October 2020. Issues were raised directly with Aviva, and with K's broker (B). B also contacted Aviva directly at this point. Unfortunately, Aviva has not provided the Financial Ombudsman Service with a copy of the correspondence actually sent to it by B at this point, despite having been requested to do so.

Aviva then issued a single final response letter, sent initially just to B, but passed to K in December 2020. I have previously issued a jurisdiction decision, setting out that this was the final response letter in relation to the complaint K had made. And that, as K did not then refer its complaint to the Financial Ombudsman Service within six months of this letter, the issues involved in that complaint do not fall within the jurisdiction of the Financial Ombudsman Service. This would include the issues raised by B on K's behalf.

However, matters with the claim then continued. In 2021, K obtained a cost report. This was apparently based on architectural drawings and using second quarter 2019 rates. This gave a reinstatement sum of just under £156,000 – excluding VAT or professional fees. In January 2022, K passed the report onto Aviva, raising a number of specific issues. And asked Aviva to review the claim. In May 2022, Aviva said that "all matters have previously been addressed" and that it was "unable to review the offer made".

K tried to pursue this in September 2022, and then again through the early part of 2023. K was at this time also pursuing a response to the issues it had previously raised as part of its 2020 complaint. Aviva maintained that its 2020 final response letter marked the end of the matter and that it would not be reviewing things further.

K ultimately brought its complaint to the Financial Ombudsman Service. K also provided a priced schedule of works which had been produced by a construction company (which I'll refer to as S) in October 2021, based on the schedule Aviva had used to produce its tenders. It doesn't seem that S's quote had been shared with Aviva previously. K has said it was waiting for engagement from Aviva. S's quote concluded that the cost of reinstating the building was around £122,000, exclusive of VAT and not including the £28,000 costs Aviva had paid. K has since commented that this price was for a reduced scope of works, rather than a full reinstatement.

As I say, I issued a decision on the Financial Ombudsman Service's jurisdiction to consider the complaint. Our Investigator then considered the merits of the parts of the complaint that were in jurisdiction. He thought that, given K is a charity, it would not have had to pay VAT on (re)building a property of this nature from scratch. So, this and the reports/quotes K had produced after Aviva had dealt with the initial complaint, led our Investigator to conclude that it was not fair or reasonable for Aviva to have considered K underinsured – nor to have maintained this position.

Our Investigator then considered the different values the reports/quotes provided by Aviva and K had come to. But ultimately said that Aviva settling the claim using the sum it received from its tender process was not detrimental to K. And that the amounts already paid by Aviva should not be deducted from this sum.

Lastly, our Investigator did not consider Aviva had dealt with the reports/quotes received from K in the manner that it ought to have. And he considered that an interim settlement ought to have been made on the claim, two months after it had first been made. But that this had not happened, for the buildings' element of the claim, until November 2024. So, he thought Aviva ought to add interest to any payment made to K, from this date to when each settlement was made. And that Aviva should pay K £500 to recognise the inconvenience caused.

K agreed with this outcome. Aviva did not dispute the findings over the underinsurance element of the complaint, but said that it was reasonable to use the costs outlined in S's quote as the basis for the claim settlement. So, said that this meant no further payment was due following the November 2024 settlement. It also said that, regardless of this, it should not be required to pay more than the sum insured. Aviva also said that it had offered K an interim payment, but that this was not accepted. So, did not think it should pay any interest on the settlement amount.

Our Investigator wasn't persuaded that Aviva had made it clear that any offer made could be accepted on an interim basis. As he was unable to resolve the complaint, it has been passed to me for a decision.

I contacted Aviva, attempting to resolve matters informally and asking for further evidence.

However, although Aviva was willing to increase the settlement to match the £180,444 tender value, it maintained that it was not reasonable to pay interest on this sum – largely because K had not actually made any payments itself.

I issued my provisional decision on 28 April 2025. The following is an extract from that decision:

“Our Investigator has said that, taking into account Aviva's tender and the cost it concluded would be needed to pay for the repairs, Aviva ought to pay the full sum insured as a cash settlement. Aviva has agreed to this, but has said that interest should not be payable on this sum.

Whilst I agree with our Investigator that using the tender quote Aviva produced to assess this part of the complaint is not detrimental to K, I do need to consider whether this is fair and reasonable to both parties in all of the circumstances of the complaint.

K has, by virtue of the quote from S, said that it would have been able to complete the works for around £147,000 (including VAT). Added to this, (at least some of) the costs of the works Aviva has already paid for would need to be taken into account. For the purposes of this decision, I have removed the element potentially relating to the contents claim, and have assumed that the sums involved already include VAT. This would give a total settlement of the buildings claim of around £164,000.

Only the £147,000 part of this was outstanding to K when this complaint was brought to the Financial Ombudsman Service though. And, given K has relied on this amount as being what was necessary to settle the claim, I cannot fairly and reasonably require Aviva to pay more than this in settlement of the claim.

Whilst I am satisfied this would fairly and reasonably resolve the claim though, this does not fairly and reasonably resolve the complaint.

When K got in touch with Aviva in 2022, Aviva ought to have considered the additional evidence provided and, if necessary, asked for further evidence if it had not been included, for example the quote from S. Having taken this into account, Aviva ought to have altered its decision on the underinsurance element of the claim. And it ought to have made K a revised offer, based on the quote from S.

It is notable that this revised offer would be less than the offers Aviva had previously made to settle the claim. But it would have been made on the basis that there was no underinsurance and so would have accurately responded to the claim.

Aviva has said that the offers it made previously could have been accepted on an interim basis. It has pointed to the fact that K was aware that it had settled part of the claim, relating to the instruments, on an interim basis whilst the rest of the claim – relating to the building and other contents – was disputed. So, Aviva considers K ought to have accepted the offer on the buildings part of the claim on an interim basis.

However, this ignores the fact that when making its offers, Aviva made comments such as, “I reserve the right to withdraw the offer”, “if we are unable to agree the settlement based on the above figure/s, then I will withdraw this offer”, and “for the avoidance of doubt, this payment is in full and final settlement of this claim and no further payment will be issued in relation to the same.”

In the face of such comments, I do not consider it is reasonable to expect a customer, with no real knowledge of insurance claims, to understand that it could take this offer on an interim basis. So, I am not persuaded by Aviva’s comments. And I think it ought to have been made clear to K that this offer could be accepted on an interim basis.

Aviva also ought to have recognised in 2022 that it should have correctly concluded in 2019 that there was no underinsurance issue relating to K’s policy. And it should have offered K interest on the claim settlement from just after the claim had been made (taking into account a reasonable timeframe for the claim to be assessed).

Aviva did not appropriately respond to the additional information it was sent in 2022. Aviva’s failure here has, more likely than not, led to consequential losses.

Aviva has made the point that K has not spent money on making the repairs, so has not been left out of pocket. Whilst this is true in one aspect – K hasn’t actually spent anything (significant) in this regard – this ignores the wider impact.

The lack of this payment meant that works to repair the building haven’t commenced. This has meant K has had to make other arrangements for its band, causing inconvenience and potentially financial loss.

More significantly, it also means that the cost of the works has likely risen. I think it is fair to say that in the past few years, the cost of construction has increased significantly. And the fact that K will now have to pay more than it would have in 2019 is a direct and foreseeable consequence of Aviva’s failures to deal with the claim appropriately.

There are two potential ways of resolving this issue.

Option One is that a third party expert can be appointed, with the purpose of carrying out an assessment of the building in its current condition, and determining the cost of reinstating it to its condition when new. Aviva would then need to pay K the difference between this and the £147,000 claim settlement amount. Aviva could deduct the amount of ‘overpayment’ it made in November 2024 from this. But it would not be able to cap this settlement at the sum insured. This payment would be in relation to the complaint settlement, and would not be subject to the terms of insurance.

Option Two is that Aviva adds interest, at a rate of 8% simple per annum, to the £147,000 claim settlement from a point two months after the claim was first made, to the date in November 2024 when the interim payment was made. Similar to the above, Aviva could take into account the ‘overpayment’, but would not be able to cap

this settlement. As a very rough estimate to aid the party's understanding, this is likely to be somewhere around £50,000 in interest.

My preference is for Option Two, as this would bring finality to the situation. In the absence of further comments on this, I will direct Aviva to resolve the complaint in this manner. But I understand either party may have some issues with this and may prefer Option One.

K does have a number of other specific complaint points. As I have indicated a number of these relate to issues that formed part of the 2020 complaint and so, given the timing of K bringing its complaint to the Financial Ombudsman Service, are not within my jurisdiction to consider.

K's pursuit of these issues does also go some way to explaining why Aviva did not fully respond to the communications K made in 2022 and 2023. However, Aviva ought to have recognised that – along with a repetition of earlier concerns – K was bringing new evidence relating to the claim that ought to have been considered.

As I've said, the delays and handling of the claim caused K inconvenience in having to make other arrangements for its band. I have not been provided with details of any costs associated with this, nor a comparison with how these compare with savings relating to not having to use its own premises. So, I will work on the basis that there is not a material financial detriment here that needs separate redress. This does not though mean that there was inconvenience which otherwise would have been avoided.

Similarly, Aviva's handling of the claim and its communications from 2022 onwards have clearly caused K a significant level of inconvenience that ought to have been avoided.

Included in this is Aviva's failures in providing the Financial Ombudsman Service with timely and complete responses to requests for information. This has impacted K in terms of how its complaint has progressed.

K is though a charity and is a legal entity in its own right. The policyholder and complainant here are the charity itself. So, whilst I appreciate the individuals working for the charity may have been significantly frustrated by this whole process, the charity itself is not able to suffer emotionally. And I am unable to take into account any impact on the individuals.

Taking everything in the round though, I am persuaded that Aviva ought to compensate K £750 for the inconvenience caused to it that ought reasonably to have been avoided."

Aviva did not respond to the provisional decision, despite being chased.

K made a number of comments. Several of these focussed on certain wording used in the summary of the complaint. However, K did make a number of other points. These included that:

- The £122,000 quote from S was for a reduced scope of works and should not form the basis for the settlement of the claim.
- K didn't agree to the initial costs Aviva paid for on the claim. K considers these were inflated and the process demonstrates a lack of transparency from Aviva.
- The decision from my colleague relating to B's actions said that any issue relating to

the wording of the policy would need to be raised with Aviva, and K did this in 2024. So, these issues do form part of the current complaint.

- K has already had to pay around £6,000 plus VAT for cleaning and decontamination of the property, due to damage from pests/birds.

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 am upholding this complaint. I'll explain why and what this means.

As I said in my provisional decision, the summary above is not intended to capture the full detail of the circumstances leading to this point. And elements have been summarised, rather than all of them being precisely stated. The events in question span a considerable period, and there have been multiple, detailed exchanges. So, whilst I note K has made some comments about wording I used in my provisional decision, generally speaking I have not felt it necessary to amend what I said previously.

However, I would like to assure both parties that I have considered their submissions in full. I will though be focussing this decision on what I consider to be the key outstanding issues that I am able to consider as part of this complaint.

K has said that the issues relating to the wording of the policy should form part of this complaint. However, as I have previously determined, I am unable to consider anything that formed part of the complaint made in 2020. The 2020 final response letter refers to the allegation of ambiguity in the wording of the policy documents. So, as consideration of this formed part of the complaint that was not referred to the Financial Ombudsman Service within the timeframe for doing so, a complaint about this is not within my jurisdiction to consider.

I note that my colleague referenced the fact that the wording of the policy was something Aviva would be responsible for. But she made no finding that a complaint about that would be in jurisdiction. She was making the finding that she was unable to hold B responsible for this issue.

Ultimately, I consider the issues around the wording of the policy documents, as well as those around the costs Aviva initially incurred, the tender process, and the transparency associated with these, were all matters that fell under the complaint considered by Aviva in 2020. As K did not refer its complaint about these issues to the Financial Ombudsman Service within six months of Aviva's 2020 final response letter, I consider that I am unable to determine these issues as part of this complaint. I appreciate K will be unhappy with this, but I have provided my reasoning for this in my 2024 jurisdiction decision.

In essence, the only matters that I am able to consider are Aviva's actions following K providing the 2021 report and later quotes.

I take on board K's comments around the scope of works in the lower quote from S. However, the second quote from S was stated to be lower, "because some of the items seem unnecessary or excessive to what we feel is required or linked to damage caused from the fire." This indicates that S believed the necessary works to address the claim could be completed for the quoted sum. So, I am not persuaded that the £147,000 would not have been adequate to complete the necessary repairs. I do appreciate this does not include any professional fees that were outstanding at that point though.

However, given K's disagreement here, and Aviva's lack of a response to the provisional decision – along with the lack of clarity from Aviva on what sums have actually been paid already – I consider that “option two” set out above is the most appropriate way to resolve this complaint.

This will involve Aviva providing K with a choice of three independent loss adjusters or similar experts. K will then be able to choose one of these to assess the cost of reinstating the property from its current condition. And Aviva will need to meet this cost.

Aviva can take into account the sums it has already paid to K in relation to the building repair (i.e. the November 2024 payment). Any sums that Aviva paid to K with the intention of allowing it to complete the repairs can be deducted from the sum Aviva now needs to meet.

The claim should be recorded on the basis of the £147,000 quote, plus any costs that have already been paid by Aviva and any professional fees in line with the policy. And any sums over this that the loss adjuster determines are payable to K (or that have already been paid) should be recorded as compensation for the complaint.

K has likely made something of a saving in relation to certain maintenance costs that it has not had to meet over the past few years. But, thinking about things in the round – and considering it is also likely there were additional costs involved in using alternative premises – I consider these balance out.

However, K has had to meet substantial costs of around £6,000 plus VAT that it most likely would not have incurred relating to dealing with pests/birds at the property. I consider these to be an additional consequential loss K has incurred as a result of Aviva's handling of the claim. Had the claim been resolved when K provided the additional information in 2021/2022 the repairs would most likely be complete and the building would not be exposed to this further damage. So, I do consider Aviva ought to meet these costs as well. Again, this should be recorded as part of the complaint settlement rather than as part of the claim.

Again, taking things in the round, I am persuaded that the inconvenience caused to K by this whole process warrants an award of £750 compensation.

Putting things right

Aviva Insurance Limited should put things right by:

- Providing K with a choice of three independent loss adjusters
- Once K has selected one of these, Aviva should pay for the loss adjuster to assess the cost of reinstating Ks premises
- Aviva should then pay K the outstanding sum (taking into account payments already made to complete these works)
- Aviva should also pay K the amount it recently spent on dealing with the pest/bird issue, and
- Aviva should pay K £750 compensation.

My final decision

My final decision is that I uphold this complaint. Aviva Insurance Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 17 June 2025.

Sam Thomas
Ombudsman