

complaint

C complains about the way Aviva Insurance Limited handled the damaged stock element of its commercial insurance fire damage claim.

background

I issued a provisional decision on this complaint in May 2018, a copy of which is attached to this final decision. Aviva replied to my provisional decision to say it accepted my conclusions. It also set out how it had worked out what interest remained due and asked if I agreed with the figure reached. Aviva calculated that C was due further interest of £12,948 which it said it was prepared to pay to the estate of the late Mr M without delay and in full and final settlement of the claim and complaint. I confirmed to Aviva that I agreed with how it had worked the interest payment out and that my final decision, should it be accepted, would become binding on Aviva thereby bringing the complaint to an end.

Mr S also responded to my provisional decision on behalf of C. Much of what Mr S said repeated points he'd made previously and which had already been considered by me before I issued my provisional decision. Any new and relevant points he made can be summarised as follows:

- That he's provided written valuations for the equipment installed on both trucks. This is good documentary evidence. His valuation is more than fair and reasonable taking into account, as it does, only the equipment on the vehicles not the two cabs themselves. Yet I haven't accepted it instead preferring the paltry valuations of the equipment provided by Aviva made without supporting documentation. C is being treated very unfairly regarding the valuations of the recovery trucks for which it is not being indemnified;
- That I said Mr S had no evidence about the value of the recovery trucks despite him obtaining written evidence as to the value of the equipment on the two vehicles;
- He can't prove the valuation of the vehicles but that's irrelevant as he's only claiming for the equipment. He also can't prove the condition of either vehicle;
- I've overturned the advice and recommendations of our adjudicator. I've not read his emails correctly. Our adjudicator said that nothing less than documentary evidence from dealers on headed notepaper would be considered yet I've accepted guesswork from Aviva;
- When vehicles are destroyed by fire it's almost impossible to validate their condition;
- That he disagrees that Aviva shouldn't be made to pay Mr M's solicitor's fees. He now has an invoice for much less than the original estimate – £1,080. A layman such as Mr M would not have had the necessary knowledge or expertise to negotiate with Aviva. The claim was complex. Aviva should pay the costs because they didn't answer the emails and caused delays;
- He is not concerned whether the cost of the fire service report is met or not. It showed the extent of the fire but didn't show as much as expected. Our adjudicator asked Aviva to get the fire service report back in March 2017. Aviva should've asked for it at the time;
- A professional loss adjuster should address every aspect of a claim – he can't understand why this wasn't done;
- That C received abysmal service from Aviva;
- Was I intending to award any compensation for distress and inconvenience and the time he's spent chasing Aviva?

The complaint was passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having taken account of the recommendations I made in my provisional decision, Aviva has calculated it should pay the estate of the late Mr M further interest of £12,948. Aviva has shown me how it reached this figure and I'm in agreement with how it did so.

In my provisional decision I said that Mr S had produced evidence from two specialist suppliers about what the equipment on the vehicles (so excluding the cabs) could be worth today. So I can't agree with him that I said he had produced no evidence. I did say that the evidence didn't assist me in assessing the vehicles' (by which I meant the entire vehicle – cab and equipment) actual condition directly prior to the fire – which is what any indemnity would be based on. And that remains the case – it is helpful evidence but not specific enough. Mr S says he's also unable to prove what condition the two recovery vehicles were in directly before the fire. But without that information I can't reasonably say that nominal value Aviva has attributed to these vehicles is unfair.

When reaching my decision, I have to weigh up all the available evidence, not just the valuations Mr S has recently produced. That evidence also includes the fact that the vehicles were off road, untaxed and quite old, along with the fact that such vehicles can hold their value. And having done so, on balance, I don't think the portion of the global settlement that Aviva has attached to the two recovery vehicles (£13,000) is unreasonable in the circumstances. Aviva has no documentary evidence about the vehicles' worth immediately prior to the fire.

But in order for me to decide that the figure of £13,000 offered by Aviva was an unreasonable one, I would have to be satisfied that their condition pre-fire was such that Aviva had undervalued them. Unfortunately for C I've not seen any evidence that I think would reasonably allow me to reach that conclusion. So I don't think, looking at all the evidence, Aviva's nominal allocation of £13,000 for the two recovery vehicles within the overall settlement is an unreasonable one.

I haven't overturned the advice of our adjudicator. The award proposed in my provisional decision significantly increased the offer of settlement our adjudicator put to Mr S.

Mr S says he was told by our adjudicator that nothing less than documentary valuations from dealers on headed notepaper would be considered. And they have been considered. Our adjudicator didn't promise that the valuations would be accepted above any other evidence. Mr S says that Mr M spent £1,080 on legal fees in an attempt to get the stock claim moving. I've not seen an invoice in relation to those fees. In my provisional decision I said was minded not to award C any legal fees. That remains the case. That's because the solicitor's letters had no effect on the claim and didn't change its course. I'm not sure I agree that the claim was too complex for Mr M to conduct without legal representation. The claim itself was quite straightforward and had been accepted by Aviva. What was difficult was getting any action out of Aviva and that's not something the solicitor was able to achieve. That's reinforced by the fact that it was Mr M's letter to Aviva's Chief Executive in December 2013 that led to the settlement of the premises part of the claim.

How a claim is run is up to the insurer. That includes what evidence it obtains during the course of the claim and the instructions given to any appointed loss adjuster. Whilst our

adjudicator may well have asked Aviva to obtain a copy of the fire report he couldn't compel it to do so. Whilst Mr S may think that the loss adjuster should've addressed every aspect of the claim the fact is that he wasn't instructed to do so. He was only instructed to assess the premises aspect of the claim.

I don't dispute that this was a poorly handled claim. The reasons I think this were set out in my provisional decision. I accept that C received a poor service but compensation awards are not automatic. I'm not minded to award the late Mr M's estate (or C) any compensation because Mr M didn't complain about being put to any inconvenience. And I can't award compensation to Mr S because we can only tell a business to pay compensation for trouble and upset experienced by their customer – not by a third party. We don't award compensation to third parties who have brought a complaint on behalf of someone else.

my final decision

My final decision is that I uphold this complaint. I require Aviva Insurance Limited to pay C further interest of £12,948.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 2 August 2018.

Claire Woollerson
ombudsman

PROVISIONAL DECISION

complaint

C complains about the way Aviva Insurance Limited handled the damaged stock element of its commercial insurance fire damage claim.

background

C was a motor repairs and salvage business. C was owned and operated by Mr M and had an all risks business insurance policy with Aviva. In May 2011 there was a fire at C's premises and a claim was made to Aviva for damage to the premises and stock. Aviva accepted the claim and appointed a loss adjuster to assess the damage to the premises. The loss adjuster thought about £50,000 of damage had been done to the premises but that C was underinsured by about 50%. There were delays in settling the premises part of the claim because C was unhappy at the amount offered. In the end C made a complaint to Aviva about it. Aviva said it thought the settlement had been fairly calculated but that its loss adjuster hadn't followed the correct process. Aviva offered to settle the premises part of the claim for £20,000 (after average was applied and the excess deducted) plus interest at 8% from the date of the claim until the date of settlement (January 2014).

In August 2011 C's broker rang Aviva and said that whilst the property side of the claim had been looked at there was still C's claim for the damaged stock (salvaged vehicles and a couple of recovery trucks) to be considered. The broker advised Aviva that the loss adjuster wouldn't deal with the stock part of the claim. Aviva told the broker that it needed make/models/registration numbers of all the damaged vehicles involved and any documentation C had relating to them. It said it could then arrange valuations.

On the loss adjuster's instructions that the site could be cleared, C disposed of the burnt out vehicles and cleaned the site. It sent the broker a list of the vehicles it wanted to claim for. Having heard nothing, C contacted the broker and was told the list hadn't arrived. C sent the broker its own file copy of the list but omitted to take a further copy for its own records. The broker later told C that it hadn't received the second list either. In the meanwhile, Aviva had also emailed the broker again in January 2012 and reminded it that it was still waiting for the information about the damaged vehicles.

During 2013 Mr M contacted the loss adjuster regarding the settlement of the premises part of the claim. As his letters went unanswered he wrote to the chief executive of Aviva in December 2013 to complain about the amount he'd been offered by the loss adjuster in settlement of the premises part of the claim and reminding him C was covered for damage to the stock up to £70,000. Aviva replied in January 2014 acknowledging the shortcomings in the handling of the premises claim (and paying interest on the claim settlement). Aviva made no mention of the stock part of the claim.

In May 2014, Mr M's solicitor wrote to Aviva to remind it that C still had to be indemnified for the damaged vehicle stock (estimated value £60,000). The solicitor asked Aviva to acknowledge the letter within 21 days. No response was received from Aviva so the solicitor wrote again several times. In May 2015 Mr M wrote to Aviva to complain about its lack of assistance for the damaged stock part of the claim and to ask that it provide him with copies of photographs taken by the loss adjuster. In the letter he said he thought the clear up of the site cost him £10,000. In June 2015 Mr M wrote again to Aviva and said he estimated the damaged stock to have a value of £17,000 excluding the two recovery vehicles. At the end of 2015, Mr M unfortunately passed away.

Just prior to Mr M's death, and due to his ill health, the outstanding claim for the damaged stock was picked up by Mr S (now a representative for the late Mr M's estate and acting on behalf of Mrs M). He contacted Aviva and has been working since then to get the stock part of the claim paid. He asked Aviva for a copy of the policy schedule, the loss adjuster's report (for the damaged premises) and copies of the photographed damaged stock. He asked whether the outstanding claim could take into account the clean-up costs.

Aviva liaised with Mr S through to the end of 2016 but couldn't get the information he'd requested. Aviva said it'd liaised with its claims team and the broker to try and get the claim file but that was proving difficult because much of the information had been archived. In November 2016 Aviva wrote to Mr S to ask for more time because it could do little until it received the file. It said it was unable to progress his complaint at present and gave him the right to refer it to this service.

Mr S brought a complaint to this service in January 2017 on behalf of C. Our adjudicator reviewed the file and acknowledged the many issues associated with the claim – the policy holder's death, the passage of time, the lost stock list, the unobtainable claim file – and suggested to Aviva it should consider making C a global offer. Further information was provided by Mr S to our adjudicator about the two recovery vehicles damaged in the fire which was passed to Aviva to comment on. Aviva said it wanted to look in greater detail at these vehicles but our adjudicator said he thought it'd had long enough.

In December 2017 Aviva proposed a global settlement figure of £40,000 to include all the damaged salvage vehicles, both recovery trucks and the site clean-up costs. Initially Aviva said it would pay interest at the rate of 3% from the date of the claim to the date it made its offer of settlement (23 January 2018). Subsequently it agreed to pay interest at this service's normal rate of 8% but for a shortened period of time – from 28 September 2015 (the date Mr S first contacted it about the unpaid stock claim) until 23 January 2018 – which came to £7,434.52.

Aviva also accepted that the interest it'd paid on the premises settlement had been incorrectly calculated. It said it would pay a further £3,682.74. This brought the total offer of settlement for all aspects of the claim to £51,117.26.

Our adjudicator put this offer to Mr S in March 2018. He said the claim had been a difficult one to validate but was satisfied, in the absence of any expert opinion to challenge the settlement offer, that it was fair and reasonable in all the circumstances.

Mr S continued to ask Aviva to provide him with copies of photographs of the damaged stock and a copy of the loss adjuster's report about the damaged premises. Mr S also said he'd be prepared to accept a settlement of £49,000 plus interest from the date of the claim (he valued the two recovery vehicles at £22,000). Mr S said he'd applied to the fire service for a copy of its report and any photographs it had. Aviva continued to say that it couldn't retrieve the photographs and that there was no loss adjuster's report for the stock and apologised if it'd misled Mr S into believing there was. It said it wouldn't settle the claim for £49,000.

In April 2018 Mr M produced a copy of the report and photographs from the fire service; these showed both the damaged premises and stock. He also provided a valuation from a specialist trailer firm for one of the recovery vehicles. It said, new, the average value would be £47,725. Taking into account depreciation, Mr M said it would now be worth £15,909 plus a further £1,000 for the cab. He also produced a current valuation from the manufacturer of the second recovery vehicle at £15,000.

The complaint was passed to me for a decision.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've set out an account of the events I consider relevant to my decision in some detail above. That's because I want to reassure both parties to this complaint that I have considered all the facts in full. I have read the full submissions about the complaint from both parties, so I would ask that the responses to this decision are confined to new evidence and points rather than a repetition of those previously made.

the evidential requests

Mr S has asked Aviva for a copy of the loss adjusters report relating to the *damaged premises*. As far as I can see he has never assumed there was a report done relating to the damaged stock. He wanted a copy of the loss adjuster's report about the premises to see if it commented at all on the damaged stock or mentioned what the loss adjuster advised Mr M to do about the site clear up. I can understand why he would want to see the report but Aviva either hasn't been able to provide a copy or won't provide a copy – which is not entirely clear to me.

But whilst I understand Mr S's request, I will no doubt disappoint him when I say that Aviva is not obliged to give him a copy of the report and I can't require it to do so.

Aviva clearly, at one point, had photographs of the damage. It no longer has them – be they lost, not retained or archived. I can't make Aviva provide Mr S with copies of something it doesn't have. Like the report, I can understand why Mr S sought copies of the photos as he endeavoured to quantify the loss and move the claim along. I note that Mr S recently managed to obtain photographs of the damage from the fire service at a cost of £152.00.

the claim

It's not unreasonable to say that Aviva lost control of this claim. I appreciate that it asked the broker to provide a list of the damaged vehicles (with chassis and model numbers etc.) in August 2011 and January 2012 but that is all it appeared to do in relation to the stock aspect of the claim. Whilst I understand that the validation of the stock wasn't within the expertise of its appointed loss adjuster, I don't understand why Aviva didn't appoint another expert to assist C in working out the value of what was lost. C was under the impression that it'd done what was necessary to assist in the validation of the damaged stock (by supplying the requested list to the broker twice) so had no reason to chase Aviva about it.

There is little record of what happened during 2012 but there is some indication that in 2013 Mr M was focussing his attentions on the loss adjuster's (correct) decision to apply the average clause to the settlement of the premises claim. I've seen two letters from early 2013 where Mr M chased the loss adjuster about this part of the claim. Why the loss adjuster let the premises claim drift is also unclear to me. To its credit, Aviva has acknowledged the loss adjuster's poor service and paid/offered to pay interest as a result.

The first record of any mention by Mr M of the stock claim seems to come in December 2013 when he wrote to Aviva's chief executive. It was after this letter that Aviva paid the premises claim (with interest). Why Aviva didn't address the stock claim then, or respond to Mr M's and his solicitor's letters about it throughout 2014 and 2015 remains unclear to me. It wasn't really until the summer of 2016 – after Mr M had passed away and Mr S picked the baton up – that Aviva re-engaged with the claim.

the global settlement offer

Aviva offered C £40,000 in settlement of the stock part of the claim. Mr M said it cost him £10,000 to clear the site. He also estimated the damaged salvage stock to have a value of £17,000. That leaves the two recovery vehicles. I have seen references to these being worth £60,000, £22,000, £13,000 and £33,000.

Whilst I note Mr S's comments that the two recovery vehicles were available for inspection by Aviva right up until 2015 the fact is they have now been disposed of without an actual inspection being carried out. More significantly, there is no evidence about what their condition (and therefore value) was immediately prior to the fire – which is what any indemnity would be based on.

In response to our adjudicator's letter about Aviva's offer of settlement, Mr S said he'd accept £49,000 (of which £22,000 related to the two vehicles). He's since produced some evidence from a trailer and a crane manufacturer about what the vehicles might be worth today (a total of about £33,000). I don't

think this evidence can reasonably make me ask Aviva to increase its global settlement offer. That's because it doesn't help ascertain the worth of the two vehicles immediately prior to the fire. I can see the vehicles were off road, untaxed and quite old. But I also understand that vehicles of this nature can hold their value. But I don't know, because there's no evidence, what these vehicles were worth in May 2011, their actual condition being so difficult to establish.

So I don't think, taking all the circumstances into account, that Aviva's nominal allowance of £13,000 towards the value of these vehicles is an unreasonable one. This means I'm not persuaded to make Aviva to increase its global settlement offer.

the overall calculation and interest

In view of all the issues surrounding this claim – Mr M's death, the length of time since the fire, the conflicting reports about the extent of the loss adjuster's involvement and the lost stock list and the difficulties that lead to – I think that Aviva's decision to make a global offer of settlement to resolve the damaged stock claim is reasonable.

I think the £40,000 – comprised of £10,000 for the site clearance, £17,000 for the damaged salvage vehicles (as estimated by Mr M), and £13,000 towards the two recovery trucks – is fair in all the circumstances.

Aviva initially said it was willing to pay interest on this sum from the date of the claim to the date it made its offer (23 January 2018) at the rate of 3%. Our adjudicator pointed out that this service's normal rate was 8% so Aviva then said it'd pay interest at 8% but from the date Mr S first contacted it about the damaged stock claim (28 September 2015) to the date it made its global offer of settlement instead.

I agree with Aviva that it need not pay interest past 23 January 2018. But I don't agree with it that interest shouldn't accrue before 28 September 2015. And I don't think Aviva is wholly opposed in principle to paying interest from the date of the claim because it was prepared to do so providing the rate was 3%. It's unclear to me why Aviva doesn't think – at the very latest – interest should run from December 2013 when Mr M wrote to Aviva's chief executive mentioning the stock claim. Or why it shouldn't pay interest throughout 2014 and 2015 when both Mr M and his solicitor's letters went unanswered.

C was entitled to indemnity under the policy. The damaged stock was available for inspection and validation from the date of the fire but Aviva chose to validate the claim by asking C to provide it with a list of the vehicles from which it intended to arrange valuations. I can only see two occasions it asked the broker for the list – no other steps were taken to move the claim along. C was out of pocket for the damaged stock for six and a half years and had to engage solicitors to pursue Aviva for the claim. I understand these cost him in excess of £3,000. That doesn't seem fair to me.

I'm not minded to award C any legal costs he incurred but I do think, taking all the circumstances into account, that Aviva should pay interest at this service's usual rate of 8% simple per year on the global settlement sum from the date of the claim (21 May 2011) to the date the offer was made (23 January 2018). I make that a total of 2,439 days inclusive.

I can see too that the interest on the premises was wrongly calculated by Aviva and that it has now calculated what the correct amount should be. It issued a cheque for this part of the claim for £21,600 on 22 January 2014. Aviva said this was made up of £20,000 for the claim and £600 interest although it seems to me it was £1,600 of interest. So I think the correct interest calculation for this part of the claim is: £20,000 x 8% divided by 365 x 977 days = £4,282.74 less the £1,600 already paid = £2,682.74.

So I think Aviva needs to pay C some additional interest. It should calculate interest on the global settlement from the date of the claim to the date the global offer was made. Aviva should be allowed to deduct from that calculation the additional £1,000 of interest it paid in error on the premises claim

and the interest amount it already paid C (£7,434.52) as part of the overall settlement in January 2018.

I'm not minded to award C the cost of obtaining the fire service report and photographs as neither have influenced my decision and don't, I think, do anything to advance the claim.

my provisional decision

My provisional decision is that I'm minded to uphold this complaint. I intend to require Aviva Insurance Limited to pay C further interest calculated as I've set out above.