

## **complaint**

Mrs D on behalf of C, a limited company, complained about the way Aviva Insurance Limited handled a claim under its commercial “all risks” insurance policy.

## **background**

At the end of October 2016 C made a claim after a water leak badly damaged its premises. The business had to close temporarily.

On 1 November 2016, Aviva’s loss adjuster visited the property. Mrs D said he told her that C’s policy for business interruption only covered loss of profit (rather than loss of revenue). She said she interpreted this to mean there was no cover for staff wages. She told C’s staff and they asked to leave their employment. She said she sent confirmation to the staff on 4 November that their employment was terminated. About five days later Mrs D was told C did have loss of revenue cover after all.

Later in November Aviva made an interim payment of £10,000 for business interruption. It asked for more information from C in order to assess whether any further amount was due to C in respect of business interruption. It also authorised the repairs to the building and paid over £4,000 in respect of damage to C’s contents.

Mrs D had some concerns that she might breach data protection obligations in providing the information requested by Aviva. These concerns were later resolved by using Mrs D’s solicitor. But Aviva says she also failed to provide the financial information it requested.

Unfortunately in January 2017 Mrs D was unwell which meant she couldn’t meet Aviva’s loss adjuster to discuss matters which were outstanding. In February she travelled abroad for a few weeks.

Mrs D complained to Aviva. She said that the loss adjuster’s mistake led to C losing its staff, suffering damage to its reputation and finding it difficult to recruit new staff.

Aviva said C’s premises would have been ready to use from 13 March 2017. It allowed for a two week period to get ready for trading and said that it wouldn’t fund any revenue losses after 27 March 2017. It said C had failed to mitigate its losses by recruiting new staff. It offered C a further £10,000 in settlement of the balance of the business interruption claim. It also said it couldn’t comment on the complaint that C had made against its loss adjuster.

Sadly Mrs D has since died and Mr G is now handling the claim on behalf of C.

## **my provisional findings**

I issued a provisional decision in which I explained why I proposed to uphold the complaint in part:

I thought there were three main issues in this complaint. Firstly there’s the extent to which the incorrect information about the policy cover caused C to lose its staff and suffer damage to its business. Secondly there’s the question whether Aviva treated C fairly and reasonably in its handling of the business interruption claim. Lastly there’s the fact that Aviva said it wouldn’t cover C’s business interruption after 27 March 2017.

*incorrect information*

When Mrs D notified the claim to Aviva, it noted that she was very upset and needed “*some hand holding on this one*”. The business interruption section of C’s policy isn’t straightforward for a lay person to understand. So I felt it was very unfortunate that the extent of the cover wasn’t clearly explained to Mrs D at the earliest opportunity by Aviva’s loss adjuster.

In an email sent a few days later to Mrs D, the loss adjuster said that it would be best to review the business interruption part of C’s claim about four weeks after C had re-opened for business. There was no suggestion at that stage of Aviva making an interim payment in respect of this.

Although with the benefit of hindsight it might seem over-hasty, under the circumstances I could understand why Mrs D informed C’s staff straightaway that she couldn’t guarantee that she would be able to pay them. I felt it wasn’t surprising that the staff took that news badly and decided to treat their employment as terminated at that point.

I noted this caused a great deal of inconvenience to C. It then had to set about recruiting a whole new team. Since news about how the previous staff had been treated appears to have spread in the locality, that was more difficult than attracting staff to a new start-up business. I thought it would be only fair that Aviva should pay C £1,000 compensation for the inconvenience caused to it by the misleading initial information from its loss adjuster.

*business interruption claim*

C had only been operating fully for two months before the claim. It provided information about its income and some of its costs. So it should have been fairly straightforward to calculate the loss of revenue. The main stumbling block was Mrs D’s data protection concerns which I’ll refer to below. Other than the sensitive data though, I didn’t think the rest of the information requested by Aviva was unreasonable.

*end date for business interruption cover*

I said the purpose of this sort of insurance was to put the policy holder in the same position after the insured event as it would have been in if the loss hadn’t occurred. Just before the claim C had about 30 clients on its books. I thought it was reasonable to assume that in the intervening four months or so, alternative arrangements would have been made for most if not all of these clients and effectively C would have had to start again. I didn’t think it was reasonable of Aviva to say that C could have got to the financial position it would have been in if the damage to its premises hadn’t happened in the space of just two weeks.

C’s other representative thought it would have been optimistic to assume that they could have reached that level by the end of June. I thought that would have been a realistic target date if C had spent the period leading up to the middle of March making appropriate preparations to reopen – recruiting staff, marketing etc. I accepted that Aviva would have made this process more difficult because of the damage to C’s reputation caused by staff ill-will. But, even taking that into account, I wasn’t persuaded it was Aviva’s fault that the business hadn’t recovered to its pre-loss level of potential income by that point bearing in mind how quickly it seemed to have got off the ground when it first started trading.

Subject to C providing the information previously requested by Aviva and to the other terms and conditions of the policy, I thought Aviva should re-consider this part of the claim based on an end date of 30 June 2017 and pay C any additional amount due to fulfil its liability.

## **responses to my provisional decision**

Mr G on behalf of C said in summary:

- Business interruption insurance is very specialised. Neither he nor Mrs D knew how it worked.
- Recruitment agencies told them that potential staff living within commuting distance of the property weren't prepared to consider working for C.
- He thought Aviva should pay C's legal costs for advice regarding the data protection implications of supplying certain information to Aviva in order to progress the claim.
- He thinks C's business would have continued to grow up to the end of June 2017 if it hadn't been for the water leak. He was concerned about making theoretical projections for the business interruption up to the end of June 2017.

Aviva responded through its solicitor. In summary it said:

- Mrs D's broker had told her on 1 November 2016 that the cover included loss of revenue. Mrs D hadn't told Aviva's loss adjuster that she'd lay off the staff. C had funds to cover the staff's wages for November.
- C's staff had been unhappy before the water leak.
- C should have started recruiting staff in November rather than the beginning of January since in November it was clear that the premises should be repaired by February 2017. This could have enabled the business to re-open sooner. So it didn't think it was fair to extend the business interruption period to the end of June 2017.

## **my findings**

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

I agree that business interruption cover is very specialised. As mentioned above, Aviva knew that Mrs D didn't seem fully aware of what the policy covered. Instead of explaining the cover clearly to Mrs D and how it affected her claim, the loss adjuster made things worse. I don't think it was unreasonable for Mrs D to tell her staff that she might not be able to carry on paying them. They were pressing her for information. All she knew at that stage was that Aviva would look at her business interruption claim about four weeks after C had re-opened for business. That was likely to be the following March at the earliest. Although C had funds for the November salaries, I can understand why Mrs D felt she couldn't guarantee that the staff would be paid for the following three months.

I accept that there had probably been some staff issues before the water leak. But I think the main reason the staff were so upset was because they were told that they might not be paid. Because they hadn't been there long enough for them to have a great deal of loyalty to the business, it doesn't surprise me that when they learned this, they wanted to leave their employment with immediate effect.

Aviva required C to provide sensitive information about its clients in connection with the claim. I'm not sure why Aviva needed this as opposed to anonymised attendance records which could have been reconciled with bank statements. Mrs D sought advice from a number of official bodies about this and was told C would be breaching data protection legislation if it provided the information. Eventually C's solicitor provided the anonymised information as an independent third party.

The legal costs for this work aren't covered by the policy. It only covers auditor's and professional accountant's reasonable charges for providing information in connection with the claim.

I think Aviva should have been more understanding about this issue and worked with Mrs D to find a constructive solution such as using her accountant to provide the information. As the need for C to instruct a solicitor could have been avoided if Aviva had handled this part of the claim better, I think in order to treat C fairly Aviva should pay the legal costs relating to this work.

The data protection issue wasn't resolved until the middle of January. In view of the uncertainty of how much would be paid in respect of business interruption and with Christmas intervening, I can understand Mrs D not taking steps to recruit staff until January when she was more certain of C's financial position.

The disruption to C's clients caused by the sudden closure of the business would have been well-known in a small rural community. Taking this into account and the fact that most of C's clients would have made other arrangements in the meantime, I think it would have taken much longer than the end of March for C to build the business up to its pre-loss position even if it had re-opened in March. The business could have re-opened in March, so I think that has to be the starting point. For the reasons previously explained, I think the end date for the business interruption should be the end of June 2017.

I appreciate Mr G's point that it's not very satisfactory to have to work on hypothetical projections but there's no other option in this case since the business still hasn't re-opened. If he isn't satisfied with the way Aviva calculates the loss of revenue, C can complain to Aviva and bring a further complaint to this service once it has exhausted Aviva's complaint handling process.

### **my final decision**

I uphold this complaint in part and require Aviva Insurance Limited to:

- pay £1,000 compensation to C for the inconvenience it was caused by Aviva's poor claims handling;
- reimburse C for legal costs incurred in connection with the claim subject to receiving satisfactory evidence of these; and
- re-consider C's business interruption claim based on an end date of 30 June 2017 (subject to C providing the information previously requested and to the other terms and conditions of the policy) and pay any additional amount due to fulfil its liability.

Aviva Insurance Limited must pay the amount of £1,000 within 28 days of the date we tell it C accepts my final decision. If it pays later than this, it must also pay interest\* from the date of my final decision until the date of payment.

\*Interest is at the rate of 8% a year simple. If Aviva Insurance Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell C how much it's taken off. It should also give C a certificate showing this if it asks for one, so it can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 26 February 2018.

Elizabeth Grant  
**ombudsman**