

The complaint

Miss P complains about the handling of a claim made against her commercial buildings insurance policy by Aviva Insurance Limited.

Aviva are the underwriters (insurers) of this policy. Some of this complaint concerns the actions of their appointed agents. As Aviva accept they are accountable for the actions of their agents, in my decision, any reference to Aviva should be interpreted as also covering the actions of their appointed agents.

What happened

The background to this complaint is well known to Miss P and Aviva. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

Miss P had a property that she let out to tenants. Following water leaks, she made claims against her insurance policy. She later complained as she was unhappy with Aviva's response to the claims, particularly the time taken. Miss P says as a result of Aviva's responses, she's lost out on rental income, incurred additional letting fees, had to pay for some repairs and suffered distress.

Aviva responded to the complaint and partially upheld it. In their final response letter, they said the leak from December 2019 did not affect Miss P's property, but referenced two other escape of water claims in 2021 and 2022.

They offered Miss P £250 as they felt that when responding to the 2021 leak, their agents could have been more proactive. They said that the 2022 claim did affect Miss P's property and was recorded as a new claim - as it affected a different area of the property and a sensible solution at that time was to reroute existing pipes within Miss P's property, with the cost covered by Aviva.

Aviva let Miss P know that they'd consider any relevant supporting evidence if she'd suffered any financial losses, such as rent or utility bill costs.

Unhappy with Aviva's response, Miss P referred her complaint to our Service for an independent review. Our Investigator considered the complaint and most recently recommended that it be partially upheld. As the complaint remained unresolved, it's now been referred to me for a decision.

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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

I note Miss P has referred to recordings and journal logs, but not provided these as representations. As I'm satisfied Miss P has had a fair opportunity to provide any evidence she wanted considered, I've based my decision on the evidence that has been submitted by both parties.

The scope of my decision

The events relating to this complaint have occurred over a number of years. My decision will consider whether Aviva fairly responded to the 2021 leak/claim and also the 2022 leak/claim. Miss P has referred at various points to a 2019 leak/claim. The relevant final response letter here is dated December 2022. It only deals with the 2021 and 2022 claims and states that the 2019 event affected a different flat.

Miss P has directly and also indirectly raised allegations of unfair treatment by Aviva's contractors. The relevant legislation here is the Equality Act 2010. It's not my role to say whether Aviva has acted unlawfully or not – that's a matter for the Courts. However, I'm required to take the Equality Act 2010 into account, given it's relevant law. Ultimately, I've decided this complaint based on what's fair and reasonable.

The response to the two claims

Miss P's argument is (in summary) that Aviva didn't properly deal with the 2021 claim and had they done so, later events (including the 2022 claim) could have been avoided. Aviva, on the other hand, argue that the 2021 and 2022 claims were separate claim events, rather than a continuation of the earlier claim - due to them being months apart and not in the same area of the property.

Having carefully considered the available evidence, I don't find that Aviva's position is unreasonable and I'll explain why below:

- The 2021 leak detection report identified two 'hotspots' (areas where a leak may be occurring). Aviva have said that follow up system tests in 2021 didn't find any further issues. I've not seen anything that sufficiently undermines this.
- Miss P disputes this and has said inadequate excavations took place to fully establish the extent and location of the leak/s. Based on the overall evidence, on balance, I'm satisfied Aviva acted reasonably when relying on the test results and carrying out appropriate excavations. The 2021 leaks were both in a separate room to the 2022 leak. I'd have reasonably expected the system tests carried out to have identified any further issues with the pipe work, if they existed in 2021 – but they didn't.
- Miss P has said that it wasn't until the heating was turned back on in 2022 that the further leak/s became known. But given the time that had passed and the general condition of the pipes, on balance, this doesn't automatically mean the 2022 leak was present in 2021 and lay dormant until the heating was turned back on.
- A report dated April 2021 recommended that the piping be rerouted (to potentially mitigate against future issues) but Miss P chose not to do this. Aviva later covered the cost of this reroute and I consider that fair.

On balance, I'm satisfied that 1- the evidence supports that Aviva responded to the 2021 and 2022 leaks, in line with the policy terms and 2- they can fairly treat the 2021 and 2021 leaks as two separate claims - meaning it was fair to charge two separate excesses.

I note that Aviva agreed to reimburse Miss P for some electricity costs whilst drying out was ongoing. This was fair. Aviva have already told Miss P they would consider any evidence of additional losses or costs in line with the policy terms. This is also fair.

The service provided

Aviva offered £250 in their final response letter to apologise for some service issues, primarily delays to the 2021 claim. Our Investigator recommended that a further £100 be paid by Aviva to recognise the impact of any issues with service provided. I find this fair, reasonable and proportionate.

To be clear, this additional award is for the general service provided - time taken and communication, when responding to the 2021 claim. I make this point as Miss P has alleged unfair treatment by Aviva's appointed agents. Whilst I'm very sorry to hear that Miss P feels this way, on balance, I've not seen sufficiently persuasive evidence to allow me to conclude that Miss P wasn't treated with respect or fairly - in the way she alleges. This isn't to detract from Miss P's experience or interpretation of how she feels she was treated.

I acknowledge that my decision will disappoint Miss P, but it brings to an end our Service's involvement in trying to informally resolve her dispute with Aviva.

Putting things right

Aviva Insurance Limited need to pay Miss P an additional £100 in recognition of issues with the service provided when responding to the 2021 claim.

My final decision

My final decision is that I partially uphold this complaint and direct Aviva Insurance Limited to follow my direction as set out under the heading 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 27 September 2024.

Daniel O'Shea
Ombudsman