

The complaint

Mr W, a director of A, a limited company, complains on A's behalf about Aviva Insurance Limited's handling of a claim made on a business insurance policy.

What happened

A held insurance covering its activities with Aviva. When the premises A operated from were damaged in a storm and it was unable to trade, A made a claim on the policy.

Aviva appointed a loss adjuster and after enquiries were completed made an offer to pay £1,500 per month for A's lost income due to the closure.

Mr W complained on A's behalf to Aviva. He said the amount offered was insufficient and didn't properly reflect the income A had lost. He was also unhappy that Aviva continued taking premium payments on a monthly basis.

When Aviva rejected A's complaints, Mr W referred them to our service. Our investigator thought Aviva had acted fairly. Mr W didn't agree and so this matter has come to me to make a final 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.

Mr W has complained about two different matters related to Aviva's actions after A made the claim. The first is the delay to, and the value of the settlement offer made by Aviva. The second is Aviva's actions in taking payments on a continuing basis for the premium. I'll deal with these separately.

Claim handling and settlement offer

I can see that A first contacted Aviva in March 2022, and that the first payment in settlement of the claim was in June 2022. A was told at that point that Aviva had calculated a loss of profit of £1,500 per month, and so it would pay this amount. The first payment was £6,000, to take into account the four months between making the claim and the settlement being made, with further payments of £1,500 per month from that date.

Insurers are entitled to undertake reasonable enquiries in order to validate a claim. However, they also have a duty to handle all claims promptly and effectively. From the evidence available to me, I'm satisfied that the enquiries and investigations carried out by Aviva were reasonably required to confirm not only whether the policy provided cover for the claim, but also what the appropriate settlement would be.

I can appreciate Mr W's frustration with the length of time between Aviva being notified of the claim and the settlement offer. His business was unable to trade, depriving him of income and the ability to pay staff and suppliers. I also understand how he'd have been further frustrated by then receiving a settlement offer he considered to be inadequate.

Unfortunately, the nature of Aviva's enquiries, which involved contacting the owners of the premises A traded from, their insurers, accountants and other matters, were almost inevitably going to take some time to complete. I don't think it would be fair to expect Aviva to have made any payments during that period, as it hadn't been able to confirm cover or establish what a reasonable settlement amount would be. Once cover was confirmed, and a settlement figure reached, it backdated the payments to cover the four month period the enquiries had taken.

I've also reviewed when the payments were made by Aviva following recommendations from the loss adjusters. There does appear to have been a delay between a payment being recommended and it being made of around three weeks during July and August 2022. However, I'm not satisfied this had a material impact on A. I say this because I can see that during this period other payments totalling £4,500 had been made, and the payments made were by and large made on a regular basis. I haven't been provided with any evidence that this delay impacted A beyond what had already occurred due to A being unable to trade.

I'm also aware that Mr W is unhappy that, during discussions with the loss adjuster about the claim and amounts being offered in settlement, it was suggested that A make staff redundant because of the inability to trade. I can understand that such a suggestion may be upsetting to Mr W. However, at a time when Mr W was disputing the settlement being offered, and suggesting it is insufficient to meet A's overheads including staff costs, it seems reasonable for Aviva to suggest that, notwithstanding the complaint, A consider ways of reducing its cost base.

Turning to the settlement made by Aviva, which I'm satisfied forms the main element of A's complaint, the policy terms and conditions go into detail about how settlements for lost income will be calculated. These terms and conditions were outlined in our investigator's opinion and I don't intend to repeat them in full here, as the points in dispute don't relate to definitions but the calculations and figures used to reach the settlement.

Effectively, A's policy says it will cover the profit lost by A during a period of closure which arises from an insured event. In making an assessment of that profit, the policy terms and conditions say Aviva will look at the turnover "*during the 12 months immediately before the date of the damage,*" but that the relevant figures "*may be adjusted to reflect any trends or circumstances which affect the business before or after the damage...The adjusted figures represent as far as possible the results which would have been achieved during the same period had the damage not occurred.*"

The primary issue that causes this dispute is that A's trading in the 12 months before the storm, and the preceding 12 month period, was seriously affected by Covid-19 and the associated lockdowns and restrictions on trading. This meant it wasn't practical, or fair, to use A's figures from the 12 months prior to the storm because there had been periods where A's ability to trade had been affected. Aviva therefore looked at accounts from the period before Covid-19 and the Covid-19 affected period. It considered that the accounts showed that A's performance was trending downwards and applied that trend to the figures, settling on a £1,500 per month as a fair settlement.

Mr W, on behalf of A, strongly rejects Aviva's conclusions around the trend of the business. He says that a number of factors impacted on the turnover during the relevant periods, outside of the Covid-19 related restrictions, including broken equipment and staff illness. He believes that A's turnover would have been much higher than Aviva and so a higher settlement should be made.

I'm not qualified to be able to say whether Aviva has applied the right trend, the percentages that should be deducted (if any) or the exact figures Aviva should rely on to make its

calculations. What I can say is that based on the evidence provided, I think Aviva has acted fairly and in line with the policy terms and conditions.

In the first instance, I need to acknowledge that there is a degree of estimation and assumption in the settlement reached by Aviva. That's an unfortunate effect of the circumstances of this claim, and its timing in respect of an unprecedented period of disruption to normal trading for A. Aviva's rightly identified that relying on the figures from the 12 months prior to A's premises being damaged wouldn't be fair or represent a true picture of A's likely turnover. It's looked at the accounts from previous years but reasonably concluded that simply using those wouldn't be the right outcome either – the economic climate, consumer spending and costs incurred by businesses are very different to that period.

I'm satisfied Aviva has shown a logical basis for its calculations, and demonstrated how these figures have been reached. I can't conclude the settlement of £1,500 per month is obviously flawed or unreasonable. I also can't use Mr W's forecast for A's turnover to reach such a conclusion, as I'm unable to establish on what basis such forecasts have been made. In any case, the policy terms and conditions don't allow for forecasted figures to be used instead of previous turnover figures. The way in which Aviva has calculated the settlement is in line with what is set out in the policy terms and conditions and what is fair in the circumstances.

I should add at this point that the amount of analysis of the accounts, consideration of the impact of Covid-19 and all other matters relating to A's turnover over this period would also have had a significant impact on the amount of time taken to reach the settlement figure. The complexity, and lack of certainty available to Aviva, would mean that this would take longer than would be ideal.

Payment of premiums

Mr W, on behalf of A, raises a further complaint that after the settlement of £1,500 per month is made, A has been paying more than £500 per month back to Aviva for A's policy. He thinks this is an unfair financial burden at a time when the income being received from Aviva is inadequate.

I've addressed why I think the settlement is fair above, but I also need to address whether it's fair for Aviva to require the payment of the premiums.

I can see that the premium payments in question are a monthly instalment of the full premium due for the full period of cover, with the policy having renewed following the claim. This is a separate policy to the one which the claim was made on. I'm also aware that Aviva recalculated the premium due to A being unable to trade.

A cancelled the Direct Debit mandate to pay the premium monthly and Aviva had placed the account on hold, rather than seeking to collect the outstanding amounts. Given the dispute over the settlement and the comments from A about the affordability of the premium in light of the settlement being made, I think this was fair.

However, the premium is due. A has continued to have the benefit of the insurance cover from the policy in the event of any further incidents which could give rise to a new claim. I've also seen nothing to suggest A hadn't agreed to pay the premium in exchange for the cover, and so Aviva is entitled to collect the premium due. If A didn't want to pay the premium, it could have discussed with Aviva its options in terms of cancelling the policy, or reviewing the cover available to reduce the premium due. I haven't seen anything which suggests it did so.

I conclude that Aviva can reasonably require the premium to be paid by A for the cover provided.

It's also fair to say that Aviva acted reasonably by collecting the premiums initially. A had agreed to pay those monthly amounts in order to have the relevant cover in place. The existence of an ongoing claim wouldn't, in my view, be a reason for Aviva to suspend taking the payments.

My final decision

It's my final decision not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 15 November 2023.

Ben Williams
Ombudsman