

## **The complaint**

The Estate of Ms B complains about how Aviva Insurance Limited (Aviva), handled a claim for damage from an escape of water under the Estate of Ms B's home insurance policy.

Any reference to Aviva in this decision includes their agents.

Ms B unfortunately passed away before the incident. So this complaint has been brought by her executors (E) on behalf of the Estate of Ms B. One of the executors represented the Estate of Ms B in making the complaint, but references to E include the three executors.

## **What happened**

Ms B had a home insurance policy with Aviva. Sadly, she passed away at the beginning of July 2022. E, as one of the three executors of her will, contacted Aviva three days later to tell them of his aunt's passing and arrange for the policy to continue to cover her property and contents. The policy was then renewed in December 2022. In January 2023, E's estate agent discovered a serious leak at the property, a result of the failure of a cold water mains inlet feed to the loft cold water tank. The leak caused significant damage to the property.

E told Aviva about the leak and arranged to meet their assessor at the property to assess the damage. However, at the conclusion of the assessment, Aviva declined the claim, on the basis the property had been unoccupied for over 60 days and the 'lived in' clause (which would have negated the withdrawal of full cover after 60 days) wasn't met. If a property was unoccupied for more than 60 days, exclusions from cover applied, including damage to buildings and contents from a number of insured perils normally covered. One of the excluded perils was escape of water, including from water tanks and pipes.

Aviva said they considered a property to be 'lived in' if it included carrying out of normal, everyday activities – including regular cooking, eating, bathing, cleaning and sleeping at the property. Staying in the property for one night would not constitute 'lived in' and wouldn't negate the policy exclusion for the property being unoccupied. The exclusions could be 'bought back' for an additional premium, if certain conditions were met – for example the water being turned off, the property being inspected internally at regular intervals.

E challenged the decline on the grounds, firstly, that he wasn't aware of the 'lived in' condition and its definition, as it hadn't appeared in (or explained) in any documentation he'd been provided with, either when he told Aviva of his aunt's passing or the subsequent policy renewal. Nor the provision for buy back of the exclusions. And, secondly, he'd renewed the policy in December 2022 and the leak was within the 60 day unoccupancy period stated in the renewal documents. He also challenged Aviva's view renewal was a continuation of the previous policy in relation to the 60-day unoccupancy rule.

That is, the renewal of the policy didn't mean a new 60-day period began. In the case of the Estate of Ms B, this meant the unoccupancy period began 60 days after the property was first considered unoccupied (the date E told Aviva of his aunt's passing). Aviva said the unoccupancy period extended to when the policy renewed (December 2022).

Aviva considered E's challenge as a complaint, but they didn't uphold it. In their final response, they said the policy schedule needed to be read in conjunction with other policy documents, including the policy booklet, to ensure the cover provided met the Estate of Ms B's needs. When E told Aviva of his aunt's passing, Aviva weren't aware he didn't have the policy booklet to review - they assumed he had all the policy documents available. In any event, E could have found the policy booklet by searching online or asking for it.

Aviva also said the policy schedule set out guidance on the unoccupancy condition, both at the time of the amendment to the policy in July 2022 and the renewal in December 2022. Aviva set out the wording of the unoccupancy clause contained in both policy schedules, adding the definition of unoccupied was self-explanatory. They said the terms of the policy hadn't been met, so confirmed their decision to decline the claim.

E then complained to this Service. He said the Estate of Ms B was affected financially by having to cover the cost of the leak and the damage. He'd also had to take four weeks' leave of absence to attend the property and deal with the issue. It was difficult for him to engage professional assistance to repair the damage, causing further damage. He was eventually able to engage a property restoration firm, but at a cost of some £15,000. He'd also incurred some £10,000 to buy and hire drying equipment to mitigate the damage before the restoration firm could begin work (as well as costs of hotels, travel and purchasing tools). The damage and work to repair it meant the property had reduced in value significantly (and remained unsold). This would affect him as a beneficiary of the Estate of Ms B (and other beneficiaries). The stress of dealing with the incident had also affected his health.

E acknowledged he'd been provided with verbal information about the withdrawal of cover after 60 days unoccupancy when he contacted Aviva to tell them of his aunt's passing but said in the circumstances he couldn't reasonably be expected to absorb the information or find it in documentation subsequently sent to him. He wanted Aviva to compensate the Estate of Ms B financially, either fully or partially (if he was considered culpable in part).

Our investigator didn't uphold the complaint, concluding Aviva didn't need to take any action. She concluded E had said the property was unoccupied - and Aviva told E about the unoccupancy clause - in the call he made telling them of his aunt's passing. Aviva also said cover for certain perils (including escape of water) wouldn't continue after 60 days unless E exercised the buyback option (at an additional premium) to extend full cover and negate the exclusions. Following the call, Aviva sent an amended/updated policy schedule to E, including confirmation the property would be unoccupied and the unoccupancy exclusion.

The investigator also noted the relevant policy terms, including what wasn't covered when a property was unoccupied and the definition of unoccupied, and that these policy terms weren't unusual in home insurance policies. She concluded the property couldn't be considered to be occupied (as E confirmed in the initial call and would have been aware of from the amended Policy Schedule) even though it was furnished and received attention from the estate agent. While E said they didn't have the policy booklet, and couldn't access it online, she thought they could have requested it (and the Policy Schedule clearly stated the policy terms should be reviewed. But even had the policy booklet been provided, the investigator didn't think it would have changed what happened, as E had already been made aware about the unoccupancy clause in the call and through the amended Policy Schedule.

Based on these conclusions, the investigator thought Aviva had acted fairly and reasonably to decline the claim because the property had been unoccupied for more than 60 days.

E disagreed with the investigator's view, raising a point he didn't think had been considered by the investigator. He questioned the policy definition of 'Unoccupied'. Specifically, he thought use of the word 'or' in the wording 'Not lived in by you or anyone who has your

permission or doesn't contain enough furniture for normal living purposes' meant the property was occupied, as the wording and use of the word 'or' meant only one of the two elements needed to be present for the property to be considered occupied. As the property was fully furnished, then the second element in the wording would apply, so the property was occupied. And in any event, the definition was unclear. In which case, the Consumer Rights Act 2015 [Section 69(1)] meant that, where a term in a consumer contract could have different meanings, the meaning most favourable to the consumer would prevail.

The investigator issued a further view in which she maintained her original conclusions. She didn't think the wording of the definition of unoccupied meant one of the two elements could be satisfied to mean the property was occupied. She thought the definition concerned unoccupancy (not occupancy) and only one of the two elements needed to be present for the property to be considered unoccupied – which would be the first element. Also, E had confirmed in the call to Aviva the property was unoccupied, and this had subsequently been stated in the amended Policy Schedule.

E disagreed with the investigator's further view and requested an ombudsman review the complaint.

### **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'd first want to express my sympathy to Ms B's nephew for the passing of his aunt. I know the loss will have been difficult and stressful for him, as well as having to deal with Ms B's affairs and with the leak at Ms B's property and the claim under the policy. I've borne this in mind when deciding whether Aviva have acted fairly towards the Estate of Ms B.

The key issue in The Estate of Ms B's complaint is whether Aviva acted fairly in declining the claim for damage to the property from the escape of water, on the basis the property had been unoccupied for more than 60 days and the 'lived in' condition hadn't been met. E says it is unfair, as while he acknowledges he was given verbal information about this, in the circumstances of his aunt's passing he couldn't reasonably have been expected to absorb (or in the documentation subsequently provided to him). He also says, secondly, the incident and damage happened within the 60 day unoccupancy period following renewal of the policy in December 2022.

On the first point, I've considered the sequence of events from the passing of Ms B, including the call in which E told Aviva of his aunt's passing and the amended policy documentation issued after the call.

Regarding the call, I've been provided with the call recording (as has E) as well as the transcript of the call made by E. From these, it's clear E confirms to Aviva the property is unoccupied following his aunt's passing, even though regular visits are being made to attend to matters. Aviva also draw E's attention to an unoccupied property being fully covered for the first 60 days it is unoccupied, after which exclusions are applied, including escape of water and other perils. Aviva also explain that the exclusions can be 'bought back' at an additional premium, and E can contact them before the 60 days have elapsed to take up the option. Aviva also provide a figure for the additional premium (to the policy renewal date in December 2022) and that E can call them back should he decide to take up the option. They also confirm the date the 60 days expires (September 2022).

Moving to the amended Policy Schedule issued after the call, it records the property will be unoccupied, by including the following statement:

### ***“Unoccupancy***

*You have confirmed that the home will be unoccupied for more than 60 consecutive days.”*

The Schedule then includes the following, under a heading *Clauses applicable to the Property*:

### ***Unoccupied Exclusions***

*You have told us that you may leave the home unoccupied for more than 60 days in a row. We will provide full cover as per the policy wording for the first 60 days in a row that the home is unoccupied,. After the home has been left unoccupied for more than 60 days in a row we will not cover loss or damage under the CONTENTS Section and (if covered) the BUILDINGS SECTION caused by: malicious people or vandals; water escaping or heating fuel leaking; or attempted theft. Also, we will not cover loss or damage under the CONTENTS SECTION to contents in the garden, or under the BUILDINGS SECTION to fixed glass and sanitary fittings.”*

Taking these points together, I think it's reasonable to conclude E would have been aware that full cover won't apply after 60 days of unoccupancy, early September 2022. And that the exclusion means damage from water escaping wouldn't be covered after that date. Which is what happened in the incident in January 2023. So, I think E should reasonably have been aware of the exclusion and its meaning. I also think E should have been clear about the property being unoccupied and this is confirmed in the amended Policy Schedule.

I appreciate what E has told us about the circumstances of the call coming a few days after the passing of his aunt and that he would have been affected by this, as well as having many things to think about and take care of in his role as executor. But even allowing for this, I can't conclude E wasn't aware of what unoccupancy meant and that it would mean reduced cover after 60 days. Also, that he was made aware of the option to buy back the exclusion, so that normal cover would continue to apply. And while I can appreciate he may not have had it uppermost in his mind in the circumstances, I can't conclude that Aviva acted unfairly or unreasonably, which is my role in considering the complaint.

I think these conclusions stand irrespective of what E says about not seeing the policy booklet, containing the detailed terms and conditions, and that he couldn't access it online (as an executor). And I don't think it unreasonable to conclude E could have requested it directly from Aviva, either in the initial call or subsequently – particularly given the amended Policy Schedule reference to reading it in conjunction with the policy booklet.

The relevant policy terms are as follows, first regarding cover where a property is unoccupied. Under a heading *Buildings section – what's not covered?* it states:

*“Loss or damage caused by any of the following when your home has been left unoccupied for more than the period shown on your schedule:*

- Malicious people or vandals;*
- Water escaping from or freezing in water tanks, pipes, plumbed-in home appliances, fixed equipment or fixed heating system;*
- Heating fuel leaking from a fixed heating system;*
- Theft or attempted theft.”*

This wording is very similar to that of the amended Policy Schedule. So, even if E didn't have the policy booklet, he would reasonably have been aware of the exclusions where a property was unoccupied.

The Policy Booklet also defines *Unoccupied* as follows:

*"Not lived in by you or anyone who has your permission or doesn't contain enough furniture for normal living purposes."*

*'Lived in' means that normal living activities like bathing cooking and sleeping are regularly carried out in the home."*

I've then considered E's point that the 'lived in' condition and the provisions for buy back of the exclusions weren't made clear to him, either at the time he told Aviva of his aunt's passing nor subsequently at the renewal of the policy. Given what I've concluded about the initial call to Aviva and the subsequent amended Policy Schedule being provided to E, I think it reasonable to conclude the provisions were made clear by Aviva.

I've then considered E's second point, that the incident and damage happened within the 60 day unoccupancy period following renewal of the policy in December 2022.

It's true the same wording for the property being unoccupied and the exclusion appear in the Policy Schedule issued when the policy renewed in December 2022.

But I don't think this could reasonably be interpreted to mean a new, 60 day period of full cover applied from the date of the policy renewal. I say that because there had been no change in the status of the property at the renewal date – it continued to be unoccupied, as stated clearly. So, I think it reasonable to conclude the same exclusion for unoccupied properties would similarly continue to apply. And there was no indication of any 'buy back' that would have meant normal cover, and removal of the exclusion).

Nor do I think (picking up E's point that I'll come on to about ambiguity in the wording of the term unoccupied) the inclusion of the same exclusion wording in the renewal Policy Schedule makes its meaning ambiguous or susceptible to differing interpretations – and therefore should be interpreted in favour of the consumer (the Estate of Ms B).

I've also considered E's further point about the property being occupied, under the policy definition of unoccupancy. And that, under the Consumer Rights Act 2015, the definition is unclear and therefore should be interpreted in favour of the consumer (the Estate of Ms B). The definition is:

*"Not lived in by you or anyone who has your permission or doesn't contain enough furniture for normal living purposes."*

I think the inclusion of 'or' means that a property is unoccupied (not that it is occupied) if *either* of the two elements of the sentence are present. Not if one element doesn't apply. In the circumstances of this case, it's clear the property wasn't being 'lived in'. And it was also made clear in the initial call what lived in would include – and E confirmed the property was unoccupied. So, I've concluded there isn't ambiguity in the definition and therefore the Consumer Rights Act (and the legal principle that ambiguity in a contract should benefit the part that didn't draft it) can't reasonably be held to apply in this case.

**My final decision**

For the reasons set out above, my final decision is that I don't uphold the Estate of Ms B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms B to accept or reject my decision before 19 February 2024.

Paul King  
**Ombudsman**