DRN-5850615

The complaint

A limited company, which I will refer to as C, complains about the handling and decline of its commercial property insurance claim by Aviva Insurance Limited.

What happened

The following is intended only as a summary of the events leading to this point. Additionally, for the sake of simplicity, I have largely just referred to C and Aviva even though other parties have been involved.

C is a commercial property owner. It held a property owners insurance policy underwritten by Aviva. The policy provided cover in respect of a particular premises. The premises was formerly operated as a foundry by a leaseholder. The leaseholder entered an insolvency process in early 2020, and vacated the premises. Aviva was informed that the premises were vacant.

In October 2020, third parties unlawfully entered the site and caused extensive damage, stealing various items – largely electrical cabling, but also other items. A claim was submitted to Aviva for this loss. Aviva queried whether C had complied with certain unoccupancy conditions, and in December 2020 said it was satisfied C had complied with the conditions of the policy. In January 2021, Aviva said that it could confirm the claim was validated. Then, in March 2021, one of Aviva's agents said the policy terms had been complied with.

Also in March 2021, Aviva's agents visited the premises to assess the level of damage. It was noted that at least one of the buildings at the premises had been demolished. And that C had removed various items and equipment from other buildings. C said that this was done for health and safety reasons.

In June 2021, Aviva requested various evidence, including documents relating to the works C had carried out following the insured event. Some of this evidence has been provided, but it appears there are a number of things that have not.

A schedule of works was prepared, indicating the cost of repair, etc. would be in the region of £10m. C said that, as Aviva had confirmed the claim had been validated and the policy terms complied with, Aviva should pay a settlement. Aviva responded saying that it needed C to provide the information requested before it could progress matters, and explained why this information was needed. And said that it had not accepted the claim – merely confirmed that the unoccupancy conditions had been complied with.

Some information was then provided, but this led to Aviva asking further questions. And in March 2022, Aviva indicated that it was going to conclude that the claim was not covered due to the Long Term Unoccupancy (LTU) exclusion relating to damage from malicious persons or theft. And that the claim was exaggerated by the inclusion in the schedule of works of damage not caused by the insured event, and that there was a lack of key supporting evidence. Aviva also said that, if a claim was met, the settlement would be on the basis of the "Indemnity" cover rather than the "Reinstatement" cover. This would only pay for

the reduction in the value of the premises as a result of the insured event – and Aviva did not consider that there had been any reduction in this value. Aviva confirmed this as its final position in September 2022.

In July 2023, C complained about this. It said that the original leaseholder had been expected to remain in possession of the premises for a number of years prior to their insolvency. And that whilst some works were carried out on site prior to the insured event, these were limited and were to tidy up the site. C said that, whilst there was a historical planning application that applied to the site, this was the previous owners'. C also repeated that Aviva had already accepted the claim as being valid and the conditions to have been met.

C did not receive an initial response to this, and brought its complaint to the Financial Ombudsman Service. Aviva then provided a response to the complaint. It said that it had intended its September 2022 letter to have acted as a complaint response. But also explained that its position remained the same.

Our Investigator then considered the complaint. She didn't think it was reasonable to say that Aviva should be liable for meeting a claim based on the comments it had made around validation and claim conditions being met. She was persuaded that the combination of concerns Aviva had over the site meant that it was reasonable for it to rely on the LTU exclusion, and that it was for C to demonstrate that this did not apply. Our Investigator did think that there had been delays on both sides, but that Aviva ought to pay £500 compensation in relation to these.

C did not agree with this outcome, and the complaint was passed to me for a decision.

Having carried out an initial review, I contacted both parties. I explained that – whilst I noted Aviva's concerns – I was not persuaded that it had done enough to show that the LTU exclusion should apply. I pointed out that there was some evidence of the premises being marketed for rental during 2020. And that a third-party was seemingly carrying out some "maintenance" work on C's premises whilst it was unoccupied.

I also said that the terms relating to the "Indemnity" rather than "Reinstatement" settlement were significant terms and had not been highlighted at the point of sale. So, I did not consider it was reasonable for Aviva to rely on these in the circumstances of the complaint.

However, I also thought that C had not provided all of the information Aviva had requested to support the claim. I thought Aviva's requests were reasonable. And that the schedule of works appeared – to my layman's eye – to be excessive and in parts unsubstantiated. So, I said that it was fair and reasonable for Aviva not to meet the claim. But I agreed that Aviva should pay £500 compensation for the claim handling issues.

C responded with further evidence relating to the activity at the premises between early and late 2020. And with comments from its surveyor on two reports Aviva's agents had produced over the condition of the premises and the schedule of works. C has also indicated that it is gathering further information about the necessity of the works.

Aviva responded saying that there remained doubts over C's intensions regarding the premises. It thought the premises was awaiting demolition or redevelopment. So, considered the LTU exclusion applied. Aviva said that, whilst some evidence relating to the marketing of the premises had recently been provided, this had not been provided to Aviva prior to the complaint and there remained some outstanding questions about this. Aviva also said that there was a lack of evidence showing the maintenance of the site/equipment. Nor had evidence of the condition of the site immediately prior and immediately after the insured

event been provided. Aviva considered the schedule of works and the strip out that had occurred prior to this to be indicative of an intention to demolish/redevelop. And that the health and safety reports did not justify the works that had occurred. Ultimately, Aviva did not consider that C had provided sufficient evidence of an intention to reinstate the property as a working foundry, and that the evidence available suggested an intention to demolish/redevelop.

Aviva said that the terms relating to settlement were clearly set out in the policy wording. Aviva also considered that C had not provided sufficient evidence to justify the schedule of works and that this responded to the insured event alone.

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 consider that Aviva should pay C £500 compensation for claim handling issues. But that Aviva's decision not to meet the claim based on the information it was provided is fair and reasonable. It may be that, if C can provide the evidence Aviva has requested, Aviva will need to change this decision. But my role is to consider the situation that existed at the time the complaint was made. I've explained why I've come to this outcome below.

Firstly though, I will just reiterate that the above is only a summary of the events and arguments. Both parties have provided detailed submissions covering a number of points. I've considered all of these. However, I have not commented on each of them within this decision. Instead, I have focused on what I consider to be the key issues. This is not intended as a discourtesy, but rather reflects the informal nature of the Financial Ombudsman.

Has Aviva already agreed to meet the claim?

The first issue is whether the comments by Aviva between December 2020 and March 2021 mean that the claim ought to be met.

I do note that Aviva said that the conditions of the policy had been complied with. But it is also clear that there was an initial investigation in November/December 2020 over whether the general unoccupancy conditions had been complied with. The comment made at that time is clearly in reference to this.

A later comment, in January 2021 confirmed the claim was validated. But I don't consider this is confirmation that the claim will be settled – either in full or part. Merely that there was an insured event.

In March 2021, Aviva's agent said:

> "I have referred back to Aviva and they have confirmed to me that they are satisfied that the policy terms and conditions have been complied with in respect of the claim."

Given the events that followed, I do consider this statement to have been somewhat misleading. However, the comment was made in response to C pointing to the previous comments that had been made – which were in relation to the unoccupancy clause. And it also should have been clear that there were a number of outstanding issues that had not been resolved.

Ultimately, I do not consider it would be fair or reasonable to say that Aviva should be required to meet the claim purely on the basis of these comments.

Has C evidenced the Insured Damage?

The terms of the policy include the requirement on C to "provide [Aviva] with all information and help [Aviva] require in respect of the claim". As well as this being set out in the policy documents, there is a general duty of a policyholder to assist an insurer during the course of a claim. This needs to be balanced by the insurer only making reasonable requests for information.

I have thought about the requests for information Aviva has made. These have evolved, along with Aviva's understanding of the situation – which is to be expected. Both parties are aware of the requests, so I have not set them out in full here. But the requests included information and documents relating to:

- The possible letting of the site
- Maintenance and mothballing of equipment on site pre-loss
- The demolition works on site
- The removal of equipment from site, including what was done with this
- Health and Safety reports
- Correspondence and reports from the surveyor.

Overall, I consider the requests Aviva made were reasonable. Aviva also provided explanation at times for why the information was needed. Aviva needed to understand what C's intentions were for the site, what condition the site was in pre-loss, and what damage was the result of the insured event.

There was some graffiti and other vandalism damage to the property. There was also evidently theft of various items – cabling, etc. And in the course of this theft, it seems most likely that there was associated damage. However, the schedule of works C has provided is extensive to say the least. And I don't think C has provided evidence that many of the work items listed in the schedule are as a result of the insured event.

C provided its own comments as responses to some of these queries, but only limited supporting evidence.

For example, Aviva asked about the demolition of one of the buildings, which C had said was done for health and safety reasons. C responded to explain that the removal of certain equipment from the premises had been necessary as it was damaged, and that this caused the buildings to become structurally unstable. But whilst I note the reasons C has given here, there is very little supporting evidence to show this was in fact necessary.

The risk assessments C provided, largely relate to the risks posed to the contractors undertaking the later works, and do not provide justification for the works themselves. They do note that the works were undertaken because of hazards and health and safety concerns. But provide little real explanation of what these were or what the cause was. For example, there is noted to be a serious fire hazard to the offices due to vandalism. But the actions being taken largely seem to relate to the removal of contents left over from its use as an office. There is no reference to the demolition of the building that was demolished.

C has said that it tried to get Aviva out to assess the site soon after the insured event. I have not been provided with evidence of this request – though I also don't think it ought to have taken Aviva until March 2021 to attend. So, I do have some sympathy with C feeling it had to take action rather than wait. But it also took this action without telling Aviva. And has not

provided substantial evidence to support that this action was necessary. It also does not seem that it has provided evidence of what was done with much of the equipment that was removed.

C has said that the removal of mechanical and electrical equipment has no bearing on the claim, as this needed replacing and could not be reused. But C hasn't actually evidenced that this is the case. Some of the equipment may not have been reusable, but some might. No evidence of an assessment of this has been provided to Aviva. And the disposal of the equipment means Aviva cannot assess this itself. C has also not provided evidence confirming how the equipment was disposed of – for example whether it was scrapped or sold, and what cost/return did this have. I do appreciate that Aviva did not attend the site for some time – and I think that it should have. But it is ultimately for C to evidence its claim. And even if the works/removals were necessary for health and safety reasons (which itself has not been fully evidenced), appropriate records ought to have been retained and/or the equipment stored somewhere securely.

C has made comments over whether other equipment would have restarted regardless of being mothballed. C has said that the length of claim would mean this would be unlikely. However, if the equipment had not been mothballed in the first place, it likely would not have restarted even if there had been no insured event. This would mean there was no loss of functioning equipment as a result of the insured event. So, it would be reasonable for Aviva to know whether equipment that is being claimed for had been mothballed or not. I appreciate that there may have been some difficulties with C carrying out such mothballing until it had resolved certain legal issues. But this does not mean that Aviva should be required to settle a claim for the loss of functioning equipment, if the equipment was not functioning at the time of loss. Regardless of C's reasons, this loss would not be due to the insured event.

It is possible that some of the functioning equipment could not be reused, even with new cabling. And C has indicated that evidence in relation to this is being sought. However, it is evidence of this nature that Aviva has been requesting for several years. And it is to Aviva that this evidence needs to be provided. At the point of this complaint being made, Aviva had not received this evidence. So, its decision not to meet the claim on this basis is fair and reasonable.

Similarly, C has said that its reasoning for demolishing the buildings are that they presented serious health and safety concerns. It has said that it will provide further detail. But at the time of this complaint, this information had not been provided. So, Aviva's decision not to meet the claim on this basis is fair and reasonable.

C has said that it, "accept[s] that not all items with the schedule are a direct result of the vandalism but there are certainly high portions which are relevant". C has said that the way this should be resolved is by a discussion on site by C's surveyor and Aviva's agent. However, C is required to provide evidence of its loss and to only claim for insured damage. This means that C needs to determine the extent of damage that it considers to be as a result of the insured event. And to set this out to Aviva, along with evidence to support that this is the case.

It may be that the level of works to the site that are required will involve addressing both insured damage, and non-insured damage that is required to bring the site back to the state of a working foundry. But this needs to be clearly defined by C. And C should only be claiming for the former. This will likely include some consequential damage caused by the theft. But there needs to be a clear, and evidenced, causation between the insured event and the claimed item. A policyholder should not be taking advantage of there having been an insured event to claim for items that they already needed to repair/replace.

Aviva has made, what I consider to be, reasonable requests for information and evidence. And I don't consider that C has complied with these. It follows that I do not consider C has evidenced its losses, or complied with the policy requirement to "provide [Aviva] with all information and help [Aviva] require in respect of the claim". So, I consider it is fair and reasonable for Aviva not to meet the claim at this stage.

Should C provide the information that Aviva is requesting, it will be open to Aviva to reconsider the claim. So, I have gone on to consider the other points in dispute.

Can Aviva apply the LTU exclusion?

This exclusion applies where the premises are vacant and are awaiting demolition/redevelopment at the time of the insured event. C's premises were vacant. So, the question is whether or not they were awaiting demolition/redevelopment.

I remain of the view that Aviva has not demonstrated that this exclusion applies.

It is initially for Aviva to demonstrate that an exclusion applies. Only once this has been demonstrated does the onus switch to C to show otherwise. That said, it is also for C to comply with the policy conditions around providing necessary evidence. And I note Aviva is not satisfied C has done this.

However, there is some evidence that C was attempting to market the premises as a foundry, which indicates that it was not intending to change its use pre-loss. Again, Aviva does have some concerns with the limited evidence of this that has been provided (though I should point out that the historic webpage of the estate agent's site that was passed on was something I sourced myself). But, I am satisfied by the information I have seen that there was an active attempt to market the property in its existing condition prior to the insured event.

I do note Aviva's concerns over the maintenance/mothballing of equipment on site. But, even though the property was used as one, C is not an expert in foundries. It would seem that a failure to carry out these works would cause C difficulties in being able to attract a leaseholder who was willing to take on the site without investment from C. However, such a failure in the management of the site does not mean there was an existing intention to demolish/redevelop. This would though have a potential impact on whether there was insured damage to this equipment – which I have referred to above.

I also note Aviva's concerns that some of the works undertaken on site post-loss might not fit with an intention to reinstate the foundry. This includes the removal of certain equipment and the demolition of buildings. I don't think it is clear whether this confirms the intentions one way or the other. It would, for example, be possible to replace the equipment and rebuild the building.

However, even if the intention now is to redevelop the site, this does not confirm that this intention existed prior to the insured event. It is the situation at the time of the insured event that is relevant to the LTU exclusion.

Aviva has said that some of the materials on site were removed prior to the loss. But, along with C allowing third parties to collect their own equipment, C has said that it removed some scrap that was on site. I don't think this demonstrates an intention to redevelop – and indeed such "tidying up" would be expected from someone trying to market their property.

Our Investigator was persuaded that the combination of all of these concerns was enough for Aviva to have concluded that the LTU exclusion could be applied. However, whilst I do

agree that C could have provided more information, at an earlier stage, I am not satisfied Aviva has demonstrated that the LTU exclusion can be applied. Aviva would be entitled to ask C further questions around this though, and C ought to comply with reasonable requests.

What is the appropriate basis of settlement?

The policy schedule sets out that claims will be settled on a "Reinstatement" basis. So, this is how a policyholder would expect a claim to be settled. This essentially means Aviva would be required to pay for damaged property to be rebuilt or replaced by similar property in a condition as good as its condition when new.

However, Aviva has said that the settlement of any claim would be based on the "Indemnity" basis set out in the policy. This allows Aviva either to settle based on the cost of repairing/replacing the damaged property to the condition it was in immediately prior to the insured event, or based on the reduction in the value of the premises. And it does not consider that the insured damage has been shown to have reduced the value of the premises. So, effectively, does not consider that there is a claim to meet.

The "Reinstatement" basis settlement section of the policy does include the following:

> "We will not provide cover if You do not incur the cost of replacing or repairing the Property Insured … However, the Basis of Claim Settlement - Indemnity will apply."

And Aviva's position is that, as C has not incurred the cost of replacing or repairing the property, the "Indemnity" provision will apply.

However, I have a number of concerns about how fair and reasonable it would be for Aviva to rely on this provision.

Firstly, at this point, I don't think C's intentions regarding the site have been fully established. C has said that it intends to reinstate it as a working foundry. Aviva has some concerns about this. Ultimately, I think further information may be needed from C.

Secondly, though, given the extent of the works that C says are required - and the cost associated with these – I don't think it is reasonable for C to have first incurred the cost before Aviva will meet the claim. It remains to be seen what the actual insured costs are. But the initial schedule of works was around £10m. I don't think a policyholder can be expected to find this level of money, following an insured event, before having their insurance claim met.

Thirdly, I consider the provision over the application of the "Indemnity" based settlement to be a significant term. A policyholder taking out insurance, and having the basis of settlement set out as being "Reinstatement", would not necessarily expect this to be altered by an insurer in the event of a claim. The term allowing for this is found amongst lengthy text concerning the basis of settlement within the policy. And I have seen no evidence that this was highlighted to C prior to the claim event. I don't think it is fair or reasonable for Aviva to rely on a significant term that it has not highlighted to a policyholder. Aviva has said that the terms are clear. But the clarity of a significant term is not enough for it to be reasonably relied upon where it has not been highlighted. So, I think Aviva ought to base any claim settlement on the "Reinstatement" basis.

I do think it would be reasonable for Aviva to make any settlement payments that are ultimately required on an interim basis. For example, to pay for the first phase of the works and for these to be completed before making a payment for the second phase – and so on.

Exactly what these phases would look like is something that would have to be determined at a later stage.

Was Aviva's claim handling appropriate?

I have thought about how Aviva has handled the claim. I should point out that for much of this period, Aviva has been waiting for C to provide information that has so far not been forthcoming. Requests for some of this information were made at least as early as June 2021, and are still outstanding.

However, Aviva has also not progressed the claim as it ought have. Aviva ought to have attended the site earlier than it did. Whilst I note the claim was made at the height of the pandemic, it isn't clear why it took almost half a year for a site visit to be made. I don't think the impact of this is that C is or was unable to evidence its loss. C could and should have taken its own action to ensure the preservation of evidence (retaining equipment rather than disposing of it, taking photos, etc.). However, this did create a delay.

Aviva was carrying out some checks on the situation prior to this. But these should only have taken a matter of weeks. And Aviva should have been making arrangements for someone to attend.

Aviva should also have been clearer about what conditions had been met, and what this meant for the rest of the claim process. Again, as above, I don't think this means Aviva is not entitled to continue to consider whether to meet the claim. But this clearly caused some confusion that ought to have been avoided.

C is a limited company, so isn't able to have experienced distress or frustration as a result of any of this. But these issues will have caused inconvenience that should have been avoided. And it is appropriate that Aviva compensate C for this.

Taking the situation in the round, I consider a payment of £500 is appropriate to address the claim handling issues.

Summary

Aviva has not shown it can fairly and reasonably rely on the LTU exclusion, so cannot decline the claim on this basis. And I do not consider it is fair and reasonable to base any settlement on the Indemnity basis, rather than the Reinstatement basis.

However, Aviva is able to currently not meet the claim on the basis that C has not sufficiently demonstrated the majority of losses it is claiming for arise from the insured event.

Aviva should though pay C £500 compensation for the claim handling issues that have been experienced.

My final decision

My final decision is that Aviva Insurance Limited should put things right by paying C £500 compensation.

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

Sam Thomas

Ombudsman