

## **The complaint**

Mr M complains Aviva Insurance Limited has unfairly declined a claim he's made on his building insurance policy following an escape of water at a property he owns.

## **What happened**

Aviva is the underwriter of this policy, i.e. it's the insurer. Part of this complaint concerns the actions of the agents for which Aviva has accepted responsibility. Any reference to Aviva includes the actions of its agents.

The background to this complaint is well known to the parties so I've included a summary here.

- Mr M owns a property insured under a buildings insurance policy underwritten by Aviva. The house was unoccupied and at some point in mid December 2022 an inlet pipe burst following a period of sub-zero temperatures. The subsequent escape of water caused damage to both the building and its contents.
- Mr M instructed a plumber to mend the burst pipe and reported the damage to Aviva to make a claim on his policy, providing it with a copy of his plumber's report. Aviva appointed agents to validate the claim.
- Through December 2022 and into January 2023, Mr M says he chased Aviva for updates. When these weren't forthcoming he started to strip out carpets and instructed an electrician to restore electrical supply so he could start drying out the property. Mr M says Aviva accepted the claim in mid-January so he cancelled the electrician's planned work.
- Through January 2023 and February 2023, a number of Aviva's agents visited the property to assess the damage and Mr M says he asked for copies of the reports a number of times. Aviva asked him for evidence of gas bills covering the claim period and he supplied these.
- In March 2023, Aviva declined the claim because it said Mr M hadn't complied with the endorsement requiring a temperature of 15 degrees centigrade to be maintained when the property was unoccupied. It said the utility bills he had provided showed insufficient gas consumption to have maintained the required temperature. And it stated this inaction on his part was material to the loss in question.
- By this time Mr M says the damage to the property and contents was much worse as no restorative action had been undertaken because Aviva had told him not to proceed with it and hadn't done anything itself. Mr M complained to Aviva about the claim decline and the delays.
- Aviva maintained its position and said the claim had been declined correctly. But it accepted its agents had caused delays and poor communication and offered £100 compensation for this. Mr M raised a complaint with this Service.

- Our Investigator considered the evidence and didn't uphold the complaint. She said she thought that Aviva had acted reasonably in saying Mr M hadn't met the endorsement requirements. And she didn't think there was enough evidence to show the delays were the cause of the extent of the damage rather than the original leak. She concluded the £100 was fair compensation. Mr M asked an Ombudsman to make 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.

I acknowledge incidences involving extensive damage by an escape of water like this are stressful for policyholders to deal with. At times my decision may sound dispassionate and I mean no offence by this, it just reflects the nature of my role.

When making a claim on an insurance policy the onus is on the policyholder to show the claim is covered under the policy terms. I'll be keeping this principle in mind while considering this complaint together with what I consider to be fair and reasonable.

Aviva declined the claim as it said Mr M had failed to meet the unoccupancy endorsements. So this is the starting point for my decision.

#### *Did Mr M comply with the endorsements?*

- When Mr M let Aviva know the property was unoccupied, it applied certain endorsements to the policy amending the cover and setting out conditions which Mr M needed to comply with. In my experience, this is a common step taken by many insurers across the industry in similar circumstances and isn't, on its face, unfair.
- Aviva says Mr M has failed to comply with the unoccupancy endorsement setting the minimum temperature that must be maintained, which says:

*"If your home becomes unoccupied for more than 7 days you must...*

- *Operate the heating system at a minimum constant temperature of 15 degrees centigrade; or the gas and water must be turned off at the mains and the water system drained"*
- I've seen nothing to show me the gas and water were turned off at the mains nor that the water system was drained so I've gone on to consider if the evidence shows, on balance, whether Mr M maintained the minimum required temperature at the property.
- Mr M has provided Aviva with utility bills showing gas consumption of just £14 in the two month period from 7 November 2022 to 7 January 2023. In Mr M's testimony, he describes the "extreme cold weather" with temperatures falling to minus eight degrees centigrade around the time of the escape of water.
- I've kept in mind the very high cost of gas during this period in 2022 and I'm satisfied that, on balance, the gas consumed wouldn't have been enough to maintain the temperature at the required level particularly given the extreme conditions Mr M describes.

- I acknowledge Mr M says his plumber said having the heating on would not have prevented the incident occurring but I've seen no detailed reasoning for this view. And in one of the emails to Mr M the plumber explains it was very difficult to determine what caused the failure leading to the escape of water, so it seems to me it's not possible to say with any certainty that the incident *would* still have occurred even if Mr M had maintained the required temperature.
- Mr M says the endorsement he has failed to adhere to is not relevant to the damage and so Aviva shouldn't rely on it. But I don't agree. The minimum temperature endorsement is added to the policy when a house is unoccupied due to the increased risk of burst pipes over the winter. Given that the pipes burst during a period of cold weather and this seemingly is the accepted cause of the damage, I'm satisfied the endorsement is relevant and material to the loss in question.
- Taking everything into account, I'm satisfied that it was fair for Aviva to say Mr M hadn't met the policy endorsement and accordingly decline the claim.

*Was Aviva responsible for the extra work required?*

- Having concluded Aviva doesn't need to settle the claim for the damage caused as a result of the escape of water as it declined the claim fairly, I've gone on to consider the impact of any delays.
- Mr M says he wanted to get electricity reinstated in the property and run de-humidifiers to start the drying out process in January 2023. But a phone call he had with Aviva led him to believe his claim had been accepted and that Aviva would be appointing agents to undertake this work, so he didn't go ahead with it himself.
- Aviva undertook an assessment of the damage in late January 2023 and given the time of year and extreme weather conditions, this doesn't seem an unreasonable timeframe to me.
- Aviva declined the claim in March 2023 for the reasons I've explained above and it accepts it took too long to do this. Mr M says the damage was much worse by this point and Aviva was responsible for this as no drying out work had been completed while it assessed his claim. So, I have to consider whether I can safely say Aviva's actions were responsible for the additional work required over and above what would have been caused by the original escape of water.
- Mr M's builder provided comments in May 2023 saying some of the internal walls were completely soaked and falling to pieces and additional work had been required. He said this was due to the length of time with no dehumidifier although he offered no explanation about why this work was required solely as a result of the delays.
- I acknowledge that the situation in the property is likely to have got worse over time. But it doesn't automatically follow that Aviva is responsible for the extra works. I have to keep in mind, the escape of water was extensive, having flowed through all the rooms for multiple days in an unoccupied property with little or no heating at a time of extremely low temperatures.
- Mr M identified the presence of mould from early January 2023 and when Aviva undertook the first assessment in late January 2023, mould was present through the property. So, while the mould situation may have got worse over time, I'm satisfied it was already an issue from much earlier not just as a result of Aviva's delays.

- The property contents were considered likely beyond restoration in January 2023. Again, while things may have deteriorated over time, as the contents were seemingly already unrestorable at the point of Aviva's first assessment I'm not persuaded the delays made a difference.
- I've thought about this very carefully, and I'm not persuaded, based on the evidence I've seen, that I can safely attribute the additional work Mr M's builder says was required solely to Aviva's delays rather than to the impact of the original escape of water.

#### *Poor communication and delays*

- Aviva accepted there was some poor communication throughout the claim and it should have provided the decline outcome sooner than it did. I agree with this and it should have done better here. I know Mr M will be disappointed but I have decided the £100 Aviva has offered Mr M by way of an apology is fair and reasonable in all the circumstances.

#### **My final decision**

Aviva Insurance Limited has already made an offer to pay £100 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Aviva Insurance Limited should pay Mr M £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 January 2024.

Paul Phillips  
**Ombudsman**