DRN-5643414

The complaint

Mr H complains that Aviva Insurance Limited (Aviva) unfairly declined a claim he made on a legal expenses insurance policy.

What happened

Mr H held a legal expenses insurance policy with Aviva which covered certain matters relating to his property. Mr H contacted Aviva to make a claim in 2020. He'd been involved in various legal proceedings and wanted to claim costs he'd incurred.

Aviva declined cover for his claim. It said a condition of the policy was that a notification condition of the policy required Mr H to contact Aviva about a claim or potential claim "without unnecessary delay." It said the claim had been ongoing for a number of years before Mr H submitted his claim.

Mr H complained to Aviva, and then our service. He said the notification condition of the policy hadn't been included in policy documents he'd been sent, and he had indicated he needed to discuss a claim in emails with Aviva before the relevant legal proceedings started. He was also unhappy that Aviva had indicated the policy had an indemnity limit of £150,000 across all claims, whereas he believed the indemnity limit to be £150,000 per claim.

Our investigator reviewed Mr H's complaint and didn't think Aviva had done anything wrong. Mr H disagreed and asked for an ombudsman's decision.

My provisional decision

After reviewing the information available to me, and making further enquiries with Aviva, I believed that Mr H's complaint shouldn't be upheld, but for different reasons to our investigator. I therefore issued a provisional decision, and outlined the reasons why I wasn't minded to uphold Mr H's complaint. I said:

The notification condition which Aviva relies on says:

"The Insured must without unnecessary delay give written notice to the Insurer of any potential or actual claim or any circumstances likely to result in a claim. All court documents and/or other communications received by the Insured must be passed immediately to the Insurer. The Insured must not deal with or attempt to settle a claim without the Insurer's prior written agreement."

This is included in the "Claims conditions" of the policy. In 2013 Mr H was in email contact with Aviva and during this asked for copies of his policy documents. Aviva sent him these but for unknown reasons the Claims Conditions and General Conditions weren't included in these documents. After Mr H received the documents (which didn't include the general or claims conditions), he was assured in an email by Aviva that what he'd been sent was "the policy in its entirety." There's no dispute that the notification condition I've referred to above wasn't included in the documents sent to Mr H in 2013.

After he'd been sent this information, Mr H sent further emails, in which he said he would like to speak with a representative of Aviva. When Aviva queried this he said "I would like to discuss a claim under the policy but it is complex." Following this there was then no further contact with Aviva until 2020, when Mr H sought to claim his costs.

There are, therefore, I think two key questions which I need to initially answer:

- Did any of Mr H's contact with Aviva or its representatives before 2020 constitute a notification of the claim?
- If not, did Mr H only pursue the legal proceedings as he believed (based on Aviva saying the documents he had were the entire policy) that his insurer would cover his costs?

If the answer to either of these is yes, I'd then need to consider the policy liability limit and whether it is an aggregate or per-claim amount.

Considering the first question, one point that was previously in dispute but now seems to be accepted is that for the costs Mr H is claiming, the relevant legal proceedings hadn't started at that point. While there were other, related, proceedings, Mr H's current claim (and his complaint about Aviva's response to the claim) is for costs relating to legal proceedings that started after Mr H was sent the email in 2013.

I can't agree Mr H's email was a notification of the claim. It gave no detail of the claim, such as what it related to, any information on the dates or the current status of legal proceedings, including the involvement of legal representatives. I'm also conscious that the department of Aviva Mr H emailed was the same as had sent him details of the policy, and there was no indication they were responsible for handling claims, or giving advice about them.

I also note Mr H didn't follow up his email to Aviva to ask again to meet with a representative or whether he needed to do anything else with regards to making the claim until several years later. The reason for this would most likely be that Mr H didn't know about the notification clause and so didn't consider this was something he needed to do. However, if Mr H believed he'd registered a claim, or notified Aviva of a claim in 2013, it's reasonable to assume he'd have had further contact with Aviva in order to progress the claim. I don't think it can be persuasively argued that Mr H notified Aviva, or believed he'd notified Aviva, of a claim.

One other point I've sought to explore as part of my review was whether there was any other indication of this claim given to Aviva or its representatives before 2020 (outside of the email correspondence in 2013). Mr H pursued a separate claim under the policy in that period, and costs related to that were covered by Aviva. I've asked Aviva whether the solicitors acting for Mr H on that claim gave any indication of this claim during the correspondence between Aviva and the solicitors. We haven't been provided with any such evidence, but if Mr H believes this was the case and can provide evidence by way of emails between himself and the solicitors, then we may be able to make further enquiries on this point. At this stage, I have to conclude there's insufficient evidence to say Mr H notified either Aviva or the solicitors of the claim which forms the subject of his complaint.

I've therefore gone on to consider the second question. Again, I can't agree that Mr H's decision to pursue the legal action was solely because he believed the policy provided cover for his costs. I think that irrespective of whether the policy provided cover or not, Mr H had every intention of pursuing the matter. There had been several proceedings before this one, and it's evident from Mr H's continued pursuit of these matters how strongly he felt about them. This is unsurprising, as they related to his property and access to it.

Having addressed those two questions, I've gone onto consider whether it's fair for Aviva to be able to rely on the notification clause even though it wasn't included in the documents it sent to Mr H.

The documents Mr H did receive said Aviva would "indemnify the Insured against:

(i) Damages including costs and expenses awarded against the Insured by a court of law
(ii) Costs and expenses incurred by the Insured with the agreement of the Insurer in taking or defending any action at law or otherwise"

Mr H argues that the claim he makes is for amounts awarded in a court order, rather than his own legal expenses, and so the notification element outlined in clause (ii) doesn't apply. However, I need to consider whether the notification clause contained in the Claims Conditions means that, regardless of what his claim is now formulated as, he should have notified Aviva of the claim.

The primary purpose of the notification clause is to allow Aviva (as the entity covering a policyholder's legal expenses) to seek to mitigate its exposure to costs, either by way of appointing a solicitor to act on the policyholder's behalf or limiting the amount it will pay to appointed solicitors, assessing the prospects of success of a case or limiting funding to certain aspects of the proceedings. It wasn't given that opportunity here.

Furthermore, the documents sent to Mr H did reference an additional condition which "was added to the General Conditions contained in this policy." I think a reasonable interpretation of this would be that there were additional general conditions. If, on reading this Mr H was unable to locate the General Conditions referred to, he could have contacted Aviva to ask for these to be provided. It's to be expected that Mr H, on receipt of the documents, should have read what he was provided with. A reasonable conclusion to draw from that was that he should at that point have highlighted that the General Conditions, which were referred to, weren't included. I think it's fair to say if he had done so, Aviva would have located the relevant additional conditions and sent them to him.

I'm conscious, however, that the notification clause relied on was contained in the Claims Conditions, which are separate from the General Conditions. The documents Mr H was in receipt of made no mention of the Claims Conditions. I've considered whether this changes my thinking here. I don't think it does. If, as I've outlined, a reasonable expectation would have been for Mr H to contact Aviva and ask about the additional general conditions, I think it's more likely than not that both the General Conditions and Claims Conditions would have been sent to him. On that basis, I don't think there's a particular distinction between the General Conditions and Claims Conditions and the effect of them not being sent to Mr H on whether Aviva's actions were reasonable. I'm satisfied that a reasonable assessment of the terms and conditions applicable to Mr H's claim should include the Claims Conditions. The notification clause was part of those conditions.

Another point I'd observe here is that the documents sent to Mr H were very brief, running to only a few pages and paragraphs of terms and conditions. Given the extent of cover provided by the policy, and reference in those documents to additional conditions, I don't believe it's reasonable to take the position that those documents consisted of the entirety of the terms and conditions, Aviva's error with regard to that notwithstanding.

Even if I were to accept Mr H was unaware and had no reason to believe there were additional conditions applicable to the policy (which as I've outlined above I don't think was the case) then I'd have to consider whether the pursuit of lengthy legal proceedings, incurring significant costs, and then asking an insurer to cover those costs is reasonable

where the insurer is unaware of the proceedings and connected costs. I've outlined the purpose of the notification clause, and these are common in legal expenses insurance policies. I don't think the clause is inherently unfair or places an unreasonable burden on Mr H. I think it's fair to say an insurer can reasonably expect to be notified of a potential claim at the earliest time so that it can make a full assessment of the cover and seek to limit its liability.

I can't agree that it would be reasonable to ask Aviva to provide cover for Mr H's claim. I'm satisfied the notification clause should reasonably have been something Mr H was aware of, and that it's fair for Aviva to rely on it.

On balance therefore, I think Aviva acted reasonably when it declined cover for Mr H's claim. Mr H hadn't notified Aviva as he was supposed to, and it's reasonable for Aviva to rely on that condition.

Mr H also queried whether the policy limit of £150,000 applied per claim or as a total across all claims. While the liability limit isn't relevant to this claim, as I've concluded cover could be reasonably declined, I have looked at the policy documents and thought about what this means for the limits of liability. The sole reference to any liability limit in any of the policy documents simply says "Limit of indemnity: £150,000." This is in the documents sent to Mr H by Aviva, rather than the General Conditions or Claims Conditions.

The policy documents don't go any further to outline whether this limit is per claim or across all claims. I've therefore gone on to consider the ordinary and normal meaning of this, taking into account the remainder of the policy documents and how the limit should be interpreted.

My starting point here is that the policy provides cover for a number of different risks, and there's no mention of a different liability limit for any of these. Furthermore, the limit isn't stated as being "per claim" or "per incident." So I think a reasonable interpretation of the documents is that the limit of £150,000 applies to all claims made for any and all of the risks insured. I'm satisfied the intention of the policy, and a reasonable definition of the "limit of indemnity" is that there is an aggregate limit of £150,000 which Aviva will pay. It isn't a limit of £150,000 per claim.

The responses to my provisional decision

Aviva didn't respond to the provisional decision.

Mr H responded to the provisional decision, outlining why he believed the complaint should be upheld. In summary he said:

- Aviva's representative had been clear that the documents he was sent (which didn't include the General Conditions or Claims Conditions) were the policy in its entirety, so it was unreasonable to allow Aviva to rely on conditions which weren't referenced in the documents he was sent.
- In any case, his email to Aviva in March 2013 was sufficient to give notice of the claim.
- His decision to initiate and continue legal action was based on his reliance on the policy documents he had and his notification to Aviva of the claim.
- There was no reference in the documents to the policy indemnity limit being an aggregate across all claims, so in the absence of this the limit should apply per claim.

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 H's response to my provisional decision raised a number of points. While I may not respond these individually, I have carefully considered each of them, and whether they change the outcome of the complaint. I remain satisfied that Mr H's complaint shouldn't be upheld, for broadly the same reasons as I've outlined. I don't intend to repeat these in detail.

I've explained previously why I don't believe Mr H's single email from 2013 was sufficient as evidence of him notifying the claim. Looking at the email in question, the relevant section simply states:

"I would like to discuss a claim under the policy but it is complex."

I think it's important to note here that Mr H's email doesn't say that legal proceedings are imminent or proposed. Nor does the email give any detail of what the legal proceedings, and therefore the claim, relate to. In addition, Mr H refers to wanting to "discuss" a claim, but doesn't say definitively that he needs to make a claim, or will be making one. He also didn't give any indication that he was likely, or possibly, to incur costs which he expected or believed the policy would cover.

So on balance, as I've said before, I can't agree that this email constituted a notification of the claim. I note as well that Mr H's email made no reference to any contact with the solicitors handling the separate claim, so I assume that the current claim wasn't the subject of any discussion or notification to those solicitors.

Mr H also says the legal proceedings were only pursued because he believed cover was in place under the policy (either by way of his notification or because the documents he had were silent on the notification clause). I've previously explained why I'm satisfied his decision to pursue the proceedings was independent of the policy cover, and I haven't seen anything to change my mind on this.

I think the only way I could reach such a conclusion would be to say that the proceedings were only advanced after the contact with Aviva in 2013 and so draw the conclusion that Mr H pursued the legal action in the expectation of the policy providing cover. However, to do so, I'd have to discount the fact that a number of legal proceedings relating to access to his property had been advanced over the years, regardless of the policy cover. I also think it's fair to say that if Mr H was only taking legal action because of the policy cover, he'd have been engaged in more contact with Aviva than an email referring to wanting to "discuss a claim" and then nothing further until submitting a claim in 2020 once the proceedings had concluded.

Turning to the omission of the General Conditions, and the impact of this on the application of the notification clause, I can't agree with Mr H's position here. He's suggested that his query about the policy was prompted by him noting the General Conditions weren't included in the documents he had. I note the relevant section of the email in question says:

"Further to our emails, can you confirm if this is just the schedule or the entire policy?"

That email prompted the response that he'd been sent the policy "in its entirety." However, I can't agree the evidence supports that Mr H's enquiry was prompted by him noticing the General Conditions hadn't been included. His email makes no reference to the General Conditions being missing, or him noting that he believed he'd been sent incomplete documentation. As I've said before, I think it's likely that if Mr H had said he didn't have the General Conditions, that would likely have prompted Aviva to provide these, along with the Claims Conditions. If, as Mr H suggests, he'd noted the General Conditions were missing or

believed the documents to be incomplete, the response that the policy documents he'd been sent were the entirety of the documents, I think the natural response would have been to query this further.

Mr H also says it's unfair for Aviva to be able to rely on its position that the General Conditions would have been sent before 2013, when the policy was taken out. He points out that Aviva's been unable to provide evidence of this. However, I note that the policy was taken out in 1995, so I don't think it's unreasonable that Aviva has been unable to show what documents were or weren't sent at that time. In any case, I haven't relied on what was or wasn't sent in 1995 in making my decision.

As I outlined previously, I'm satisfied from the documents sent to Mr H in 2013 that they should reasonably have acted as a prompt to ask about the missing General Conditions. That would, I'm satisfied, have resulted in the General Conditions and Claims Conditions being provided. So I remain satisfied that it's fair for Aviva to rely on the notification clause as it formed part of the policy. As I've outlined, I've concluded Mr H's email in 2013 referring to discussing a claim didn't amount to a notification of the claim. On that basis, it's my opinion that Aviva's decision to decline cover for the claim was fair.

Finally, turning to the indemnity limit, which isn't directly relevant to this claim if Aviva has reasonably declined cover for the current claim. I understand Mr H's point that if the policy documents don't explicitly state the limit is an aggregate then it should be assumed to apply per claim. I don't agree with this, for the reasons I've previously given. I think the limit being stated as £150,000 would reasonably be interpreted as an aggregate, in the absence of a specific limit being stated for individual risks or claims.

My final decision

I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 July 2025.

Ben Williams
Ombudsman