DRN-4572138

The complaint

Mr H and Ms R have complained about the amount Aviva Insurance Limited has paid for a claim they made on their buildings insurance policy.

Mr H has primarily dealt with things so, for simplicity, I'll refer to him only.

Reference to Aviva includes its agents and representatives.

What happened

As the circumstances of this complaint aren't in dispute, I'll summarise what's happened.

- Mr H took out a buildings insurance policy for his holiday home through a broker, who I'll call S, in 2019. The cover was provided by an insurer I'll call L – not Aviva. It renewed in 2020 and Aviva became the insurer of the buildings and contents.

- When the policy renewed in November 2021, Aviva remained the buildings insurer and another insurer, who I'll call R, became the contents insurer. The sum insured for the buildings was set to £202,000.

- In April 2022, Mr H got in touch with Aviva to make a claim following an escape of oil which had contaminated the water supply to the property.

- Aviva accepted the claim and said Mr H should have insured the property for around £550,000, so it was underinsured. Because of this, Aviva paid 50% of the cost of reinstatement and 100% of the cost of providing a temporary water supply. I understand some reinstatement work had to be redone, and Aviva paid 100% of this.

- Aviva worked with relevant authorities to restore the water supply and it arranged for reinstatement work to be carried out. This was completed in September 2023, although water sampling was set to continue for a further year.

- Mr H complained about the way Aviva had dealt with the claim. Primarily that it hadn't paid the claim in full. But also, not paying for loss of rent or alternative accommodation (AA), the time it had taken, and the impact on him and his family.

- Aviva didn't change its position or agree that it had acted unfairly in any way.

- Our investigator thought the complaint should be upheld. She said:

    - It was likely Mr H had underinsured his property to some extent – but Aviva hadn't shown what impact this had on the premium it charged. So she didn't think it was fair for Aviva to reduce the claim payment and asked it to pay the full claim cost.

- Mr H was living at the property during the claim. And Aviva had paid the full cost of a temporary water supply. So there was no need for it to pay for AA.

- Mr H had chosen to live at the property during certain times of the year due to personal circumstances unrelated to the claim. So the claim hadn't caused a loss of rent at those times. But outside of those times, were it not for the claim, he wouldn't have lived there and would likely have received rent. So Aviva should pay loss of rent for those periods.

- Aviva should pay £200 compensation for an avoidable delay caused by not testing the borehole for contamination at an earlier stage. And a further £200 for delays caused chasing R for a contribution to the claim cost. But overall, she didn't think there were significant avoidable delays.

- Neither party fully agreed with our investigator. I'll summarise the key points each party made about the matters that remained in dispute.

- Aviva said:

  - It couldn't estimate the rebuild cost at an earlier time without incurring costs from a surveyor.

  - There was an impact on the premium of a higher sum insured and provided information about this.

  - It paid around £8,500 for the temporary water supply, including an allowance to clean the pipes to receive the water. And if Mr H had paid more than this, it would consider paying additional costs.

- Mr H said:

  - There were significant delays restoring the water supply, which also delayed the wider reinstatement work. This was a result of Aviva and R disagreeing over which of them was responsible for the cost.

  - The water pipes in the property were contaminated, so a temporary water supply couldn't be used. Even though he paid to have the pipes cleaned, it was unsuccessful. So whilst Aviva had paid for the temporary water facility, in practice it wasn't an option available to Mr H. Instead, he made regular trips to get water and used facilities at a neighbour's home at times.

  - He questioned whether the approach our investigator had taken to the underinsurance matter was the right one, noting historic guidance about the matter on our website differed.

- Our investigator wasn't persuaded to change her mind. As an agreement wasn't reached on all points, the complaint has been referred to me.

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.

- When making my decision I need to consider what's fair and reasonable in all the circumstances of the case, taking into account relevant law and regulations;

regulators' rules, guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the time.

- There's no dispute that the claim was covered by the policy in principle. The key dispute is about the amount Aviva paid to settle the claim, so that's what I'll focus on. There are also secondary disputes about the way the claim was handled and whether Aviva should pay anything for AA and/or loss of rent.

- This complaint is solely against Aviva, so I can only consider matters that Aviva is responsible for. That's essentially the claim, including the amount paid and the way Aviva and its agents and representatives handled it. I can't consider any matters that other parties, including S, R and L, are responsible for. Mr H is entitled to raise complaints about matters other companies are responsible for if he wishes.

Amount paid for the claim

- In a nutshell, the key dispute arose because Aviva said Mr H should have insured his property for a much higher amount. And, as a result, Aviva considered it was entitled to reduce the amount it paid for the claim. In other words, Aviva reduced the claim settlement because it said Mr H had set the sum insured for his buildings cover too low at the 2021 renewal. So I think it's relevant to consider what happened then.

- When selling and/or renewing the policy, S was responsible for gathering the information Aviva required in order to decide whether to offer cover – and, if so, what premium to charge. That usually involves S asking the policyholder to take reasonable care to provide relevant information. It may also involve S providing guidance and support to help the policyholder do that.

- Aviva's policy says: *"You have an ongoing duty to ensure that your sums insured represent the full value of the property insured at all times. For Buildings, this means the cost of rebuilding the buildings if they were completely destroyed, including demolition, debris removal and professional fees. This will not necessarily be the market value… If the amount shown in your schedule represents less than 100% of the full value, we will only settle claims at the percentage you are insured for"*.

- Because of this, I'm satisfied Aviva required the sum insured to reflect the full rebuild cost of the property. That's very common and not unreasonable.

- At the 2021 renewal, the policy documents provided by S said: *"Buildings (sum insured up to £202,000)"*. That means Mr H effectively told Aviva, via S, that the cost to rebuild his property was £202,000. I know he considers he wasn't given sufficient support and guidance by S to reach a reasonable figure. But that's not something Aviva is responsible for, so it's not something I can hold against Aviva. Put simply, Aviva wanted to know the full rebuild cost – and it was told £202,000.

- When Aviva looked into the claim, it estimated the rebuild cost to be around £550,000, based on March 2022 costs. I haven't seen any other professional estimates to challenge this. And I don't think Mr H has challenged it either. He accepts he inadvertently ended up underinsured.

- Aviva's estimate should be based on the costs at the time of the renewal so that it can be fairly compared with the figure Mr H gave. It hasn't done that, so it's unclear what figure it thinks Mr H ought to have given in November 2021. However, given the difference between the renewal and Aviva's estimate is around six months, I'm

satisfied there's still likely to be a large difference, even if the costs were adjusted. So, I'm satisfied Mr H's figure wasn't a reasonable estimate at the relevant time.

- According to Aviva's policy term, that means it can settle the claim at a percentage of the full claim cost – often known as 'applying average' – and here that's around 37%. It considers it treated Mr H fairly by settling some of the claim at 50% and the rest at 100%. I agree in principle that if Aviva was entitled to settle the entire claim at 37%, then settling at a higher amount, and for some parts the full amount, would have been a fair claim settlement.

- However, in my view it's relevant to consider what impact there would have been on Aviva if Mr H had given a similar figure to Aviva's. And to judge the fairness of Aviva's offer based on that.

- If, for example, Aviva would have offered the same policy at the same premium, even with a higher sum insured, I'm not satisfied it would be fair to follow the policy term and make a deduction to the claim. That's because doing so would effectively penalise Mr H for an inconsequential mistake. Or similarly, if Mr H paid, say, 75% of the premium he would have done for a higher sum insured, paying only 50% of the claim in return doesn't seem fair, proportionate or equitable. Nor would it be in line with the relevant law relating to remedies available to insurers if policyholders don't provide reasonable information when taking out or renewing insurance policies. So establishing the likely impact on Aviva is vital to determining a fair outcome.

- Based on a sum insured of £202,000, Aviva charged £168.58 for the buildings cover. So the important question is: what would Aviva have charged at the November 2021 renewal had the sum insured been higher – something like £550,000, adjusted for cost rises since November 2021?

- Aviva has provided a variety of information about this – none of which is persuasive. It initially said the premium of £80 would increase to £191.78. But the premium wasn't £80 to start with – it was much more than that. After our investigator challenged this, Aviva said it could only provide information about the premium it would charge in November 2023 – two years later than relevant. It later said it *could* provide information from November 2021 and repeated what it had said initially – despite knowing the premium wasn't £80 at that time.

- Aviva's response on this point is inadequate. It's been inconsistent about the information it can provide. And the information it has provided contradicts known facts. Insurers often have to estimate the premium they would have charged at different times, with different information, in order to follow the relevant law relating to remedies available to insurers if policyholders don't provide reasonable information when taking out or renewing insurance policies. So it's surprising that Aviva is seemingly unable to do this.

- In principle I accept that an increased sum insured is likely to lead to an increased premium – to some extent. But across the industry, different insurers take a wide variety of approaches. In similar circumstances, some insurers may increase the premium negligibly, whilst others may do so significantly. That means the extent to which Aviva would have increased the premium makes a material difference to the outcome of the complaint – and possibly a significant one.

- Returning to my question a few bullet points above, Aviva hasn't shown that it would have charged a higher premium for a higher sum insured. So I'm not satisfied it's

shown any impact as a result of Mr H being underinsured. Because of that, I'm not satisfied it acted fairly when it relied on the policy term to reduce the claim cost.

- To put that right, Aviva should settle the claim without applying that reduction. But all other policy terms and conditions remain, which may impact the settlement. For example, any applicable policy excess(es) and/or limit(s).

- I know Mr H has questioned this approach to underinsurance, as it differs from historic guidance on our website. My role is to reach an outcome that I consider to be fair and reasonable in the particular circumstances of the complaint, bearing in mind, amongst other things, relevant law, rules, guidance and standards. And noting the approach I've taken hasn't disadvantaged Mr H, I don't think I need to comment on the general approach in more detail to fulfil my role.

Alternative accommodation (AA)

- The policy covers AA whilst the property can't be lived in due to the escape of oil problem. Mr H and his family remained living there during the claim. But they didn't have safe running water as a result of the contamination. So I can understand why he questioned whether he should have been offered AA.

- Aviva didn't offer AA, but it paid around £8,500 for a temporary water supply. If that had provided safe running water, I understand the property could have been lived in and AA wouldn't have been required. So that payment was effectively in lieu of AA.

- There's a dispute about whether the temporary supply was effective. On the one hand, Aviva says the payment allowed Mr H to clean the pipes, so the supply could be used. On the other, Mr H says the cleaning didn't work, so the supply wasn't a practical option for him.

- But I don't think I need to make a finding on that specific point. Aviva paid Mr H around £8,500. So if the supply was impractical, this money was effectively compensation for the inconvenience and trouble associated with him making trips to get water, living in a home where water had to be regularly refilled, and using the facilities at his neighbour's home at times. I'm satisfied that's reasonable compensation in the circumstances. So I won't be telling Aviva to pay anything further for AA and/or the temporary water supply problem.

Loss of rent

- The policy also covers loss of rent whilst the property can't be lived in due to the escape of oil problem. As Mr H and his family were living at the property during the claim, on the face of it there can be no loss of rent.

- However, Mr H has explained that the situation is more complex than that. He owns a property in one part of the country. He also owns this property, which is in another part of the country, and is insured as a holiday home. Prior to the claim, it was regularly let out, particularly in peak holiday periods, such as the summer time.

- As a result of the escape of oil claim, I think it's unlikely it could have been rented out as a holiday home. At best, it would have had a temporary water supply in the garden and, at worst, no water supply at all. The holiday let company Mr H uses to facilitate bookings provided comments which make clear they wouldn't have considered trying

to rent it out in such a condition. I'm persuaded by that, and I note Aviva hasn't challenged it either.

- Due to a change in personal circumstances, Mr H began living in the property more often prior to the claim. He was there during academic term time, but at peak times outside of that, he was at his other property to allow the holiday home to be rented out. Due to the claim, he wasn't able to let the holiday home at those times – so he'd like Aviva to accept this claim for loss of rent during those times.

- Our investigator thought this was reasonable and asked Aviva to do so. Aviva didn't comment on it, so I assume it has no objection to doing so. And Mr H's testimony, combined with evidence he's provided, persuades me this would be the fair thing to do – subject to the terms and conditions of the policy.

- To put things right, Aviva should accept the loss of rent claim. It should then go on to consider how much to pay to settle it. That will likely involve asking Mr H for information about when he would have let it out, and at what rate, possibly with supporting evidence.

Delays and claim handling

- The claim began in April 2022 and ended in September 2023, so it took around 18 months to resolve. As our investigator has explained, any distress or inconvenience as a result of the escape of oil – or the steps inevitably required to put it right – is an unfortunate and unavoidable consequence of the escape. That's not something I can hold Aviva responsible for.

- However, if Aviva has avoidably added to that distress or inconvenience, I'll hold it responsible for that and consider what an appropriate remedy is.

- Our investigator identified two periods of avoidable distress or inconvenience caused by Aviva. The first where additional work was required due to a lack of borehole testing. And the second where a disagreement between Aviva and R about responsibility for costs held up claim progress. In both cases she suggested £200 compensation, making £400 in total.

- Neither party challenged this, so I assume both are in agreement this is a reasonable sum for the avoidable distress or inconvenience caused by Aviva. Having considered the history of the claim, I'm satisfied this represents a fair amount of compensation.

My final decision

I uphold this complaint.

I require Aviva Insurance Limited to:

- Settle the claim without a deduction for underinsurance, subject to the remaining terms and conditions of the policy.
- Accept the loss of rent claim, subject to the terms and conditions of the policy.
- Pay £400 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Ms R to accept or reject my decision before 12 March 2024.

James Neville
Ombudsman