

The complaint

G, a limited company, complains Aviva Insurance Limited didn't pay the full amount it believes is due following a claim on its business interruption policy.

What happened

G has a Combined Commercial Insurance policy with Aviva which includes cover for business interruption. In August 2018 there was an escape of water (from a burst water main) in the street where it has its premises. The water caused damage to stock and other items in its premises and the road remained closed for some time afterwards.

G made claims on its policy with Aviva for material damage and business interruption. I understand the damage claim has been settled so that isn't something which forms part of this complaint. In relation to the business interruption claim the loss adjuster's report from the time said *"the Insured's evidence is that footfall has significantly reduced since the incident...insofar as sales are concerned, the Insured advises that turnover has been significantly reduced since the date of the incident, partially arising from a reduced level of stock but primarily due to a decline in the number of customers visiting the premises"*.

Aviva considered the claim under the 'Prevention of access' section of the policy. It accepted G had suffered a loss of business and paid it £50,000 (the limit for this section of cover set out in the policy schedule).

G said having reviewed matters it now thought its losses were caused because (acting on advice from the loss adjuster) staff had sought to repair damaged items which resulted in lost sales as they weren't able to focus on existing customers who took their business elsewhere. Items that were sold had to be discounted. And that reduction in income meant G wasn't able to buy and refurbish machinery which had been a significant contributor to its profits.

So it thought the claim should be considered under the main section of the business interruption policy which covered escape of water and had a limit of nearly £260,000. It also noted a subsequent closure of the road where its premises were situated hadn't impacted its sales.

Aviva didn't think G had shown there was an additional loss as a result of the issues arising from the water damage based on its past trading records. So it didn't agree to make any further payment.

Our investigator noted Aviva had paid out the full amount under the prevention of access section of the policy. So he considered whether it had acted fairly in not paying out the claimed amount under the escape of water section. He accepted that evidence provided by G did show there was a dip in profits in 2018. However, he didn't think G had evidenced that was a result of the damage caused by escape of water. The loss adjuster hadn't been satisfied it resulted from that and the information provided was from two years after the insured event. He agreed Aviva didn't need to make any further payment.

G didn't agree. In summary it said

- Aviva had agreed to pay £2,000 for business interruption resulting from water damage (in addition to the payment under the prevention of access part of the policy). So it must have accepted there was a link here.
- It provided photographs showing the extent of the damage caused and explained why that had impacted sales. And it said the later road closure didn't have a significant impact on those sales.
- It was the loss adjuster (acting on behalf of Aviva) who had said it should try and repair stock to mitigate its losses and that had contributed to the loss in sales (as staff were employed in carrying out repair work). So Aviva should be responsible for this.
- It provided details of its monthly sales in the two years prior to the incident alongside sales for the period after it and believed these did demonstrate a significant drop which it said was attributable to the flood.

So I need to reach 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.

The relevant rules and industry guidelines say Aviva has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

It's for the insured to show an insured event under the policy has taken place. If they can, it's then for the insurer to show, on balance, that an exclusion or condition applies which means it can turn down an otherwise valid claim.

I've looked first at the terms and conditions of G's policy. The business interruption section says:

We will cover You for any interruption or interference with The Business resulting from Damage to property used by You at The Premises for the purpose of The Business occurring during the Period of Insurance caused by the Contingencies stated in The Schedule

Those contingencies include "escape of water from any tank, apparatus or pipe or escape of fuel from any fixed oil heating installation".

And the policy schedule sets out that the sum insured under the main business interruption policy is around £260,000 (Insured Profit) with a maximum indemnity period of 12 months. For 'Prevention of Access' (which is an additional cover) the sum insured is £50,000.

The policy goes on to explain the 'Basis of Settlement':

We will cover You only for loss of Insured Profit due to

- (1) reduction in Turnover, and*
- (2) increase in cost of working.*

We will pay, less any savings during the Indemnity Period in business charges or expenses, payable out of Insured Profit, which reduce or cease due to the Damage,

(1) Turnover, the sum produced by applying the Rate of Insured Profit to the amount by which, due to the Damage, the Standard Turnover exceeds the Turnover during the Indemnity Period.

(2) increase in cost of working, any additional expense You necessarily and reasonably incur solely to prevent or limit a reduction in Turnover during the Indemnity Period which but for such additional expenses would have taken place due to the Damage. We will not pay, in respect of (2) above, more than the amount produced by applying the Rate of Insured Profit to the reduction in Turnover avoided by the expenditure.

Turning to the claim made by G, the contemporaneous reports from the loss adjuster say it believed its business interruption loss primarily related to the closure of the road. So I think it was reasonable of Aviva to consider the claim on that basis and it's paid out the maximum available under that section of the policy.

However, G subsequently argued the claim should be considered under the escape of water section of the policy. It said damage caused by the flood meant its employees had to spend time in carrying out work associated with that rather than focussing on their core role. And that led to a reduction in sales. That then meant G wasn't able to purchase machinery for refurbishment and onward sale.

I understand how this could have impacted G's sales. And I've reviewed the photographs G provided and these do show reasonably significant water ingress to its premises. I don't think it's in dispute that took place. Nor do I think it's in dispute that there has been some impact on G's business. Aviva wouldn't have paid out under prevention of access section of the policy if it hadn't been satisfied of that (the amount of £2,000 it also paid under the main section of the policy was for losses directly relating to the 48 hour period G's business was closed).

I appreciate G doesn't believe a subsequent closure of the road had any significant impact on its sales. And that the reason it decided to repair stock was based on advice from Aviva's loss adjuster. However, G is recorded as telling the loss adjuster that the initial closure had impacted sales "*due to a decline in the number of customers visiting the premises*". I don't think the fact a subsequent road closure impacted it differently means that was incorrect. That road closure took place two years later in which time G could well have made changes to its business operating model.

Nor have I seen other evidence to support G's view that the loss adjuster told it to repair stock. The loss adjuster's contemporaneous report from September 2019 (following his visit to the premises) says G thought larger items remained saleable at close to their original retail value subject to sympathetic cleaning, drying and re-lubrication.

And "*the Insured would prefer to undertake all restoration in house and is making enquiries regarding the availability of temporary or contract labour to assist with this task, with a view to freeing up employed technicians for regular tasks*". That suggest to me it was G's decision to refurbish this stock and its intention at the time was to source temporary labour to assist with this.

In any event I think the key question here is to what extent G's sales (and therefore its Insured Profit) were reduced as a consequence of any business interruption (whatever the cause of that was). And if there's been an impact here that exceeds the amount Aviva has already paid out on the policy; it would only need to take further action if that was the case.

G believes there has been a much more significant loss. It's provided sales figures for the two years prior to the loss and subsequently. It says these show year on year growth of around 35% was being achieved. And it's used that figure to predict the monthly sales G would have achieved but for the flood.

However, Aviva's loss adjuster reviewed that information and wasn't persuaded that did demonstrate trend growth at that level. He noted "*no discernible month to month, or season to season, pattern of trading was identified from historic financial data and occasional spikes in turnover appeared to arise due to one off contracts rather than any continuing positive trend.*" He thought anticipated turnover for the 12 month period following the loss (the period covered by the policy) was £514,673. That gave rise to a shortfall of around £81,800 and a loss of Insured Profit of around £33,500. Aviva nevertheless agreed to settle the claim at the £50,000 limit set out in the prevention of access section of the policy.

I've reviewed the information provided by G to decide if Aviva has acted fairly. I appreciate that a straight comparison of its sales in the two years before the flood does show an increase of around 35%. But as, the loss adjuster identified, the monthly figures for those periods are inconsistent. For some months there's no increase. And while there are other months where sales are significantly higher in the later year, in others they're considerably lower. Nor does evidence appear to have been provided to Aviva to counter the loss adjuster's view that the increases which did take place were due to one off contracts rather than representing an ongoing trend.

And, as I've already explained, it is for the insured to show it has a valid claim under the policy (which includes providing evidence in support of its loss). In this case Aviva's loss adjuster wasn't satisfied it had demonstrated a loss in excess of the amount Aviva had already paid out. For the reasons I've explained I don't think it was unreasonable of Aviva to rely on his opinion in declining to make further payments to G.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 26 September 2023.

James Park
Ombudsman