

## **The complaint**

The Estate of Mr L (Mr L) complains about Aviva Insurance Limited (Aviva), concerning the time taken to repair a mains water leak at his property under his home emergency policy.

References to Aviva in this decision include agents who provide services under the policy.

This complaint was brought to this Service by the executor of the Estate of Mr L, who passed away in October 2022. References to Mr L in this decision include his executor.

## **What happened**

The following is a summary of what happened in this case and the sequence of events, the detail of which is well known to Mr L and Aviva.

Mr L had a home emergency policy with Aviva, covering plumbing and drainage, including the water supply pipe. Following Mr L's passing, his executor visited Mr L's property at the beginning of November 2022 and again later that month. He noticed a noise from the water pipes and other indications of a water leak, which he reported to Aviva.

Aviva sent an engineer to assess the leak, some ten days later. They carried out some work to locate the source of the leak but said a piece of wet ground needed to dry out. A second visit was made in January 2023 but wasn't able to locate the source of the leak. A third visit later in January did locate the source of the leak, but a fourth visit was needed in February 2023 to complete the repair to the pipe (there was a visit scheduled before that, but the engineer didn't attend).

Mr L was unhappy at the time taken to locate and then fix the leak. His understanding was part of the reason was Aviva had downgraded the policy coverage, meaning they would only provide a limited time for each visit. He was also unhappy at the standard of the repair work and concerned about potential structural damage from the leak extending over the period. He thought the leak should have been located and fixed within a couple of days, whereas the water supply had been cut off for 77 days. As the executor of the Estate of Mr L, he'd also had to incur travel and hotel costs to be present for the appointments.

In their first final response, Aviva referred to the visits to locate and fix the leak. They accepted the leak should have been fixed sooner (in three visits) than it was, so they upheld the complaint because two further visits were made (one not kept). They apologised for the inconvenience and awarded £100 compensation. They also offered to assess the hotel, travel and reasonable food costs for the two extra visits, if Mr L provided evidence of the costs).

Mr L challenged the first final response and Aviva issued a second response in which they increased their compensation offer to £240. They acknowledged the figure reflected the fact Mr L wasn't resident at the property during the period. They also reiterated their offer to assess the hotel, travel and reasonable food costs for the two extra visits.

Mr L then complained to this Service. He was unhappy at what had happened and it taking 77 days for the leak to be located and fixed. He'd incurred costs including travel to the property for the visits, hotel costs as well as the lost time and lack of water supply during the period. He wanted Aviva to compensate him for these factors.

Our investigator initially upheld the complaint, concluding Aviva hadn't acted fairly. She noted what Aviva said about the repairs should have been completed in three visits, and two further visits were needed (including a scheduled visit where the engineer didn't attend). She thought it was reasonable for Aviva to ask Mr L to attend the appointments, a requirement under the policy terms.

She considered the specific points Mr L raised about costs incurred. She didn't think it reasonable to hold Aviva responsible for heating costs of the property during the period, as the home insurance requirements on heating of the property would have applied irrespective of the leak. On the issue of the level of cover [being downgraded] the investigator concluded there was no evidence of this, although she acknowledged Aviva's policy was to prioritise occupied properties. Nor was it reasonable to hold Aviva responsible for any delays in the property being marketed with a view to its sale. On the loss of water to the property, the investigator concluded Aviva weren't responsible for the water being turned off, as they hadn't caused the leak.

On the travel, hotel and food costs, the investigator thought it reasonable for Aviva to cover the costs for the two unnecessary visits, but not the three visits Aviva said it should have taken for the repairs to be completed. On the distress and inconvenience caused to Mr L, the investigator thought Aviva should pay an additional £260 (making a total of £500).

In response to a clarification that the policy wasn't transferred to Mr L's executor following the passing of Mr L, the investigator issued a second view in which she noted this Service cannot make awards for distress and inconvenience to someone who is not an eligible complainant. In the circumstances of the case, Mr L's executor was acting on behalf of the Estate of Mr L, not as a complainant in his own right (as a policyholder). So, the investigator couldn't award the additional £260 compensation.

Mr L disagreed with the investigator's conclusions and requested an ombudsman review the complaint. He maintained his view the policy had been downgraded by Aviva, leading to the repairs taking longer than they should have done (so leading to the costs and other consequences he'd raised in his complaint). As the executor, what happened had caused him distress.

Mr L provided further representations about the case, including what he considered the downgrading of the policy; the time taken and number of visits to locate and fix the leak; the costs and other consequences of the time taken to fix the leak

### **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.

My role here to decide whether Aviva has acted fairly towards Mr L.

There are several aspects to Mr L's complaint, summarised above. I'd want to reassure Mr L I've considered all the detailed points he's raised in his complaint, including those made initially and then in response to our investigator's view. While I may not comment in detail on

each and every aspect of the points raised, I have taken account of them when arriving at my decision.

The sequence of events set out above indicate it took a total of just under three months to locate and then fix the mains water leak at the property. Given the nature and location of the leak, I think it was always likely to be the case that determining and then fixing the leak would have taken more than one visit – I don't agree with Mr L that it should only have taken a couple of days to locate and fix. Aviva say it should have taken no more than three visits to locate and fix the leak – whereas it took five visits between December 2022 and February 2023 (the penultimate visit didn't take place as the engineer didn't attend).

Looking at the sequence of visits, including Mr L's descriptions of the visits, I don't think it unreasonable – given the nature and eventual location of the leak – to conclude it was likely three visits should have been necessary (sufficient) to identify the leak and then fix it. The nature of leaks mean it isn't always possible to locate it in one visit, and then to fix it.

So, I agree that five visits – including one missed visit – was more than it should reasonably have taken. In these circumstances, I think it reasonable for Aviva to offer to reimburse Mr L for the costs of travel and hotel costs, on provision of appropriate receipts or other evidence of payment. They've also agreed to consider additional costs for food and other transport, which I think reasonable. Our investigator recommended £37 for taxi and bus costs for each of the two unnecessary visits and £20 per person per night (for the Executor and their wife) for each of the two unnecessary visits.

While I've reached these conclusions, I have considered the point about whether it was reasonable to require attendance for the visits. The policy wording requires attendance for visits and in the circumstances of Mr L passing, and there not being an alternative attendee other than the executor, then I can't conclude it was unreasonable for Aviva to require attendance. And while I accept this meant long journeys and hotel stays for the executor, I can't hold Aviva responsible for those circumstances.

In bringing the complaint, Mr L also asked for reimbursement (compensation) for what he considers to be other costs and financial losses from the time taken to fix the leak. Taking these in turn, on the need to keep the heating on at the property, from what I've seen this was a requirement for an unoccupied property (in the winter months) under the terms of the home insurance policy covering the property (or the heating system drained). Mr L says the property needed to be heated when he visited the property for the engineer appointments, and it wasn't practical to drain the system after each visit. However, the terms of the home insurance policy would have applied irrespective of the leak, so I can't conclude Avia should be responsible for those costs.

Mr L also says the time taken to fix the leak affected the sale of the property and the costs associated with administering the estate, as well as the loss of water to the property. However, the policy terms and conditions include, under the *General Exclusions* section of the policy, an exclusion for any losses as a result of a problem covered by the policy other than direct costs expressly covered by the policy, unless caused by [Aviva's or their agent's or supplier's] negligence. While Aviva accept fixing the leak shouldn't have taken as long as it did, I don't think this means I can conclude it was due to their negligence. And while the water supply was turned off, in the circumstances of an unoccupied property where there was a leak from the mains water supply, I don't think this was unreasonable or something for which Aviva can be held responsible.

On the issue of whether the leak and the time taken to fix it led to structural damage at the property, I haven't see any evidence to indicate this.

Mr L also maintains the level of cover under the policy was downgraded, because the property was unoccupied. However, I haven't seen anything that shows this was the case – the only changes Aviva made to the policy was to add the executor's address to the details of the policy. And while Aviva say their approach is to give priority to occupied properties over unoccupied properties, this is an operational business decision for them and as such it isn't something that falls within the remit of this Service.

On the issue of compensation for distress and inconvenience, Aviva have offered £240 compensation for the distress and inconvenience to Mr L from the two additional visits that Aviva accept shouldn't have been necessary. Aviva say they've based this on the property being unoccupied, which I don't think unreasonable, as had the property been occupied, the level of distress and inconvenience would have been more significant.

As our investigator set out in her view, this Service wouldn't ordinarily make awards for distress and inconvenience to someone who isn't an eligible complainant in their own right (typically a policyholder). In this case, the executor of the Estate of Mr L has brought the complaint to this Service. But they aren't the policyholder (Aviva didn't transfer the policy to the Executor on learning of the passing of Mr L). In these circumstances, as the Executor is bringing the complaint on behalf of the Estate of Mr L, I can't award compensation to the Executor. But having offered compensation to the Executor, then I'd expect Aviva to make payment of the sum (if they haven't already done so).

Taking these points together, on balance, I think Aviva have acted fairly and reasonably towards Mr L, so I won't be asking them to make any further awards beyond those they have offered and those I've set out above.

### **My final decision**

For the reasons set out above, my final decision is that I require Aviva Insurance Limited to:

- Reimburse Mr L's Executor for the costs of travel and hotel costs, on provision of appropriate receipts or other evidence of payment.
- Pay Mr L's Executor £37 for taxi and bus costs for each of the two unnecessary visits and £20 per person per night (for Mr L's Executor and their wife) for each of the two unnecessary visits.
- Pay Mr L's Executor the £240 compensation for distress and inconvenience they've offered (if they haven't already paid it).

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr L to accept or reject my decision before 2 August 2024.

Paul King

**Ombudsman**