

## **The complaint**

M, a company, complains about Aviva Insurance Limited's ("Aviva") decision to decline a claim for malicious damage under its commercial building insurance policy. M is also unhappy with how the claim has been handled.

Any reference to Aviva includes the actions of its agents. Mr D brings this complaint on behalf of M, so I'll refer to him throughout.

## **What happened**

The circumstances of this complaint are well known to both parties, so I've summarised events.

M has a commercial property insurance policy which is underwritten by Aviva. Mr D made a claim on the policy saying the tenant – who had vacated the insured premises – had caused malicious damage to it – which is an insured peril.

Aviva's loss adjuster visited the property and noted in their report that: rubbish had been discarded internally and externally; multiple items of equipment had been left inside the building; a lack of care and cleaning had led to a rodent infestation. Aviva wasn't satisfied the damage was "malicious", and so, declined the claim, saying there wasn't an insured peril.

Unhappy with Aviva's decision and how it handled the claim Mr D complained. Aviva maintained its decision to decline the claim but acknowledged there had been times when the claim hadn't progressed as it should, and its communication had fallen short. So, it offered £200 compensation to recognise the inconvenience this had caused, which M accepted.

Subsequently, Mr D brought a complaint to this Service. An Investigator considered it but didn't uphold it. He wasn't persuaded the property had been maliciously damaged, and instead was persuaded the property's condition was due to poor maintenance and deterioration. He accepted Mr D's point that the tenant may have wished to frustrate Mr D by leaving rubbish but said doing so didn't amount to malicious damage.

With regards to the service provided – the Investigator acknowledged some calls had been missed, and updates didn't happen when they should have. And that there were times the claim could have progressed quicker. But he was satisfied £200 compensation was fair in the circumstances. Mr D disagreed and so, the complaint has been passed to me to decide.

## **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've also kept in mind Aviva's responsibility, as an insurer, to handle claims promptly, fairly and to not unreasonably decline a claim – as set out in the Insurance Conduct of Business

Sourcebook (ICOBS). Having done so, I agree with the outcome our Investigator reached and I'll explain why.

### *Malicious damage*

Aviva has declined M's claim saying there hasn't been malicious damage. The policy defines "*damage*" as "*physical loss, destruction, or damage*" but "*malicious damage*" isn't defined. This Service, however, considers it to be damage caused intentionally by another person. If the property is damaged accidentally, through neglect or poor maintenance, we wouldn't usually consider it to be malicious.

So, I've looked at the available evidence to decide if Aviva's decision to decline the claim was fair and reasonable in the circumstances.

Aviva's loss adjuster said the property and surrounding land was filled with items of equipment, rubbish and detritus which was left behind when the tenant vacated the property but that there was no evidence of malicious damage. Rather, the property had deteriorated due to the items and waste left behind.

From looking at photographs taken at the property, the adjuster's conclusion seems reasonable. Whilst there's apparent damage to the shop ceiling, Aviva has explained this was caused by an escape of water – likely emanating from the flat above - and is being dealt with separately. What remains is extensive rubbish and equipment having been left both internally and externally on the premises – which has unfortunately, attracted vermin.

I've also kept in mind satellite images - dating back to 2018 - which show rubbish and equipment being stored externally on the premises. This suggests the presence of rubbish has been a longer-term issue as opposed to being a deliberate act of retaliation by the tenant in response to being notified of their eviction - as Mr D has suggested. But even if it the rubbish was left by the tenant to frustrate Mr D, I'm not persuaded doing so amounts to malicious damage.

Based on the evidence, I'm satisfied the condition of the property isn't due to malicious damage. And so, I consider Aviva's decision to decline the claim to be both in line with the policy terms and fair and reasonable in the circumstances.

### *Service*

Mr D says Aviva caused avoidable delays, didn't provide timely updates, and that it had been rude to him. The claim for malicious damage was raised in late June 2023 and repudiated at the end of July 2023. In early August, Aviva passed the claim to its loss adjuster for further investigation. The adjuster asked to interview Mr D about the alleged damaged, but Aviva says this was refused.

In mid-September 2023, the loss adjuster inspected the property and provided their report soon after which concluded there wasn't malicious damage, and that the property's deterioration was due to a large number of items being left by the previous tenant which had resulted in a rat infestation.

In early October 2023, Aviva reviewed Mr D's complaint and stood by its decision to decline the claim. Aviva has said there were times the claim didn't move as quickly as it could have. Beyond this, I haven't seen any lengthy avoidable delays which persuades me the compensation doesn't already account for these delays.

With regards to communication – Aviva has accepted it didn't provide updates when it ought

to have, and it acknowledges that cancelling an appointment at very short notice would have been inconvenient for Mr D. It's paid £200 to recognise this. I agree this fairly reflects the difficulties caused and so, I won't be directing Aviva to pay more.

Mr D has said Aviva's loss adjuster had been rude during a visit. Aviva has looked into the matter but said it doesn't have evidence to support this. I can't reasonably determine this matter as there simply isn't persuasive evidence to support either party's position. So, this hasn't changed my mind on the overall compensation awarded.

So, in summary, I'm satisfied Aviva's decision to decline the claim was fair, and the compensation it's paid is reasonable in the circumstances. So, I won't be directing it to take further steps.

### **My final decision**

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 3 April 2024.

Nicola Beakhust  
**Ombudsman**