complaint

Ms G is unhappy with the amount of compensation Aviva Insurance Limited has offered her following a claim on her home insurance policy.

background

In September 2015 Ms G made an escape of water claim on her home insurance policy. Pipes in her bathroom had been leaking and caused damaged to her downstairs toilet and hallway ceilings. Ms G's boiler was housed in the downstairs toilet, on the wall above the toiler cistern. The ceiling in the toilet had an artex coating, so tests were carried out for asbestos. These came back positive, so Aviva arranged for a specialist company to carry out the removal and reinstatement works. Ms G raised some concerns with the works at this time, but these were resolved.

Following completion of the works, Ms G noticed that dust and debris fell onto the toilet cistern when the toilet door was pulled closed. She says she raised this with the specialist company but it reassured her that this was just dust from the plaster and not anything of concern.

In December 2017 Ms G had her boiler serviced. When the engineer opened up the boiler cover there was a cloud of dust and ceiling debris fell out of it. Ms G advised the engineer that she'd previously had a positive result for asbestos in the room, so they both vacated the property immediately. She contacted Aviva and it arranged for the residents of the property to move into alternative accommodation that evening.

Aviva arranged for tests to be carried out in the toilet and it was confirmed there was a positive reading for asbestos behind the old boiler. The old boiler was removed and a new one installed in its place. All items in the room were disposed of and Ms G was asked to replace the items with these costs being refunded to her. It was also agreed that the property would be cleaned to remove any potential remaining dust. Following this Ms G, her family and lodger were able to return to the property.

Ms G reported that there was still dust and debris in the toilet. She had concerns this contained asbestos. She said the property wasn't adequately cleaned so despite her pre-existing health conditions she had to do this herself. She also said her new boiler was making loud noises. Aviva said a further test had been carried out after the works were complete, which was negative for asbestos, so the specialist company wouldn't be returning to carry out more tests. It was however agreed that Ms G could carry out her own test and be reimbursed for the cost if it gave a positive result. Further works were carried out on the boiler but the wooden cupboard around it wasn't finished by Aviva. Ms G said that there was still debris and dust around the pipework and so they were unable to use the toilet as there was no guarantee it was safe. And she said it didn't make sense to get the cupboard finished, as it would need removing to clean the pipework.

Whilst the above works were ongoing Ms G complained to Aviva. She said she hadn't had all the agreed costs refunded to her; she wanted further tests done to check for asbestos; for further cleaning works to be carried out to remove the dust and debris; for the boiler cupboard to be finished following the tests and compensation for the stress she'd been caused. She said her family have been exposed to asbestos for two years despite her raising concerns in 2015. She asked for compensation in the region of £10,000.

Aviva partially upheld her complaint; however, Ms G wasn't happy with this so she came to our service. Our investigator looked into her concerns and recommended that Aviva:

- Pay Ms G £2,000 compensation
- Arrange for the dust and debris behind the pipework to be cleaned and tested
- Finish the works in the toilet (after the cleaning)
- Pay Ms G for the clothes she bought when she was unable to enter the property
- Continue offering her and her family access to a specialist respiratory doctor

Aviva agreed with the assessment. In response Ms G asked for an ombudsman's decision, so the complaint has been passed to me. She said Aviva had ignored her complaint for two years and has potentially put anyone who used that room at risk. She was unhappy the investigator had said she could've got tests done herself. And that the room was still unfinished. She said asbestos had been dripping from her boiler for two years and that the inconvenience and stress for her and her family was extreme during this time.

my findings

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

In terms of Ms G's points about the incomplete work in the toilet, by accepting the investigator's assessment Aviva has agreed to carry this work out. So I don't consider I need to look into this part of the complaint further, as it's agreed to carry out all the actions Ms G asked for. And I consider these actions a fair way to resolve this part of the complaint. So the only part left to resolve is the level of compensation she is due.

Ms G has referred to an example on our website as part of her reasoning for a much greater compensation award. However, we look at each case on an individual basis. So just because we awarded another consumer in a similar situation a certain sum of money, it doesn't mean Ms G is due this and more.

I appreciate that Aviva, through its contractors, should've ensured Ms G's property was dealt with properly in 2015. So it needed to either cover the boiler while the works were carried out or open it up to check for dust and debris following the artex removal. On that basis, I do agree Ms G is due compensation. But it has to be proportional to the inconvenience and distress she *has* suffered, not linked to hypothetical situations or how she feels with the benefit of hindsight. Our role as a service isn't to punish businesses.

Ms G says she was extremely stressed and inconvenienced between 2015 and 2017. But considering what happened, I'm not persuaded she suffered distress or inconvenience *during* this time period that warrants compensation.

In 2015 Ms G accepted the outcome of the specialist company's investigation and her claim was closed. From that point until December 2017, when the boiler was opened, I can't see that Ms G was distressed by the situation. She accepted the contractor's view that its work was complete and there wasn't a risk to herself or her family. She says that she was afraid the dust she was cleaning up contained asbestos, but it doesn't seem this caused her significant distress as, following her initial enquiry in 2015, she did nothing further about it until late 2017.

I consider that if Ms G had been extremely stressed by the dust, as she now suggests, she would've been in contact with Aviva regularly until a resolution was reached. I take Ms G's point that she shouldn't have to fix a problem Aviva created. But at the same time she also had a responsibility to mitigate her situation. In 2015 she accepted the specialist company's explanation, so it seemed she was satisfied with it. If she didn't believe the specialist company, then I consider she wouldn't have accepted it and/or would've arranged for her own tests to be carried out. I also acknowledge that cleaning up the dust that fell from the boiler would've been inconvenient. But I haven't seen anything to suggest this was to the extent that it added much, if any, additional cleaning time to the normal upkeep of the room.

It's not disputed that there was asbestos present in the room in 2017. So it's possible that Ms G's family were exposed to it when in the downstairs toilet. I fully appreciate that discovering this would've been very distressing for Ms G. And having works carried out to rectify this situation has been inconvenient for her. Moving her family and lodger out of their home at short notice and realising the potential risk would've been very stressful. So I've considered what Aviva can do to rectify this for her.

Aviva has already offered for Ms G and her family to see a specialist doctor in respiratory medicine. But she has refused. Aviva can't undo any damage that may have been done; all it can do is pay compensation and support her going forward *if* needed. So I think this is a fair offer.

Considering the worry Ms G says she is suffering, I think an appointment with a specialist is a reasonable proposition. The specialist will be able to advise if the family is currently showing any signs of ill health as a direct result of the asbestos not being cleared fully in 2015. Ms G says she will continue to worry about what could happen in the future, but Aviva isn't able to do anything to prevent this. When considering the overall level of appropriate compensation, I take account of all the emotional harm and stress suffered. I've also had to factor in that only the fragments *behind* the boiler showed as positive for asbestos. The dust fragments tested in the room didn't test positive. So thankfully, this means the risk of exposure to Ms G and her family is likely much less than she initially thought.

In terms of compensation, I've already set out why I don't consider Ms G was extremely distressed or inconvenienced *between* 2015 and 2017. I do, however, think she is due compensation for the distress and inconvenience she experienced since the boiler cover was removed in December 2017. I've reviewed Aviva's offer of £2,000 and I consider this is a fair amount. The initial removal in 2015 should've been carried out in a way that prevented this situation. And Ms G and her family's life were disrupted at Christmas time when she had other plans. So I do consider a substantial award is due. But £2,000 is generally regarded as substantial for non-financial losses such as worry, stress, emotional harm, etc. I'm also obliged to take account of the law and what that says about keeping damages for distress or inconvenience in perspective – and a leading authority is Lord Justice Ward's judgment in the Court of Appeal in *Milner v Carnival plc* [2010] EWCA Civ 389:

> Perhaps the most acute form of distress is that which is suffered by a parent who has lost a child. Here damages are limited by statute and the present figure is no more than £10,000. If that figure may be thought by many to be derisory, it is all part and parcel of the same policy considerations dominating damages for distress. Lord Steyn said it all in *Farley v Skinner*:
>
> > *'I have to say that the size of the award [£10,000] appears to be at the very top end of what could possibly be regarded as appropriate damages. Like Bingham LJ in Watts v Morrow [1991] 1 WLR 1421, 1445H, I consider that awards in this area should be*

> *restrained and modest. It is important that logical and beneficial developments in this corner of the law should not contribute to the creation of a society bent on litigation.'*
>
> …I must now stand back and look at the judge's awards…against the background of comparable awards for psychiatric damage in personal injury cases, for injury to feelings in cases of sex and race discrimination and damages for bereavement...
>
> Damages under these heads are of course not entirely comparable with damages in holiday cases. Physical inconvenience and discomfort is necessarily ephemeral. Disappointment, distress, annoyance and frustration are likewise the feelings one experiences at the time and which last painfully for some time thereafter. But one is not disabled, the psyche is not injured and one gets on with life. Every time one thinks back, one relives the horror but the reliving of it is transitory. There is no medical evidence here to indicate any recognisable psychiatric injury: distress falls into a different and less serious category and does not equate with bereavement.

As I set out above, while Ms G has said she was extremely stressed for two years, her actions – and the chronology of events – don't support this. Aviva's internal notes detail a conversation with Ms G where she doesn't suggest any action was taken during those two years despite her alleged concerns. And in 2018, she's told us that not knowing if there's still asbestos in her home, or what impact it's had on her family, has had a severe impact on her. But there's no independent medical evidence of actual personal or psychiatric injury: Ms G and her family aren't disabled; their psyche isn't injured (to borrow the judge's words). So we are just dealing with more ephemeral distress or inconvenience. I don't diminish Aviva's responsibility or the awful effect on Ms G and her family, but she is looking for an extreme amount of compensation which, objectively, the circumstances simply don't justify.

In premise, I am satisfied this situation has caused Ms G significant distress and inconvenience, but I consider Aviva's offer of £2,000 is fair compensation. Aviva should pay Ms G and carry out the further actions our investigator set out in his assessment, summarised above. Following this, the claim should be brought to a close. The toilet will have been fully tested, cleaned and redecorated. So I don't require Aviva to carry out any further works to the toilet after this (under this claim). The only ongoing element should be the monitoring of the family's health – if this is needed and wanted. The specialist should advise what, if any, care is required following the initial consultation. I do note Ms G's family does already suffer from pre-existing respiratory issues. Aviva is only required to cover care that's needed as a direct result of the potential asbestos exposure from this claim.

Notwithstanding the above, if Ms G were to obtain compelling new medical evidence showing bodily or psychiatric injury as a result of asbestos exposure which Aviva could have prevented, then the door may be open to her to pursue additional damages for personal injury. But that would need to be a new complaint/cause of action – and might be more suited for a court of law given the complexity and quantum of personal injury disputes. Time limits apply to actions for personal injury; and Ms G should probably seek independent legal advice if this is something she's contemplating.

my final decision

Aviva Insurance Limited has agreed to pay £2,000 in compensation; arrange for the dust and debris behind the pipework to be cleaned and tested; finish the works in the toilet (after the cleaning); pay Ms G for the clothes she bought when she was unable to enter the property; and arrange for Ms G and her family to see the specialist respiratory doctor. Following this, this claim should be closed.

I conclude that such an offer is fair compensation in the circumstances. My decision is that Aviva Insurance Limited should pay the above compensation and outstanding money, and begin arrangements for the further works to be carried out – if it hasn't already done so – within 28 days of receiving notice of her acceptance of this decision.

Ms G should note that if she accepts my decision, it will be legally binding on all parties and she probably then wouldn't be able to take legal action over this matter for additional compensation (save for damages for personal injuries in light of any new medical evidence – see above). If, however, she rejects the decision, although her legal rights will remain intact, it'll be purely a matter between her and Aviva as to whether the above offer still remains open for acceptance. Strictly speaking, an offer is not binding on the offeror after rejection of it has been communicated.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 24 October 2018.

Amy Osborne
ombudsman