

The complaint

Miss M complains about how Aviva Insurance Limited settled a claim she made on her commercial property insurance policy.

Reference to Aviva includes its agents.

What happened

Miss M holds a commercial insurance policy with Aviva. After a tenant in one of her properties she made a claim for the damage she discovered.

Initially Aviva declined the claim. It said the damage was caused by the tenant's lifestyle and general neglect of the property. It didn't consider the damage to be malicious – something the policy did provide cover for.

After further investigation it agree some aspects of the claim could be considered as malicious damage. But because it wasn't clear the damage was caused in one event, Aviva said each damaged item was subject to it's own claim and excess and thought some of the damage claimed for fell under that excess.

Aviva agreed the following was able to be claimed for as malicious damage:

- Glass and locks to the door of the property
- Patch plaster repair to the property
- Handrail in the hallway (falls under excess)
- Bathroom door and main bedroom with the hole in this and the framing (falls under excess)
- The toilet roll holder (falls under excess)
- The holes in the wall of the small bedroom (falls under excess)

Miss M didn't think this was fair and complained. She thought more damage should be included. This included damage to the kitchen worktops, carpets, staining to the walls, graffiti on the walls and damage to the front door and its frame. Miss M also thought Aviva should pay for the costs of removing and cleaning the property after the large amount of rubbish left in it by the tenant.

Aviva didn't change its stance but did offer £300 compensation for delays and poor communication. Miss M brought her complaint to the Financial Ombudsman Service because she remained unhappy.

Our Investigator ultimately thought what Aviva deemed as malicious damage and what it didn't was reasonable. But they didn't think it was fair that each bit of damage was treated as its own claim with its own excess. He thought it should be all classed as one claim with one excess.

Aviva agreed to our Investigator's assessment. Miss M didn't and asked for an Ombudsman's decision. She maintained that it was fairer to treat all she was claiming for as

malicious damage.

I wrote a provisional decision explaining that I was thinking of upholding the complaint. It said:

“Miss M’s policy covers her for malicious damage. But the policy doesn’t define what malicious damage is. So I’m satisfied it’s fair to take a standard definition in order to determine the scope of cover. So I take that to mean that the damage was done with intent to cause harm.

Here, I think what Aviva has agreed to deem malicious is reasonable. What’s in dispute is the damage it’s deemed to not be malicious and thinks is more likely caused by general neglect and lack of care for the property.

In reality, we’ll never know the intent of the tenant who caused the damage. But I think there are areas of damage that would be fairer classified as malicious. This is because they look like they were caused with the intent to do harm.

One aspect currently not deemed malicious damage that I think should be is the blood staining on the walls. Miss M has pointed out the pictures show that the sanitary products and indeed the blood on the walls looks to be fresh. I think it unlikely this was done accidentally or just through lack of care. So I’m persuaded this was done with the intent to cause harm and so should be fairly determined as malicious damage.

Therefore, I’m recommending Aviva include the costs associated with the blood staining from the sanitary products to be included within the claim.

Another area I feel should be fairly deemed malicious damage is the smoke alarms and the graffiti on the walls close to one of them. The graffiti I’m persuaded is fairer deemed as malicious damage rather than any lifestyle choice. And while it could be argued that the removal of smoke alarms is a lifestyle choice – to allow smoking in the property – I think their removal is a clear deliberate act, and something that was clearly going to cause harm to Miss M as the property owner by way of her needing to replace them.

So, based on this, I think Aviva needs to include any costs relating to replacing the smoke alarms and making good the graffiti damage in its settlement.

Another area I think that should be covered is the cost of rectifying any damage caused by the disposal of rubbish within the property. I understand Aviva’s position that this too was a lifestyle choice/neglect of the property. But I take a different view. Looking at the level of rubbish in the property, and its location some for instance filling a bathroom and some in wardrobes, I’m persuaded this is more than a lifestyle choice and was a deliberate attempt to cause damage and harm to Miss M by way of leaving her to clear it.

Therefore, I’m recommending Aviva include the costs associated with removing this rubbish and rectifying any damage caused by it.

There are however still elements of the claim which I think are still fairly not classified as malicious damage. It’s clear the property was not treated well at all. And some of the damage reflects that. This includes stains to worktops, damage to carpets and bowing shelves. I’m not persuaded this was done with the intent to cause harm, and agree with Aviva that it was more likely caused over time by the way the tenant lived and didn’t take care of Miss M’s property.

Similarly I’m not persuaded the damage Miss M is claiming for in relation to the door is

malicious damage. I can see why she thinks it is – because she thinks it was deliberately broken. But I can also see Aviva's point of view that it was more likely caused by constant misuse. Ultimately I'm not persuaded it's most likely it was damaged deliberately, with the intention to cause harm. It may have been, but for me to recommend Aviva pay out as part of the claim, I have to be satisfied it most likely was. So I think Aviva acted fairly when it said it wouldn't pay for this – because it thinks the damage wasn't caused maliciously, but rather was done from misuse over time.

Our Investigator thought it was fair to treat this all as one claim, with one excess. Aviva accepted this recommendation. I'm satisfied that fair. And that shouldn't change with the inclusion of the items set out above.

Aviva offered Miss M £300 for miscommunication and delays in this claim. I understand Miss M doesn't think this is enough and says further damage has been caused due to Aviva's delays. But I've not seen anything that persuades me that's the case. That said, I do think Aviva has unfairly excluded some claimed for damage from the claim. And that will undoubtedly have caused inconvenience. So, to acknowledge that it should pay a further £200 compensation. Taking the total to £500."

To put things right I recommended Aviva:

- *Include any costs relating to the blood-stained walls in this claim.**
- *Include costs relating to the removal of graffiti near the smoke alarm and the replacement of smoke alarms in this claim.**
- *Include costs relating to the removal of rubbish and damage caused by it in this claim**
- **Interest at a rate of 8% simple should be added. Interest to be calculated from the date Miss M paid them, to the date Aviva pays her*.*
- *Pay Miss M a total of £500 compensation.*
- **Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Aviva to take off tax from this interest. If asked, it must give Miss M a certificate showing how much tax it's taken off.*

Aviva didn't respond.

Miss M did respond. She accepted most of the findings but thought she should be covered for the door and provided further explanation and pictures to support her claim. She also thought she should be covered for loss of rent. And she thought she should be covered for damage to the bathroom cladding because she thought it was caused at the same time as some other damage previously accepted as malicious.

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 see no reason to depart from the majority of my findings. So, my final decision reflects the provisional decision set out above, with the following amendments and additions.

Loss of rent

Miss M has said because I've recommended further damage be included in the claim, her claim for loss of rent should now be accepted.

I can understand that, but I don't think that's the case. Aviva said the loss of rent cover is there for when the property is uninhabitable, not when the property is unable to be let out.

The policy says "*We will cover You if Your Residential Property or any of the Residential Units at Your Premises cannot be lived in or if access to them is denied as a result of Damage insured under the Property Damage Section*".

Looking at the damage, it's clear it would make it very difficult if not impossible to let the property out in its unrepaired state – because no one would *want* to live or certainly want to pay to live in such a property. But I don't think the damage covered by the policy makes the property unliveable in, there's no damage to water or heating facilities for example. I understand Miss M said she couldn't access the boiler which needed repairing, but I don't think that in itself means a loss of rent payment is due here. It was the broken boiler, not the rubbish making access to it difficult, that would have rendered the property uninhabitable.

So, unfortunately for Miss M, there's no loss of rent cover under the policy for her in relation to this claim.

I've considered whether Aviva's unfair exclusion of the damage I've said should be covered has meant the property has been unoccupied longer than it would have been had it accepted it. But I'm not persuaded that's the case. Unfortunately the property was left in such a state that work needed to be done to make it lettable again. Whilst Aviva's exclusion of the damage I think should be covered has caused Miss M additional cost, cost which I think Aviva should pay her, I'm not persuaded it added significant time to the repair job needed following the tenant's exit.

The front door

Miss M has sent in further pictures and explanation around the front door and why she thinks this should be covered under her malicious damage claim. She's pointed out that it must have been damaged within a small window of a few months.

I agree the evidence points to the door being damaged in a short window, but I'm not persuaded this means it was done maliciously. It could well have been that in those few months the tenant took considerably less care with the door, causing the damage.

Unfortunately for Miss M, I'm still not persuaded that based on the evidence, the door was damaged maliciously, and therefore I'm not going to require Aviva to include it in this claim.

Bathroom cladding

Miss M has said that she thinks the holes in the bathroom cladding were more likely caused maliciously than carelessly as Aviva suggests. She's pointed out that in the same room Aviva has accepted some damage as malicious.

On reflection I'm persuaded by Miss M here. I think it is more likely than not that the damage to the cladding was done at the same time as the other previously accepted damage in this room and done with the same intent – to cause harm. Therefore I think the holes in the cladding should be deemed malicious damage and included in this claim.

Putting things right

To put things right I require Aviva to:

- Include any costs relating to the blood-stained walls in this claim.*
- Include costs relating to the removal of graffiti near the smoke alarm and the replacement of smoke alarms in this claim.*
- Include costs relating to the removal of rubbish and damage caused by it in this claim*
- Include the costs relating to the damage to the bathroom cladding in this claim.*
- *Interest at a rate of 8% simple should be added. Interest to be calculated from the date Miss M paid them, to the date Aviva pays her.
- Pay Miss M a total of £500 compensation.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Aviva to take off tax from this interest. If asked, it must give Miss M a certificate showing how much tax it's taken off.

My final decision

My final decision is that I uphold this complaint. To put things right Aviva Insurance Limited needs to take the actions set out in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 25 July 2025.

Joe Thornley
Ombudsman