

## **The complaint**

M, a company, complains about a claim it made on its Aviva Insurance Limited business protection policy, which has not yet been finalised.

M says Aviva treated it unfairly and wants Aviva to cover it for the costs it is claiming.

M's complaint is brought by Mr M, but I shall refer to all submissions being M's own for ease of reference.

All references in this decision to Aviva include their claims handlers.

## **What happened**

M made a claim on its Aviva business protection policy following a flood to its business premises in July 2021. The premises was repaired and reopened in September 2022.

M's complaint is about the losses it says it has yet to recover from Aviva and the delays in resolving things.

Our investigator considered M's complaint and upheld it. He said Aviva needed to pay M roughly £17,510 as offered in settlement and recalculate M's claim for contents in line with our approach to underinsurance. M doesn't agree so the matter has been passed to me to determine.

## **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 uphold M's complaint for broadly the same reasons and in the same way set out by the investigator. Before I explain why, I wish to acknowledge the detailed nature of the submissions made by each party in this complaint, particularly through their representatives to each other. Whilst I have read everything they've said, I won't be addressing each and every point. That's not intended to be disrespectful. Rather it represents the informal nature of the Financial Ombudsman Service. Instead, I'll focus on the crux of M's complaint, namely whether Aviva treated it fairly.

There are matters I won't be addressing in this decision for the reasons the investigator has explained. These include the matters complained about by M and addressed by Aviva in their final response letter dated 2022. That's because M did not refer that complaint in time to this Service and as such those issues fall outside my remit. M has made a separate complaint about that which was assessed by an investigator. If M remains unhappy then it is entitled to ask for a final decision. Until that issue is determined in finality however, I won't be commenting on the time period M has asked for me to. Equally I can't comment on the ongoing complaints M has made beyond Aviva's final response letter dated 24 July 2024 as Aviva has not addressed these. As the claim is not yet resolved in finality with Aviva, M is entitled to bring a separate complaint about anything it remains unhappy with beyond 24 July

2024, provided the matters complained about have not already been addressed within this decision.

### *Underinsurance*

There is a dispute between the parties about the value of stock in trade claimed by M. Aviva says it has paid M around £3,270 for this because that was the amount C was insured for.

When the policy was renewed prior to the claim, the relevant law was the Insurance Act 2015, under which there's a duty to make a "fair presentation" of the risk. This duty applied at each renewal of the policy. When buying or renewing the policy the party seeking insurance – in this case, M – was required to disclose every circumstance they knew, or should have known, which would influence a prudent insurer in deciding whether to underwrite a risk or what premium to charge. In this case M only insured its stock in trade for the value Aviva has paid out. In light of that I'm not persuaded that it was entitled to claim anymore for this.

M has said it was entitled to a 30% uplift on this claim for three months in accordance with the policy terms which say:

*"We will increase the Sum Insured on each item of Stock in the Schedule by 30% for the months of November, December and January or for any other three month period selected by You and stated in the Schedule."*

M says this would account for the closure of its business during its busiest months. From what I've seen M didn't make this claim because it says its broker didn't highlight this term to it. Whilst that might be the case, I don't think that meant that Aviva needed to consider an uplift in the claim without M asking it to do so. So, I don't think Aviva did something wrong here. As the claim is not finalised, M is entitled to ask Aviva to now consider that uplift in accordance with the policy terms, with evidence, if it wishes to do so.

M has also claimed for its contents amounting to around £62,470. The sum insured for this is £45,710. Aviva has made an offer of around £45,680 based on the calculation of an average. On the other hand, M says it is not underinsured and that the information it gave Aviva was based on 2019 values, which were pre Covid. Whilst that might be right, the onus was on M to give a fair presentation of risk. The policy inceptioned in October 2020, so M had the opportunity to place the correct values on its contents at that time, which were very much during the pandemic. As a commercial entity it was up to M to ensure it was adequately insured rather than rely on 2019 values. Because of this it is not entitled to claim for more than it has insured the items for. Aviva however has not applied the correct calculation when taking into account the underinsurance in this case. As such it should do so now by recalculating the claim proportionately based on the how much M paid for its policy premium versus what it would have paid had it placed the correct value on its contents when renewing its policy. Aviva should only pay the percentage of the claim that is proportionate to what it would have charged if the contents had been correctly insured.

### *Business Interruption*

The policy terms say:

*“We will indemnify You in respect of loss of Income resulting from Damage to Property Insured Used by You at The Premises for the purpose of The Business to the extent of Cover under the Property Damage Section and where liability is admitted under a policy of insurance covering Your interest in such Property Insured.*

*The amount payable will be*

*(a) the amount by which the Income falls short of the Income which would have been received during the Indemnity Period due to the Damage*

*(b) any additional expense You incur to prevent or limit the reduction in Income during the Indemnity Period due to the Damage.”*

Aviva made an offer to settle this aspect of M's claim based on the reports of the loss adjusters it appointed. It's clear to me that the parties are in dispute about the turnover figures M has applied to its claim versus those applied by Aviva. The parties are still seeking to negotiate this issue and that there is willingness on both parts to do so. Indeed, I understand a settlement meeting has been arranged with a view to agreeing the matter in finality. My role isn't to determine M's losses, rather it's to decide whether Aviva treated M fairly. From what I've seen Aviva made an offer based on the evidence it was presented with by its loss adjusters which it was entitled to do. Given the parties have now arranged a settlement meeting with a view to discussing M's position, I'm satisfied that the matter is one where Aviva are open to considering M's position further which is in my view reasonable.

Aviva's offer to settle M's claim in July 2024 was as follows:

All other Contents - £43,929.42  
Business Interruption - £90,992  
Less policy excess of £250  
Total - £137,938.42

The offer for contents requires recalculation based on what I've said above. But even so, from what I've seen, Aviva has not paid out the sum it has offered to M in respect of business interruption. Based on this calculation there appears to be roughly £17,509 outstanding to M for business interruption. Once Aviva recalculates M's contents claim as I have directed, they should pay out the entirety of the sum offered for business interruption. I appreciate that this is subject to ongoing negotiations between the parties so the amount Aviva pay in finality in respect of this may well increase. But Aviva should pay the outstanding amount and make adjustments for the contents claim as I have directed above as minimum.

### *Policy renewal*

M argues that the delays in Aviva settling its claim have led to it being forced to renew its policy with them and that the premiums have increased significantly.

I appreciate that an ongoing claim is one M would need to declare when taking out cover elsewhere, but this would have been true regardless of whether the claim was ongoing or concluded. Equally I've seen nothing to support that M was obliged to renew its policy with Aviva. As such I'm not persuaded that there is any loss to M in this case, such that it was not able to mitigate it by seeking insurance with another provided at renewal.

### *Delays*

I'm satisfied that there are many elements to this claim that were and remain in dispute. For the period of the claim, I can deal with- post April 2022 until July 2024- I'm not satisfied that the delays in Aviva dealing with M's claim have been down to Aviva alone. There have been delays on M's part too in providing the evidence requested or responding to offers and there has been protracted correspondence by both parties' seeking to address the areas in dispute. Given the complexity and volume of issues in dispute between them, I can't say that on balance Aviva were responsible for the time taken to progress M's claim. Aviva were dependent on receiving legal advice in respect of the matters M has complained about through Solicitors and so I'm satisfied that there was good reason why the matter was addressed in the way that it has been during the period I can consider. It follows that I don't agree that the losses M is claiming as a result of delays are down to Aviva's actions.

### **Putting things right**

For the reasons set out above, Aviva should:

- Recalculate M's contents claim proportionately based on the how much M paid for its policy premium versus what it would have paid had it placed the correct value on its contents when renewing its policy. Aviva should only pay the percentage of the claim that is proportionate to what it would have charged if the contents had been correctly insured. The payment of this claim is subject to any applicable policy excesses or limits.
- Recalculate and pay the balance of the sum it has offered for business interruption once the contents claim has been recalculated.

### **My final decision**

For the reasons set out above, I uphold M's complaint against Aviva Insurance Limited and direct them to put things right as I have set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 11 November 2025.

Lale Hussein-Venn  
**Ombudsman**