

The complaint

The estate of Mrs H complained they lost rental income on their property ahead of sale due to delays by Aviva Insurance Limited (“Aviva”) on the progression of a claim. A representative for the estate of Mrs H dealt with this complaint, who I’ll refer to as “the Representative”.

What happened

In a different complaint raised with our Service, we found that Aviva delayed an insurance claim by around ten months which caused a delay in the sale of the property belonging to the estate of the late Mrs H.

The Representative (for the estate of the late Mrs H) said the delays caused by Aviva meant the estate couldn’t benefit from the financial asset (the house) during the delays. In other words, the Representative couldn’t sell the house or obtain a reasonable rent for it during the period of delay. The Representative has provided calculations supporting an estimated loss of rental income (including interest) of just shy of £13,000.

The Representative has explained that he hadn’t anticipated any delays, so hadn’t actively tried to rent the property on the open market during this period. Instead, to try and mitigate any losses and keep his buyer, he said he rented the property out at a lower rate. The impacts of this are included in the Representative’s calculations.

Aviva said “I cannot see that, at any time, did you discuss this with us to determine if we would cover [any] shortfall, or, if indeed loss of rent was covered. I can see that you changed the property insurance to a let property in June 2020, when you were to return to Customer Services, to advise when a tenant had been found. I do not see that you contacted them again, until October 2020, when you said the property had been sold. No further contact was made until cancellation of the insurance in March 2021.

That said, any loss of rent claim can only apply if the property is deemed uninhabitable. For example, no cooking facilities, no hot water, or bathing facilities. Clearly, the fact the new owners moved into the property would determine that this was not the case.

I [must] therefore conclude that the conditions of a claim for loss of rent were not met”.

Our investigator decided not to uphold the complaint. She said, “I’m not satisfied it’s reasonable for Aviva to pay the loss of rental income that [the Representative] is claiming for because I’m not persuaded it’s a financial loss that he’s suffered”. The estate of the late Mrs H disagreed, so the case has been referred to an ombudsman.

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.

Firstly, I'd like to share my condolences for the friends and family of the late Mrs H. I appreciate the circumstances will have added to the distress of making any claim to Aviva.

For the avoidance of doubt, my decision will not consider the delay itself as this was dealt with under a different complaint. I will only consider the loss claimed by the Representative for the limited use of the financial asset (the house) during the period of said delay.

Aviva has confirmed the estate of the late Mrs H wasn't covered for loss of rent as the circumstances didn't constrain the rental of the property as the property was habitable. Aviva has provided evidence to this end, in showing the future owner moved in and lived in the property, paying a nominal rent.

However, the Representative said he only entered this arrangement as it was the best of all evils, ensuring that losses were mitigated as far as possible during this period and to keep hold of the buyer. The circumstances were further complicated as all this occurred around the time of the Covid pandemic, which added to the uncertainty.

The Representative has made it clear that his loss of rent is a proxy calculation for the financial loss suffered by the estate. The crux to his argument is that the sale was delayed by Aviva, so the estate couldn't service the financial asset within it.

I've taken my time weighing up the factors in this case, and unfortunately for the Representative, I won't be upholding this complaint. I'll explain why.

Our service when making decisions must be careful to only use factual evidence to guide us. Any losses we consider need to be direct to the estate and to have actually happened. It's important to understand that under the rules our service is regulated by, we can only consider any direct losses to the estate and not any losses that may be caused to benefactors.

In considering the rental argument first. Aviva said the Representative made the decision to follow the path he did unilaterally. The Representative didn't engage with Aviva to consult whether this was the optimum approach given the circumstances. Aviva have stated the flat was habitable, so loss of rent under the policy wouldn't apply. I think this is fair, as there is no evidence the house wasn't habitable. Certainly, the bathroom and kitchen were serviceable.

I think not engaging with Aviva was an error on the part of the Representative, as it was important to get buy into this plan. The Representative allowed the buyer to rent at a rate much lower than the market rate. The Representative said he followed this path to ensure he didn't lose his buyer. Whilst I understand why he did this. It was his choice and one that meant he didn't make full use of the financial asset during this time. It helped his buyer out, who had his own costs to consider, such as an early redemption penalty on his mortgage.

However, I think the Representative could've chosen to charge his buyer or someone else a rental rate at a level commensurate to the general rental market. So, I don't think there is a direct loss to the estate here. I don't think I can draw enough of a connection between the actions of Aviva and potential lost rental income to the estate caused by Aviva.

I've noted the Representative chose to go down the rental route as he wasn't able to service his asset, i.e. sell it. He's cited worries about the potential loss the estate could've made if they lost their buyer and there was a market crash. I haven't considered this point as this isn't what happened, so no direct financial loss was suffered. The Representative went down a rental route and I've already considered this point. So, I don't uphold this complaint.

My final decision

My final decision is that I don't uphold this complaint. I don't require Aviva Insurance Limited to do anymore.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs H to accept or reject my decision before 19 June 2024.

Pete Averill
Ombudsman