

complaint

T's complaint is about Aviva Insurance Limited declining its claim for fire damage and voiding its Property Owners Insurance Policy (that is, treating the policy as if it had never been entered into).

background

The owners of a family business arranged for several buildings, some of which were used by the business, to be transferred to T, a self-administered pension scheme. The owners of the business were T's trustees and T became the business' landlord. T took out an insurance policy with Aviva, which already insured the family business and other buildings owned by the family.

Less than a year later there was a fire which destroyed one of the transferred buildings and some valuable equipment. Aviva declined T's claim and voided its policy because it said that T had not disclosed material facts when it took out the policy. It also said that there had been a failure to comply with risk improvement measures imposed as a condition under a previous policy taken out by the family business and that the property and the equipment were underinsured.

Our adjudicator felt that Aviva had not behaved reasonably and recommended it should reinstate the policy and consider the claim. Aviva asked for the complaint to be referred to an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Aviva has argued that this complaint falls outside our jurisdiction and we don't have the power to consider it. It says T should be regarded as a linked enterprise with the family business and other family companies. On that basis, T wouldn't be a micro-enterprise and so couldn't bring a complaint to us. Aviva drew our attention to a decision on a related complaint by one of my colleagues, which decided that the family business and another family company were linked enterprises.

My colleague's decision turned on the fact that the two enterprises were involved in the same or adjacent markets. That's not the case here: the family business is involved in manufacturing, T in investment property. The definition used in our rules says that without that additional connection through markets, two or more enterprises, which are under the common control of a group of natural persons are not treated as linked. On that basis, T is a micro-enterprise.

In addition, T's net assets are below £1 million, so I think it is an eligible complainant and this is a complaint we have power to consider.

When T took out the policy, its broker approached Aviva very informally and said the family now wanted to bring the relevant properties into their insurance arrangements with Aviva. Aviva wrote the policy with equal informality; there was no formal proposal or presentation of risk and no survey.

Aviva has said that it was invited to treat the application to insure T as effective continuity of cover with only a simple change of name. On that basis Aviva felt it was reasonable not to require a statement of fact or a questionnaire and to put the onus on T or its broker to disclose any material facts or change in circumstances.

I don't think that was a reasonable position for Aviva to take. Aviva was already insuring the family business and other property owned by T's trustees. And it had insured these buildings some time before when they were owned by another family company. But it hadn't been insuring the buildings immediately before the transfer, or for some time, and it didn't have up to date information about them. In its response to the application, it said cover would be subject to a survey (but it didn't follow this up).

In those circumstances, I think it was reasonable for T to assume that Aviva would ask for information it needed before providing cover. This wasn't the same as a renewal where it might be reasonable for an insurer to expect a policy-holder to alert it to any changes in circumstances or material new facts.

But, in any event, I don't think it's clear that the circumstances Aviva has tried to rely on actually did involve non-disclosure or would have entitled it to void the policy.

Aviva has argued that it was entitled to void T's policy because the family business had not complied with risk improvement measures, which were imposed upon it as a condition of its business insurance the previous year.

It's not clear that Aviva should be entitled to void T's policy because a business carried on by a separate legal entity has failed to comply with a condition of its insurance, even if T's trustees owned that business. But, Aviva hasn't actually shown that the family business was in breach of this condition. In fact, the best evidence, is a written statement by the contractor who said he did the work, is that the condition was complied with.

Aviva has also argued that it was entitled to void T's policy because it had discovered that a proposal form submitted to another insurer by the family business a few years earlier had contained a misrepresentation. Aviva said that the misrepresentation by the family business in connection with insurance in the past represented a 'moral hazard', that should have been disclosed to it.

The alleged misrepresentation was in relation to a question '*Have you or any of your partners or directors either personally or in connection with any business in which you have been involved.....had within the last 5 years any losses whether insured or not or had any claims made against you (in this or any existing or previous business)*'. When it returned the form, the family business didn't disclose that another family owned company had made a claim four years before the proposal.

I think this was very far from a clear question. It appears to be asking a limited company whether any of its directors had suffered any previous losses or claims. I don't think the addition of '*in connection with any business in which you have been involved*' makes it clear enough that, in fact, it's asking whether any other business in which a director had been involved had suffered a loss. I think this question was so unclear that the family business answering 'no' wouldn't have involved a misrepresentation.

Aviva has argued that it was also entitled to void the policy for non-disclosure because T didn't disclose that one of its trustees had been a director of an insolvent company or that

the buildings, and land around them, were used to host a car rally. Although no specific questions were asked about solvency history or use of the premises, Aviva said both items fell under a general duty of disclosure. It pointed to the declaration, which T signed when it took out its policy, that all material facts had been disclosed. And it argued that T should be regarded as a sophisticated customer.

I agree that, given the trustees' experience and the resources available in the family business, T should be treated as a sophisticated customer. But I don't think it follows that either of these items should be regarded as a material non-disclosure.

I don't think it's obvious that T should have thought it needed to volunteer that one of its trustees had been involved in an insolvent business without a specific question being asked. But, in any event, Aviva knew this information because it was disclosed on the proposal form provided to a previous insurer which has been referred to above.

Similarly I don't think it's obvious that T should have thought it needed to disclose that the buildings and surrounding land were used for three or four rallies a year. Particularly so since the rallies were separately comprehensively insured by the organisers, and so wouldn't be expected to lead to any claims against Aviva. In the circumstances, in the absence of a specific question, I think T could reasonably suppose that they weren't material for disclosure to Aviva.

Lastly, Aviva has said that the buildings and the equipment were materially underinsured. But underinsurance isn't something that would normally lead to a policy being voided and evidence from Aviva's underwriters supports the view that this wouldn't be an appropriate remedy here.

my final decision

My final decision is to uphold the complaint. Aviva Insurance Limited should reinstate the policy and consider the claim in accordance with the remaining policy terms and conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 11 March 2016.

Jonathan Coppin
ombudsman