

## **The complaint**

Mr and Mrs D have complained about Aviva Insurance Limited's (Aviva's) handling and settlement of a claim they made under their commercial property insurance (landlord's) policy for damage caused to their let property by an escape of water.

## **What happened**

The details of this complaint are well known to both parties, so I will not repeat them again in full detail here. But to briefly summarise, Mr and Mrs D are unhappy with Aviva's handling of their claim. After a disagreement about the materials to be used to repair the damage, Aviva decided to withdraw its offer to repair the property and instead insisted on a cash settlement.

Mr and Mrs D say this caused inconvenience, a loss of rent and resulted in them incurring additional financial losses. They also complain that Aviva charged the policy excess twice, and that the cash settlement offer isn't sufficient to cover all of the required repairs. They're seeking an increase to the settlement amount based on a quote they've supplied, additional payments for loss of rent and reimbursement of professional surveyors and damp specialist costs. They also want Aviva to apologise for its handling of matters and to compensate them and their tenants for the distress and inconvenience caused. And Mr D would like to be compensated for the time he has spent dealing with the claim.

Our investigator issued two assessments on this complaint. In her final assessment, she said it was Aviva who withdrew the offer to carry out repairs, so any cash settlement should be based on the costs available to Mr and Mrs D, not on Aviva's discounted supplier rates. She said the invoice provided by Mr and Mrs D seemed reasonable so Aviva should meet those costs, plus interest from the point they were out of pocket to the point they were reimbursed. She also said Aviva should pay Mr and Mrs £200 compensation for the distress and inconvenience it caused them.

However, our investigator didn't think Aviva needed to cover the costs Mr and Mrs D incurred in appointing surveyors or a damp specialist. She also later clarified that she didn't think Aviva needed to cover additional loss of rent either.

Aviva didn't agree with our investigator's assessment. It said Mr and Mrs D's quote included elements of betterment. It also said that as an insurer it is able to limit the cost of repairs to what it would cost its suppliers, and Mr and Mrs D's costs were far in excess of that. However, Aviva did agree to pay the £200 compensation recommended by our investigator, as it accepted some service failings.

As no agreement could be reached, the complaint was passed to me to decide.

I was minded to reach a slightly different outcome to our investigator. So, in order to give the parties the opportunity to respond before I reached my final decision, I issued a provisional decision. Here's what I said:

### ***“What I’ve provisionally 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’m minded to reach a slightly different outcome to that reached by our investigator. I’ll explain why, addressing each issue separately for clarity.*

#### ***Switch to cash settlement***

*Mr and Mrs D are unhappy that Aviva took the decision to withdraw its offer to carry out the repair works through one of its suppliers several months into the claim. They’re also unhappy that the subsequent cash settlement offer was based on the amount Aviva said its supplier could carry out the repairs for, rather than the amount it would cost for them to carry out the repairs privately.*

*Aviva says that it is entitled to limit the cost of repairs to the amount it would have cost for its supplier to do the works. This is based on the following term from the policy wording:*

*“We may repair, reinstate or replace the lost or damaged property. If we cannot replace or repair the property we may pay for the loss or damage in cash. Where we can offer repair or replacement through a preferred supplier, but we agree to pay a cash settlement, then payment will not exceed the amount we would have paid the preferred supplier.”*

*Terms similar to the above are common in property insurance policies. But Aviva ought to be aware that our service has a long-standing and well-established approach to how such terms can be fairly and reasonably applied in a situation like this. That is, that an insurer can only fairly limit its settlement to its suppliers’ costs if it is willing to carry out the works through that supplier, but the policyholder refuses to allow the insurers supplier to do those works. Or, where it is reasonable for the insurer to refuse for its supplier carrying out the works due to an irretrievable breakdown of the relationship with the policyholder – which is due to the policyholder’s unreasonable behaviour.*

*Aviva says it took the decision to withdraw its contractor and offer a cash settlement due to Mr and Mrs D’s approach to a disagreement over certain materials to be used during the repair. It says the relationship had effectively broken down and so a cash settlement offer was made, limited to its suppliers’ costs, in line with the terms of the policy.*

*I’ve thought carefully about this. And while I appreciate the policy gives Aviva the right to decide how to settle the claim, including by offering a cash settlement limited to its suppliers’ costs, I’ve not been persuaded that its decision to withdraw the contractors at the point it did, and for the reasons it gave, was fair or reasonable in the particular circumstances of this claim and complaint.*

*I say this because I've seen no evidence that Mr and Mrs D were deliberately obstructive or in any way threatening or abusive. Instead, it seems to me that they were simply advocating for what they believed they were entitled to under their policy. I think it's reasonable (and very common) that some negotiation is to be expected in claims of this nature. And, from what I've seen, it seems that several of their assertions were eventually accepted as being valid. Ultimately, nothing I've seen has persuaded me that Mr and Mrs D's behaviour was so unreasonable that it was fair for Aviva to completely withdraw its contractors at the point it did.*

*As I'm not persuaded that Aviva's decision to withdraw its contractors, for the reasons it gave, was fair or reasonable, it follows that it wouldn't be fair to allow it to limit the cash settlement to its supplier costs. Instead, the cash settlement should be based on the costs available to Mr and Mrs D. I'll explain what this means for the settlement in the next section.*

### *The claim settlement*

*Since the complaint was first raised with Aviva, Mr and Mrs D have had the repairs completed by their own contractor. Aviva has had sight of the invoices for the works carried out and has made the following comments:*

- The bathroom furniture was not damaged as a result of the claim so it didn't require replacement.*
- The floor tiles were included in the schedule and settlement provided.*
- The floorboards were included in the schedule and settlement provided.*
- Making safe the plumbing is included within the enabling for the overall project and costs included within the settlement.*
- The vanity unit was included in the schedule and settlement provided, the toilet and wash hand basin were included for removal and refitting.*
- The woodwork is included in the schedule and settlement provided.*
- The plumbing appears to include betterment to renew waste pipes, with the original refitting of the existing bathroom items, this would not be considered necessary as part of the claim or project.*
- The removal of the existing towel radiator is included previously and appears to be a duplicate.*

*Aviva's cash settlement is based on a schedule of works drawn up by its loss adjuster, based on its supplier costs, covering the claim related damage identified during the visual inspection. But I've already set out above that I don't consider it fair for Aviva to limit the settlement to its suppliers' costs.*

*So, in order to put things right, I think Aviva needs to increase the cash settlement so that it meets the costs set out in Mr and Mrs D's invoices for all of the claim related repairs. However, it can exclude any works which were not necessary as a result of the claim, such as the replacement bathtub, or any bathroom furniture not damaged as part of the claim.*

*That said, Mr and Mrs D have explained that they were unable to find any contractors who were willing to reuse old pipework when carrying out the repair, and this doesn't seem unreasonable to me. So, I do think Aviva needs to meet the cost of the new pipework included in Mr and Mrs D's invoices.*

*Aviva should calculate the updated cash settlement offer (based on Mr and Mrs D's quotes), and to any additional amount due to Mr and Mrs D it should add 8% simple interest from the date it issued the cheque for the cash settlement of £4,768, to the date it pays the increased settlement. This is to compensate Mr and Mrs D for being deprived of the use of funds I think they were reasonably entitled to under the terms of their policy.*

*I appreciate Mr and Mrs D didn't cash the cheque Aviva initially sent, and so they didn't get the benefit of the funds at that time either. But I can't reasonably hold Aviva responsible for their decision not to cash the cheque. This is why I'm only intending to award 8% interest on the difference between Aviva's initial settlement payment and the new settlement value, rather than on the full value of the new settlement.*

#### Professional costs

*Mr and Mrs D have incurred costs in appointing a surveyor and a damp specialist during the claim. They say their policy provides cover for this, based on the following term:*

*"We will also pay;*

- fees to architects, surveyors, consulting engineers and legal fees which you have to pay with our consent to reinstate the buildings"*

*From what I've seen, Aviva didn't give consent for Mr and Mrs D to incur those costs prior to them being incurred. And given Aviva had already confirmed the claim was valid and committed to covering any additional claim related damage which might be discovered during the repairs, I don't think it would be reasonable for me to conclude that it was necessary for Mr and Mrs D to incur these costs in order to receive a fair settlement. So, based on this, I'm not intending to direct Aviva to cover these costs.*

#### Loss of rent

*Mr and Mrs D wanted Aviva to cover alternative accommodation for their tenant. However, the property was not deemed by Aviva to be uninhabitable as a result of the damage covered by the claim. And based on the evidence I've seen, I agree that its position here was reasonable. I say this because the key facilities in both the bathroom and the kitchen remained operational.*

*As part of its cash settlement, Aviva covered one month loss of rent – as this was the estimated time the claim related repairs would have taken, and during repairs it accepted the property would become uninhabitable. And as it appears Mr and Mrs D's tenant vacated before commencement of any repairs, I think this approach seems reasonable.*

*Since their original complaint was made, Mr and Mrs D have suggested that Aviva should cover a further three months loss of rent, because the actual repairs took until November 2022 to be completed. They also say that, but for the length of time repairs took, due to Aviva's handling of things, they could have increased their rent during this period. So, they want Aviva to cover this alleged rent shortfall too.*

*Despite these issues not being included in their complaint originally, our investigator asked Aviva for its comments on these issues, which it duly provided. So, as Aviva has provided a response to these issues, and in the interest of completeness, I'll address them as part of my provisional findings.*

*I appreciate the evidence Mr and Mrs D have provided about the rental values of similar properties in their area. But I'm not intending to direct Aviva to cover the alleged rent shortfall, because I've seen no evidence that they had an actual tenant in place who would have been prepared to pay said increased rent, but for the ongoing works. The alleged rent shortfall Mr and Mrs D are seeking to claim for here is purely hypothetical and so I don't consider it would be fair or reasonable to direct Aviva to cover it.*

*In terms of the additional time it took for the works to be completed, Aviva has argued that Mr and Mrs D took the decision to fully renovate, adding additional time for all the works to be completed. Aviva maintains the claim related damage, in isolation, could have been completed within one month.*

*Based on everything I've seen, I'm not persuaded by the information put forward by Mr and Mrs D, that the claim related repairs in isolation would have reasonably taken three months to be completed. So, in the absence of additional evidence setting out why the repairs took so long, and supporting this was solely the result of claim related damage, I'm not intending to award any additional loss of rent here.*

#### *Financial loss, distress and inconvenience*

*Mr and Mrs D would like Aviva to pay Mr D a fixed daily rate for the amount of time he has spent dealing with the claim.*

*While I appreciate Mr and Mrs D will likely have spent time liaising with Aviva and its agents as well as on this subsequent complaint, some disruption and inconvenience is to be expected with claims of this nature and wouldn't necessarily be the fault of Aviva. I'm also mindful that some of the delays in the claim resulted from Mr and Mrs D not initially providing evidence to support their disputes over materials, and it wouldn't be reasonable to hold Aviva responsible for that either.*

*I should also point out that I haven't seen any evidence to support that Mr D lost a specific daily amount at any point, due solely to issues caused by Aviva. So, it wouldn't be fair or reasonable to make an award of this nature.*

*However, I do agree that there have been some delays and service failings on Aviva's part in this case, and that Mr and Mrs D will have suffered some distress and inconvenience as a result. That doesn't seem to be disputed as Aviva has agreed to pay compensation following our investigator's assessment.*

*I've thought carefully about everything Mr and Mrs D have said about the impact Aviva's failings have had on them and their tenant. But I must point out that I'm unable to consider any distress and inconvenience suffered by their tenant as part of this complaint, as they aren't Aviva's customer. So, taking into account the impact to Mr and Mrs D only, and considering our service's published guidance around awards of this nature, I think the £200 compensation recommended by our investigator is sufficient to put things right."*

I said I was intending to direct Aviva to increase the cash settlement so that it meets the costs set out in Mr and Mrs D's invoices for all of the claim related repairs and to add 8% simple interest to the additional amount due, from the date it initially cash settled until the date of settlement. And I said it should pay £200 compensation.

Aviva confirmed it accepted my provisional findings. It asked for a summary of the settlement it needed to pay in order to resolve the complaint.

Mr and Mrs D provided a lengthy response and several supporting documents. To summarise, they said:

- They haven't received the compensation recommended by our investigator despite it being agreed in 2022.
- The claim settlement cheque wasn't issued by Aviva but by the builder.
- The work to the bathroom floor is not complete as their builder wouldn't carry it out.
- They maintain Aviva should cover their professional costs as it was necessary to appoint someone due to the damage and mould on the joists.
- Aviva agreed to pay £240 toward damage to kitchen units but it hasn't, and my provisional decision didn't cover this.
- Aviva decided to withdraw their contractor. They then couldn't find a contractor who could start on short notice, or one that wanted to work with insurers involved. They had to appoint one who could only work a few days here and there which is why it took longer for the works to be completed. They shouldn't be penalised for this, and Aviva should pay loss of rent for the duration of the works.
- They provided additional context around the impact of Aviva's handling of the claim and requested I reconsider awarding financial loss and the amount of compensation I provisionally awarded.

### **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.

I've also thought carefully about the responses and additional evidence provided in response to my provisional decision. Having done so, my provisional conclusions remain unchanged. I'll explain why in more detail, using the same subheadings I used in my provisional decision.

#### *Switch to cash settlement*

Many of Mr and Mrs D's points about the impact this claim has had on them stem from Aviva's decision to withdraw its contractor and offer a cash settlement. They say they paid a deposit to secure the contractor and Aviva's decision to withdraw them when it did amounts to a breach of contract and has resulted in significant distress, inconvenience and financial loss.

In my provisional decision I explained why I didn't think it was fair for Aviva to withdraw its contractor and limit the cash settlement to the equivalent of its own costs. But to be clear, Mr and Mrs D's policy allows Aviva to decide how best to settle the claim, including by offering a cash settlement. There's nothing inherently unfair about it deciding to settle the claim in this way. My concern was not with Aviva deciding to cash settle, in isolation, but with it doing so *and attempting to limit the cash settlement to its supplier's cost*.

Even though the policy allows Aviva to decide how to settle the claim, including by offering a cash settlement, there are circumstances where our service might decide that doing so would be unfair. For example, where the required repair works are particularly substantial or complex, such as claims for subsidence damage where the solution requires underpinning. But the works required in this case were not substantial or particularly complex in nature.

Based the above, I don't consider that Aviva's decision to switch to a cash settlement, in isolation, was unfair, or a breach of contract as Mr and Mrs D have suggested. But it was unfair for it to do so and attempt to limit the settlement to its own costs. Aviva's decision to switch to a cash settlement is only fair providing the cash settlement it pays is based on Mr and Mrs D's costs and not its suppliers' costs. And to be clear, the £250 Mr and Mrs D paid was the policy excess, not a deposit to guarantee Aviva's contractors.

#### The claim settlement

Mr and Mrs D have pointed out that the initial cash settlement was paid by the contractor not Aviva. To clarify, the contractors were working as agents of Aviva. As the principal, Aviva is responsible for the actions of its agents. So, when I've referred to actions, evidence or arguments put forward by Aviva, this also includes things put forward or actioned by its agents.

Neither side has objected to my provisional finding that Aviva should recalculate the settlement for the claim related repairs based on the costs incurred by Mr and Mrs D. So, as there are no new arguments here, my conclusion on this point remains the same.

However, Mr and Mrs D have pointed out that Aviva's offer to pay £240 toward a damaged unit was omitted from my provisional decision.

Given this doesn't appear to be in dispute, and Aviva has committed to making this payment, I see no reason to comment in detail. But I will direct Aviva to make this payment as part of my final decision – in line with the offer it has already made.

Mr and Mrs D have also highlighted that the bathroom floor work was not carried out by their contractor, and so remains outstanding. They say Aviva's schedule of works included for this work so it should complete the work or include the cost of it in the cash settlement. They also say this will result in the home being uninhabitable for two to three days and so Aviva should include alternative accommodation costs for that time.

From Aviva's schedule of works, it does seem that the costs for removal and replacement of the entire bathroom floor have been included. This means the cost of this work will be covered in the cash settlement, so there is nothing further Aviva would need to pay (aside from increasing the price of the work to Mr and Mrs D's costs rather than its suppliers) for the actual works.

In terms of alternative accommodation while that work is carried out, Mr and Mrs D's policy doesn't cover alternative accommodation for tenants, only for the policyholder and their family if they live in the property. Where the property isn't lived in by the policyholder, it covers loss of rent instead of alternative accommodation costs.

So, whether or not the property will become uninhabitable during repairs, there will be no cover for alternative accommodation. But if, at the point of repairs, Mr and Mrs D incur a loss of rent, they should present evidence of this to Aviva for further consideration. Should they remain unhappy with Aviva's decision on this, at that point, they may be able to raise a new complaint with our service, subject to our normal rules.

In terms of Aviva's request for a summary of the award, I've not forensically reviewed the invoices and schedules of work as that's not my role. So, I'll not be setting out specifically each and every element of the works which needs to be covered.

In order to fairly resolve this part of the claim and complaint, Aviva needs to increase the amount it paid for all the items it accepts were required as a result of the claim, based on the costs incurred by Mr and Mrs D. It should also include the replacement pipework, for the reasons I explained in my provisional decision. But it doesn't need to pay for any other items which it deems were not damaged as a result of the escape of water.

### Professional costs

Mr and Mrs D maintain the costs they incurred for their architect's report should be covered. They say Aviva refused to remove and replace water damaged joists, and that Aviva's contractor would be less qualified than an architect, surveyor or damp specialist, in diagnosing any potential mould or dry rot issue.

I've thought carefully about everything Mr and Mrs D have said. But having done so I remain of the view that it wouldn't be fair to direct Aviva to cover these costs. I say this because the policy only provides such cover where the costs are approved by Aviva in advance – which they weren't. Aviva also confirmed it would consider any further damage discovered during the repairs, and while I accept a contractor doesn't necessarily have the same expertise as an architect, surveyor or damp specialist, I think they would be able to identify rotten or mouldy joists and report this to Aviva for further investigation.

I also note that the architect's report didn't make a firm finding on the presence of mould or rot, rather it suggested further investigation was required. And I'm aware that Mr and Mrs D's contractor didn't end up removing or replacing the joists, rather they treated it with some sort of repair solution and left it in place.

Taking all of the above into account, I'm still not satisfied that it was necessary for Mr and Mrs D to appoint an architect, without Aviva's prior approval, in order to receive a fair settlement. So, in these circumstances, it wouldn't be fair or reasonable to direct Aviva to cover those costs.

Mr and Mrs D have also clarified that their contractor obtained the advice of a damp specialist, but not a formal report. They say they assume the costs of this were added to their contractors' costs – although these aren't set out on the invoice.

I accept it is possible that the costs of a damp specialist would have been required to confirm whether a fungicide solution would be appropriate or whether the joists required replacement. But again, Mr and Mrs D didn't obtain Aviva's approval before incurring these costs. That means by a strict application of the policy terms, Aviva doesn't need to cover those costs. However, even if I intended to step outside the policy terms and award these costs on a fair and reasonable basis, there is no evidence of any additional costs being incurred for this. So, in the circumstances, I'm making no award for any damp specialist costs either.



### Loss of rent

Mr and Mrs D have said they remove their request for Aviva to cover their lost opportunity to increase their rent. But they maintain Aviva should pay loss of rent for the full length of time the works took to complete – between July and November 2022.

As set out in my provisional decision, the evidence I've seen suggests that one of the main reasons the work took so long to complete was because of additional, non-claim related repairs Mr and Mrs D decided to complete alongside the claim repairs.

In response to my provisional decision, Mr and Mrs D have also further clarified that the contractor they employed to carry out the repairs was only able to attend on an ad hoc basis, further increasing the length of time the repairs took.

As I've explained, I don't think Aviva's decision to offer a cash settlement, in isolation, was unfair. So, while I appreciate Mr and Mrs D had difficulties sourcing a contractor, I can't reasonably hold Aviva responsible for their choice to pick one who couldn't carry out the works in one consistent block.

Ultimately, I don't think the additional time the works took to complete resulted from something Aviva did wrong. So, I'm not awarding any additional loss of rent for the period of the works.

Mr and Mrs D have also raised additional points about their property not being habitable or lettable following the event until the works were completed. They've pointed to the potential risks posed by mould, rot and exposed insulation wool.

I've thought about this, but I note that their tenants chose not to vacate the property initially, so even if I accepted the property was uninhabitable, which I'm not necessarily saying I do, there is no loss here as they continued to receive rent until the repairs commenced. And I've already explained above, and in my provisional decision, why I think Aviva's decision to only cover one month loss of rent, for the reasonable duration of the claim related repairs, was fair.

### Financial loss, distress and inconvenience

As I explained in my provisional decision, our service doesn't typically make awards for the number of days or hours a complainant spent on dealing with their claim or complaint. And Mr and Mrs D haven't provided any evidence of actual financial loss caused solely by Aviva either. In these circumstances, I think it's fair to consider everything that happened in the round, and consider the impact of the Aviva's errors, when deciding on a fair amount of compensation.

I'm grateful to Mr and Mrs D for setting out the significant distress and inconvenience this claim has caused them, and I sympathise as I can see it's been a difficult time for them. However, most of the points Mr and Mrs D have highlighted stem from the fact there has been an escape of water which they needed to claim for, rather than because of something Aviva specifically did wrong. I've already explained that Aviva was entitled to offer a cash settlement, and that I don't think this, in isolation, was unfair. And, as explained, some inconvenience is expected in claims of this nature, which I've had to take into account.

I've also had to be mindful that the vast majority of distress and inconvenience in this case was suffered by the tenants – and as explained I'm unable to make an award for this because the tenants aren't Aviva's customers.

I do appreciate that Mr and Mrs D have suffered from distress and inconvenience as a result of the errors Aviva has made – which are to unfairly restrict the cash settlement to its supplier's costs and some avoidable delays and service issues its solely responsible for. But I remain of the view that the £200 set out in my provisional decision is enough to compensate for the impact of the particular issues which I can solely attribute to something Aviva did wrong.

I accept that the claim as a whole has caused significant additional disruption and inconvenience to Mr and Mrs D. But that isn't something I think Aviva is solely responsible for. So, I'm not awarding any additional compensation for distress, inconvenience, or alleged financial losses.

### **My final decision**

For the reasons I've explained above, and in my provisional decision, I uphold Mr and Mrs D's complaint in part.

Aviva Insurance Limited must:

- Increase the cash settlement so that it meets the costs set out in Mr and Mrs D's invoices for all of the claim related repairs.
- Pay Mr and Mrs D £240 toward the damaged kitchen unit – in line with the offer it has already made.
- Add 8% simple interest to any additional amount due, from the date Aviva issued the initial cash settlement, to the date of settlement.
- Pay Mr and Mrs D £200 compensation for the distress and inconvenience it has caused them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 12 September 2023.

Adam Golding  
**Ombudsman**