complaint

Mr and Mrs J are unhappy with Aviva Insurance Limited. Mr J had arranged home cover with it but, following a claim they made for damage caused by a water leak, it avoided the cover (treated it as though it had never existed). As a result the claim was declined.

background

Mr and Mrs J moved into the house in May 2015. The house had belonged to Mrs J's father and in his will he left the house to Mrs J and her sister. The sisters were also executors. The administration of the estate hadn't been completed by this point and the house remained in Mrs J's late father's name and there was no insurance in place for the property. There had been an Aviva policy for the estate in Mrs J's maiden name but this ceased in February 2015.

In January 2016 Mr J, using a price comparison website, arranged a policy through a bank. Aviva was the insurer for that policy. The administration of the estate had still not been completed at this time.

In September 2017 the family came home to find there'd been a leak. They contacted Aviva and found a holiday home to stay in. That house wasn't really suitable for them and Aviva didn't assist with finding them anywhere else. Aviva paid £1,000 as an emergency payment and arranged to carry out some emergency works at the property with contractors attending within 48 hours of the claim being notified.

Four days after the claim was notified a loss adjuster visited the property. He discovered that Mrs J was still the executor for her father's will, that the estate hadn't been dealt with and that the title for the property hadn't been passed on. He told Mr J he didn't think he had an insurable interest in the property and that Aviva may well have no liability for the damage that had occurred.

On 3 October, a week after the loss adjuster had visited Mr and Mrs J's home, an email was sent to Mr J explaining that Aviva wouldn't agree any further payments and that any enquiries it made were being done on a 'without prejudice' basis.

Nine days later the loss adjuster wrote to Mr J. He said that because the building had been unoccupied between 2010 and 2015, and because the house wasn't owned by Mr J, Aviva was avoiding the policy. However, it was accepted that cover for contents items would have been given to Mr J so it had arranged for a contents only policy to be implemented from January 2016 onwards.

The letter went onto explain that the maximum limit for contents under the new policy was £30,600. It also said that the maximum allowance for alternative accommodation under the new policy was £10,000. The loss adjuster said Aviva would therefore look to make a payment to settle the whole claim, having taken into account previous payments and the policy excess, of £38,500.

Mr J was unhappy with this. He said he did own the house because his wife was one of only two beneficiaries of the will. He pointed out he had a mortgage on the property and made planning applications- all activities associated with owning a property. Mr J thought it was unfair for Aviva to complain about the house being previously unoccupied when he and his family had lived in it since 2015.

He was also unhappy about the contents policy Aviva had implemented. He said the cover was inadequate – the cost of living elsewhere far exceeded £10,000. But also the cost of living elsewhere would have been less if Aviva had done something in the early stages of the claim when he complained about the property they were in. He also said he wouldn't have used the drying company if he'd known they'd do so little for the extortionate sum charged – £2,000. He didn't think it was fair for Aviva to deduct this amount from the settlement sum for contents.

Our investigator considered the complaint and issued more than one set of findings. Ultimately he felt that Aviva had acted reasonably in not settling the buildings claim because Mr J didn't own the house.

Mr J was dissatisfied with this. He said Aviva knew of the situation with the house because of the previous policy. He said ownership is not defined by a name on a document – for example, a car's registration document specifically says being named on the documents doesn't evidence ownership of the car. He also noted this service's approach to proving ownership of things such as jewellery often extends to accepting pictures of items being worn by the people saying they own them. He also referred to The Beneficial Owners Act in respect of ownership being defined by the person who has most control.

Mr J went on to say that Aviva's reference to the property being unoccupied was totally irrelevant. He said that being the case it brought its other reason (ownership) into question too. He said he hadn't cashed the cheque Aviva sent him as a refund of premiums.

The complaint was passed to me and I asked Aviva for more detail about what it would have done if it had been told the house was still in probate. Aviva said it couldn't have given Mr J cover. It explained it had previously offered cover to the estate but that policy had ended due to non-payment several months before Mr J arranged cover in his own name.

Given the new evidence from Aviva, and the points Mr J raised following our investigator's assessment, I issued a provisional decision to take everything into account. Overall I said I wasn't minded to uphold the complaint or make any award against Aviva. I said:

"ownership of the house

Mr J doesn't own the house. Ownership of property is determined by the name on the deeds. As such, how car ownership is determined is not relevant. Nor is this service's approach to ownership of personal possessions. The Beneficial Owners Act relates to commercial entities and determining which shareholders are considered to be in control. So that isn't relevant either.

Currently the house belongs to the estate of Mr J's late father-in-law. The executors of the estate are Mrs J and her sister. But they don't own the house, they are merely custodians of it while the will is resolved. In theory at least once the will is resolved they will own the house jointly and Mr J, through his marriage to Mrs J will likely have some rights in respect of the property. But his link to Mrs J and her entitlement to inherit under the will don't make him an owner at this time.

I'm not sure why or how Mr J has been able to secure a mortgage on the property or make planning applications when he doesn't own it. The fact that he has though doesn't mean he does own it. Doing something associated with owning an item doesn't necessarily mean

ownership has passed to you. There might be some instances where something like that could occur but again this is a property that is in question; transfer of property can't be so simply achieved.

avoidance of cover

Mr J applied for cover for the house and he later told Aviva that when he did so he "filled in the most appropriate box". He explained in other documents how once the will is settled Mrs J's sister will sign things over to Mrs J entirely and Mr and Mrs J's names will be entered on the deeds. So I think Mr J knew he didn't own the property but he thought it would be ok to answer that he did because he felt official ownership was a mere technicality. Effectively he assumed Aviva would accept his answer.

I think that in making the application in this way Mr J didn't take reasonable care. He should have called to make further enquiries. Given what Aviva has said to me, I'm satisfied that if he had it wouldn't have given him a policy. The call might have triggered an awareness that allowed Mr J to take other action – getting his wife and sister-in-law to set up a policy for example – but as he wasn't an executor or owner of the house, the relationship between Mr J and Aviva, in respect of buildings cover anyway, would have come to an end. Aviva has already confirmed, initiated and acted on a contents policy that it said it would have been happy to issue under Mr J's name.

When reasonable care isn't taken during a policy application and this results in the wrong answer being given to an insurer this allows the insurer, once it finds out the correct information, to act as it would have done if it had known this at the outset. Looking at what I've said above, if Mr J had told Aviva the correct information it would only have issued him a contents policy. Therefore, its avoidance of the original contract and setting up of a contents only policy was fair and reasonable.

I know Mr J says that the contents policy is not one he would have chosen. However, whilst it isn't exactly what he would have put in place it is the next best thing. It is what Aviva would have offered and it has given him the benefit of the doubt by considering he would have accepted that. If it had taken the view that he wouldn't have accepted it then the relationship between the two would have ended entirely and Aviva would have no liability at all for the loss suffered. As it is Mr J has benefitted from the contents cover Aviva made available to him. That's fair and reasonable in my view.

I'm also aware of Mr J's argument that Aviva offered the cover knowing it was in the control of the estate given it had been providing a policy previously. I don't think it's fair to say that in this case. The policies were set up by different routes and there was a significant passage of time between one ending and the other beginning. Furthermore, there was no link in terms of names between the policies as the policy for the estate used Mrs J's maiden name.

Aviva did give another reason for its avoidance – that the property had been empty for a time before Mr J and his family moved in. However, Mr J wasn't asked a question about this when he applied for the cover so it isn't a valid reason for avoidance. Whilst it isn't valid the fact that Aviva has raised an invalid point doesn't take anything away from the other reason it has given (which Mr J has suggested should be the case). It doesn't make that reason any less valid or mean that it can't fairly be relied upon. The above reason is sufficient and I've explained my view that I think Aviva acted fairly and reasonably in that respect.

loss adjuster's inaccuracy

In a letter dated 12 October the loss adjuster referred to Mr J having rented a property for six months. Mr J says this is incorrect, he hasn't heard of the property and hasn't rented it. He says this error brings the whole document and all its contents into question.

I'm not sure why such an inaccuracy occurred. Aviva might like to comment on this in response to my provisional decision. However, I'm not minded to think the inaccuracy brings Aviva's actions in respect of the cover into doubt. As is said above, I think it acted fairly and reasonably in this respect.

delay in dealing with the claim

Aviva's loss adjuster's visit took place on 26 September. It was 3 October when Aviva contacted Mr J and told him it wasn't going to make any more payments, that it needed to consider its position. On 12 October the loss adjuster wrote to Mr J telling him of the avoidance. But that letter also advised of its decision to set up the contents policy and gave details of the settlement offer it was prepared to make under that cover.

Mr J thinks that 16 days (26 September – 12 October) was too long, that Aviva should have made its decision sooner. That because it didn't Mr J was stuck paying for and living in costly and unsuitable alternative accommodation. And he says because Aviva had put things on hold while it made its decision it hadn't agreed to move the family to other, better accommodation.

I don't think Aviva took too long to make its decision at all. This was not a straightforward situation and Aviva had a duty to act fairly. It couldn't just reasonably jump in and avoid cover. For example, it had to decide what it would have done – and in doing that it felt it would have offered contents cover. But that sort of decision has to go through underwriters and managers and various pieces of information have to be considered. It is something that I would expect to take a little time and, in the circumstances, I think Aviva acted in a reasonable time.

In any event, given that Aviva had told Mr J that there would be no further payments, if he felt the property was too expensive and unsuitable, he could have moved the family himself. It would be unusual for an insurer to discount payment for a cheaper property (in the event Aviva had agreed to continue cover) and if it wasn't going to make any further payment at all then moving somewhere cheaper could only benefit Mr J.

I'm not minded to place any blame for loss suffered or distress caused during this period on Aviva. I'm not going to make it do or pay anything in this respect.

failure to provide suitable housing or release funds

Mr J says he told the loss adjuster on 26 September that the alternative accommodation they were staying in was unsuitable. He thinks something should have been done to resolve this problem. I don't agree.

House insurance policies generally cover the cost of alternative accommodation. They don't usually place an onus on the insurer to find and provide such. As a matter of course most insurers do assist with this – but that is as much to keep the claim costs down as anything else. In any event, here, given the uncertainty Aviva faced from the point of the loss

adjuster's visit as to liability for the loss, I don't think it was unreasonable of it to not assist in finding other accommodation.

Likewise I don't think it was unreasonable of Aviva to not release funds. An emergency payment of £1,000 was released prior to the loss adjuster's visit. I couldn't reasonably expect Aviva to have paid any money once the liability issue came to light. If it had done so that could have compromised its position on liability.

costs charged by the restoration company deducted from contents settlement

Prior to the loss adjuster's visit and prior to any issue arising about liability Aviva appointed a restoration company to attend to carry out emergency works. The company brought with them two drying machines and they removed some large items from the property. When Aviva offered settlement for the claim under the contents policy it deducted £2,000 for the costs it had incurred in relation to the restoration company. Mr J said this was unfair; the cost for what they'd done was excessive and he shouldn't have to pay for a company Aviva had chosen to employ.

I would expect an insurer to act prudently to protect its own and its insured's position when it's notified of a claim. An insurer will also usually want to repair the property itself and most household policies will allow for it to have that choice. Therefore, I can understand why Aviva sent the restoration company to the property and I think that was reasonable.

Aviva was charged for the work undertaken. The avoidance meant that the contract under which payment for these was made no longer existed. Aviva can fairly ask for that outlay back. After all it wouldn't have had to pay that sum if Mr J had taken reasonable care when applying for the policy (as it would never have offered cover). Therefore, I think Aviva's action of taking this sum from the contents settlement was fair."

responses to my provisional decision

Aviva said it had nothing further to add. Mr and Mrs J wanted some further points taking into account/given consideration:

- what legislation is it that states ownership of a property relies on detail in the deeds?
- the term 'ownership' was never defined and they reasonably considered themselves owners. They couldn't reasonably have guessed that was wrong.
- they do consider they own the property, now as things stand, but have previously referred to ownership transferring to them only as an acknowledgement of a more traditional view of the completion of a red-tape/paperwork exercise.
- changing the named owner of a property is a simple matter of filling in a form, for them nothing else would change, they would just continue as they are and have been doing for some time.
- there was cover previously in place so Aviva does clearly provide cover for properties that are in the hands of executors.
- the policy was a branded one and it was the business at the heart of that brand that Mr and Mrs J had wanted to contract with and it was disappointing to them that really Aviva was in control, especially as the 'brand company' knew everything about the house.

my findings

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

Deeds, in modern terms, means the detail that is recorded on the relevant land registry database. The detail there records who owns a property and/or land. And Mr and Mrs J in their response acknowledge this. Changing the details with the registry may be only a simple task but it is key to establishing ownership. Whilst they say again that they consider themselves owners and have done for some time, they also acknowledge, and so seem to have been aware, of the more 'traditional' form or definition of ownership. So I still think Mr J didn't take reasonable care when answering the question about the nature of *his* title to the property because he knew the answer he was giving was based on his interpretation of 'ownership' when there was another 'more traditional' view out there.

And it is the fact that Mr J alone applied for the policy that Aviva arranged that is key here. Mr J isn't an executor for the estate to which the property belongs. So Aviva couldn't have offered him cover on the basis of an estate owned house. As I said provisionally, Aviva's relationship with Mr J would have ended, had he taken reasonable care and called it to discuss the ownership position, at the point it was established that the property was still in the control of the estate (and which Mr J wasn't a party to). What it would have done if Mrs J had contacted it again, and what it had done previously, aren't relevant because Mrs J didn't apply for this cover that Aviva avoided and which is the subject of this complaint.

It is a common fact within the insurance industry that certain companies offer policies in their name that they don't actually underwrite (have liability for in terms of claim action and settlements). Whilst I understand Mr and Mrs J's disappointment about the lack of involvement of the brand company, this complaint is about the avoidance that was instigated by Aviva, as the underwriter of the policy.

my final decision

I don't uphold this complaint. I don't make any award against Aviva Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs J to accept or reject my decision before 13 December 2018.

Fiona Robinson
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