

complaint

Miss K has complained about Aviva Insurance Limited's handling of her claim under her buildings insurance policy after she suffered an escape of water at her flat.

background

In September 2016, Miss K noticed a damp patch appearing in the hallway of her flat. She made a claim under her policy. Aviva concluded the damage was due to an escape of water and accepted the claim. It found the cause of the damage, repaired this and, after stripping out, arranged for a specialist company to dry the property. It also arranged for Miss K to be moved to alternative accommodation.

In February 2017, the specialist company declared that the property was dry. Aviva's contractor started plastering the property.

In April 2017, Miss K became concerned about the progress of the claim. She believed the plastering work had been started before the property had properly dried. She asked that work on the property be suspended while she obtained independent reports.

In July 2017, Miss K's surveyor issued a report in which he said the internal walls were still damp and he criticised the quality of work which had been carried out. Miss K asked Aviva to provide a cash settlement so she could arrange for the repair work to be carried out by her own contractor. She provided an estimate from her surveyor that the work would cost approximately £28,000.

Aviva arranged for further testing to be carried out. This confirmed the property was suffering from dampness though Aviva said this was due to pre-existing problems of rising damp at the property. It said Miss K's quote for repairs included work which it regarded as betterment and was also expensive. It provided its own schedule of work which it said its contractor would carry out for £10,427 and offered this as a cash settlement. It agreed to extend cover for the cost of alternative accommodation for Miss K until the end of March 2018 which it was satisfied was ample time for the work to be completed.

Miss K disputed that the property had pre-existing problems. She complained to Aviva but it wouldn't change its position. Miss K therefore referred her complaint to us. She provided a report from a damp specialist which concluded the property wasn't suffering from rising damp but was suffering from dampness due to the use of the wrong type of plaster by Aviva's contractor. She raised various concerns about Aviva's handling of the claim.

I issued a provisional decision partly upholding the complaint. My findings were as follows:

"Let me clarify that this complaint is about the claim which Miss K made under her buildings policy. Miss K has raised some issues regarding her contents but, as the investigator has explained, she needs to raise any concerns about this with Aviva in the first instance. As I understand it, Miss K hasn't yet even made a contents claim."

damp issue

Miss K asked Aviva's contractor to stop work because she was dissatisfied with the quality of work being carried out and thought the property still wasn't dry. Aviva admits the property

wasn't dry, though it says this was because the property was suffering from pre-existing rising damp.

Aviva had undertaken to carry out repairs. It had an obligation to make sure those repairs were long-lasting. If it discovered a problem of dampness, this would have affected the durability of the repairs and I would have expected it to have suspended repair work to investigate its cause. It could then have determined whether the cause was something for which it was liable - in which case it would have had to rectify it before continuing with the repairs - or whether it was something for which it wasn't liable – in which case it would have had to discuss with Miss K on how to proceed. I'm therefore surprised that it was Miss K who had to point out the problem with the repair work and ask for this to be suspended pending investigation.

Aviva considered the problem of dampness was caused by rising damp and provided a report of testing which had been carried out. The investigator found this persuasive. The testing found chloride and nitrate to be present. The report said "Both chloride and nitrate can form part of a rising damp complex and their presence in the samples may have arisen from such a process" (my underlining). While this means that rising damp is a possibility, I don't find the report to be conclusive as to the cause of the dampness. I note that Aviva's representative commissioned the testing in the belief that rising damp was to blame without having ever visited the property.

Miss K's surveyor pointed out that Aviva's contractor had used the wrong type of plaster; Aviva accepted this. The surveyor, who had visited the property, said there was no evidence of rising damp and said the damp problem had been caused by Aviva's contractor. Miss K's damp specialist reached the same conclusion.

On balance, I consider the opinions of Miss K's surveyor and damp specialist to be more persuasive than the findings in the Aviva report. I think the damp problems in the property were unlikely to have been pre-existing but were instead likely to have been caused by Aviva's contractor as a result of using the wrong type of plaster.

Given this, I think it was reasonable for Miss K to say she no longer wanted Aviva's contractor to carry out the repair work and instead wanted to receive a cash settlement for a contractor of her choice to do the work.

I also think she should be reimbursed for the cost of the report by her surveyor, plus interest (I understand the report by the damp specialist didn't cost her anything). Miss K has provided evidence that the report cost £300 and that she paid this on 19 July 2017.

work schedule

Miss K's surveyor drew up a schedule of the work he considered was necessary to repair the damage caused by the escape of water and by Aviva's contractor. This was more extensive than the schedule which had been approved by Aviva. Aviva noted that the policy provided cover only on a like-for-like basis and considered that the new schedule included items which constituted "betterment".

I am inclined to agree that, given it wasn't there previously, the installation of waterproof tanking to the bathroom was betterment. I am also inclined to agree that the rotten window frame in the bathroom appeared not to be caused by the insured event but instead was pre-existing damage. I don't think Aviva should be liable for these costs.

With respect to the remainder of the schedule, I think it is reasonable to hold Aviva liable for the work. I recognise there are some items, such as the use of waterproof plasterboards in the bathroom, which Aviva says are betterment. However, Aviva's failure to carry out the repairs properly has meant that Miss K has had to appoint her own builder. I think that any builder expecting to carry out a lasting repair would have used waterproof plasterboard in this situation and I think it reasonable that Aviva allows for this in its cash settlement.

work cost

Aviva took issue with the quote provided by Miss K's builder and said this was far more than its own builder would have charged. I acknowledge that this might be the case. However, Aviva forfeited its right to carry out the repairs itself when its contractor made the error with the plaster and Aviva failed to acknowledge the problems this had caused. I therefore think it fair that Aviva meets the full cost of the eligible repairs carried out by Miss K's builder.

Miss K has now had these repairs carried out and has provided details of the cost. The total cost was £25,520 (no VAT was paid).

However, I can see that this total includes certain costs which were not in the schedule originally approved by her surveyor. These costs include £4,000 for a damp proof course for wet walls and timber. I don't think Aviva should have to pay for this. There is also £600 for the cost of replacing four radiators which Miss K says were damaged by two years of no working heating and £1,500 for a new boiler. I haven't seen satisfactory evidence to show that either the escape of water or Aviva's contractor were responsible for any failure in the boiler or radiators. I therefore don't think Aviva should have to meet these costs.

Furthermore, the work includes the installation of waterproof tanking and the replacement of the rotten window frame in the bathroom, both of which I have explained above I don't think should have been included. Miss K's builder hasn't been able to provide a breakdown for these costs beyond a total cost for the bathroom works of £9,000. I think it is reasonable to allow £1,000 for the tanking and £250 for the window repair.

If I deduct the non-eligible costs from the total amount paid by Miss K, I arrive at a figure for eligible costs of £18,120. I think this is the amount which Aviva should pay as a cash settlement to Miss K.

Miss K has provided evidence that she paid her builder £10,000 on 23 April 2018 and an amount including the balance of eligible costs of £8,120 on 17 May 2018. I think Aviva should add interest to its cash settlement from the dates of these payments.

delays in moving to alternative accommodation

Miss K thinks that Aviva wasn't as helpful as it could have been in finding alternative accommodation and in helping her move from the damp property. I'm satisfied that Aviva approved Miss K's request for alternative accommodation costs shortly after she submitted details of this. However, it seems that due to a problem with parking permits only some of Miss K's items were moved with her initially and she had to wait a further 21 days to

complete the move. I think this would have been inconvenient for Miss K and that a small amount of compensation is payable as a result. I deal with this, along with other payments for distress and inconvenience, later on in this decision.

alternative accommodation rental costs

Aviva agreed to cover the cost of alternative accommodation for Miss K until 5 March 2018. However, given that the level of cash settlement was in dispute and I have now found that Aviva's offer was inadequate, I don't think it was reasonable to expect Miss K to have moved back into her property by that time. Miss K eventually had the work carried out and was able to move back in but in the meantime she incurred a further three months of alternative accommodation costs. This came to £6,825 which she has shown she paid on 1 March 2018. I think Aviva should reimburse her this cost, plus interest from that date.

council tax costs

Aviva agreed to cover the cost of council tax on the alternative accommodation for the duration of Miss K's stay. I think this was reasonable. Miss K has suggested Aviva didn't fully meet these costs but hasn't provided evidence of this.

However, Miss K ended up staying in the alternative accommodation for three months further and, because I think Aviva should meet the rental costs for these three months, it stands to reason that it should pay for the council tax costs over this period also. Miss K hasn't been able to provide the council tax bill or details of when she paid it but, based on the previous year's charge, I estimate the cost to be about £238 so this is the amount which I think Aviva should pay her.

Miss K has also referred to penalties she had to pay for late payment of council tax. She hasn't provided anything to show that the late payments in question were the fault of Aviva. I therefore don't think it is required to refund her these charges.

utility costs, including drying costs

Miss K has complained that Aviva hasn't reimbursed her for the cost of utilities at her alternative accommodation. I wouldn't necessarily expect an insurer to reimburse such costs though I would expect it to compensate a policyholder for any additional costs they have to pay in such situations. I therefore think it reasonable that Aviva reimburse Miss K for ongoing utility costs at her home address while she was in alternative accommodation.

Miss K also thinks she should be compensated for the additional electricity costs she incurred through the use of dehumidifiers while her property was being dried out. However, given that the drying process apparently took place after she was moved to alternative accommodation, the additional electricity costs will be accounted for through the process above.

Unfortunately, Miss K's evidence of her duplicate utility costs consists largely of entries in various bank statements rather than a full presentation of relevant invoices. The difficulty with this is that one cannot see the time periods or property to which the payments relate. As a result, I cannot easily say exactly how much Miss K had to pay for utilities at her home property while she was living elsewhere. However, based on the various pieces of evidence she has provided I think it is reasonable to estimate that she had to pay £850 for electricity (including for the cost of drying), £65 for gas and £577 for water. This gives a total additional

cost of £1,492 for which I think Aviva should provide reimbursement. Miss K has also referred to additional telecommunications charges, including her internet connection, but I haven't included this because I think she should reasonably have transferred this service to her alternative accommodation address.

moving costs

Miss K has explained that she had to bear the cost of moving herself back into the property. I think it reasonable that Aviva meet this cost. Miss K has provided evidence that this cost was £1,048 which she paid on 23 May 2018.

miscellaneous

Miss K says she incurred various other costs during the claim. These included parking permit fees for tradesmen working on her property which she estimated to be £190. She has provided evidence to show she was regularly paying for permits during the relevant period so I think it is reasonable that Aviva reimburse this cost. However, she has provided no evidence to support other miscellaneous costs and I therefore don't think I can reasonably ask Aviva to pay anything towards them.

health issues

Miss K says she was made unwell through having to live in the damp property before moving to alternative accommodation and through the stress of the dispute with Aviva. She has provided evidence relating to her various medical conditions. I have looked at this evidence but can see nothing to link her physical conditions to the handling of her claim. With regard to psychological conditions, there is a letter from her GP dated April 2017 which indicates that her mood had been aggravated by problems with her flat. However, I would expect it to be stressful for anyone to have suffered an escape of water in their home and then to have to move out for repair work to take place. I can't hold Aviva responsible for this. Nonetheless, I recognise that Miss K's psychological conditions may have meant she found it particularly difficult to deal with the ongoing problems over the handling of the claim. I have addressed this later on under the heading of distress and inconvenience.

loans

Miss K has explained that she ran into financial difficulties as a result of the claim handling and has provided evidence that she had to borrow over £43,000 from relatives. I accept that Aviva should have paid Miss K various sums of money as outlined in this decision, though these wouldn't account for the full amount of Miss K's debt. I have awarded interest on the sums which Aviva should have paid. It doesn't appear that Miss K needs to pay a greater level of interest than this on her borrowings and I therefore don't think she needs to be compensated for any financial loss. I accept that having to borrow the money may have caused her some embarrassment and I deal with that below under the heading of distress and inconvenience.

distress and inconvenience

The investigator thought Aviva should pay Miss K £200 compensation for the trouble and upset it had caused her through its handling of the claim. I think that in view of the various issues highlighted by Miss K, this figure should be increased to £400."

I invited both parties to make further submissions in response to my provisional decision.

Aviva didn't respond.

Miss K responded. Her response can be summarised as follows:

- Her building contractor had installed a waterproof tanking on the advice of her surveyor because Aviva's contractor had previously stripped the bathroom back to brickwork and installed an ill-fitting tanking which trapped the damp in wet walls. The new tanking allowed the walls to dry without causing further damage and saved on both the cost of drying and on repair time.
- The damp course was necessary to remedy the rampant damp in the property which got aggravated by two years of disrepair with no central heating or ventilation. It saved cost and time, and was more cost efficient than drying with humidifying machines. It was also crucial to the house structure as Aviva had found the water escape had rotted the base of the beam supporting the staircase.
- In respect of council tax, she wasn't entitled to a 25% single occupancy discount on both the alternative accommodation property and her home property simultaneously. At some point, this discount was moved to the alternative accommodation property, leaving her liable for the full tax on her home property. Furthermore, because she'd been unwell and had insufficient support from Aviva, she found it hard to manage financially and so had incurred fines for late payments. She submitted further council tax invoices, including for the rental property for the period after March 2018, in evidence of the amount she'd been charged.

my findings

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

Miss K has explained why her surveyor considered that waterproof tanking should be installed in the bathroom. I accept that the tanking may have been a sensible move. But I haven't seen evidence that it was essential for a lasting repair and, given that it wasn't there before, I remain of the opinion that it was "betterment". I therefore still think that Aviva should not be liable for this cost.

While I note Miss K's comments on the damp proof course, this wasn't on the schedule originally approved by her surveyor and I have seen no expert opinion to support this was essential for a lasting repair. I therefore remain of the opinion that Aviva shouldn't have to cover the cost of this element of the repair.

Miss K has explained that she was entitled to a 25% council tax discount on only one property at a time. Miss K still hasn't provided sufficient evidence to allow me to say that Aviva had failed to cover her full, additional council tax costs as a result of moving to alternative accommodation for the period to 5 March 2018. Furthermore, I've still not seen any evidence to show Aviva was responsible for the fines she incurred due to late payment and so I don't think Aviva is liable for these costs. However, I originally estimated her additional council tax costs for the further three month period she was in alternative accommodation to be £238. In light of the further invoices and information Miss K has

provided, I'm now satisfied her additional cost was £333 and this is the amount which Aviva should therefore pay her.

Given that Miss K hasn't commented on any other issues, and Aviva hasn't responded at all, I'm satisfied that the rest of my provisional decision can stand.

my final decision

For the reasons given above, my final decision is that this complaint is upheld in part.

I require Aviva Insurance Limited to pay Miss K the following amounts (wherever interest is mentioned, it is at the annual simple rate of 8% and is payable to the date of settlement*):

- £300 for the surveyor's report, plus interest from 19 July 2017;
- £18,120 for the repair work to her property, with interest on £10,000 of this from 23 April 2017 and on the remaining £8,120 from 17 May 2018;
- £6,825 for additional alternative accommodation costs, plus interest from 1 March 2018;
- £333 for additional council tax costs;
- £1,492 to cover additional utility costs, including drying costs;
- £1,048 to cover moving costs, plus interest from 23 May 2018;
- £190 to cover parking permit fees for tradesmen; and
- £400 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 30 December 2018.

David Poley
ombudsman

** If Aviva considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Miss K how much it's taken off. It should also give Miss K a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*