

complaint

D complains that its Residential Property Owners insurance policy was cancelled and, when a new policy was taken out, Aviva Insurance Limited wouldn't provide subsidence cover.

background

D arranged Property Owners insurance through a bank. In 2013 the bank decided to arrange this type of insurance with another insurer instead of Aviva. Various issues meant the policy wasn't "renewed" and cover lapsed. While, some time later, a new policy was arranged with Aviva, D complained that it excluded subsidence damage. And this was despite the fact that Aviva was still dealing with a subsidence claim that was made before the 2013 "renewal" date.

Our adjudicator thought Aviva was entitled to decide not to provide subsidence cover. D disagreed. I issued a provisional decision. I said Aviva had insisted that it hadn't provided any cover to D after 2013. But, later, it agreed that it did provide cover in 2014. D thought this new policy didn't cover the property against subsidence damage. And it seemed that Aviva intended not to provide cover for subsidence. But I didn't think the policy documents that had been issued achieved this intention. I thought their effect was that subsidence damage could reasonably be taken as excluded only in four specified circumstances.

Also, I said that, when an insurer is dealing with a subsidence claim, we normally think it's good industry practice for it to continue to offer the policyholder cover against subsidence damage. That's as long as, other than for the risk of subsidence, the property and the policyholder meet its normal underwriting criteria at the time.

In all the circumstances, my provisional conclusion was that, from when the new policy started, Aviva should have offered D cover that included subsidence damage. D accepted my provisional decision. It said the policy that was arranged in 2014 had been "renewed" with Aviva in 2015 and 2016 on the same terms. Aviva disagreed with the provisional decision. It said it wasn't involved in the decision in 2013 to offer "renewal" of D's previous policy with a different insurer. And it wasn't responsible for that policy lapsing.

my findings

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

I accept what Aviva said in its response to the provisional decision about the "renewal" of cover in 2013. In its response, D said all the contractors that carried out work at the property in connection with the subsidence claim were appointed by Aviva's agent. That tends to support what I said in the provisional decision about Aviva apparently having decided to settle the claim by undertaking to repair the damage (or to arrange the repair). Aviva didn't provide the clarification on this point that I requested in the provisional decision.

Aviva also didn't comment about my provisional findings regarding the cover provided by the 2014 policy. But it did refer to my remarks about continued subsidence cover when an insurer is dealing with a subsidence claim. It said the approach I'd described derived from an industry agreement on subsidence claims that only applies to "*domestic consumers*". And it said I was "*overreaching on [my] remit*" by applying an approach that's not used for commercial customers or commercial policies.

I don't believe I exceeded my remit. As I've already indicated, my remit is to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. In considering what's fair and reasonable, I must take into account, among other things, relevant codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time. I have done that. It was within my remit to express the view that I did.

The industry agreement I think Aviva was referring to says it applies to policies covering domestic properties owned and occupied in a personal capacity. I think the property covered under D's policy effectively fits that. D told us it owns the building, but each owner of the flats within it owns a share, and is a director, of D. Also, Aviva's "renewal" schedule for the 2012/2013 period described: that policy as a "*Residential Property Owners Insurance*", D's "*Business*" as "*residents association*", and the policyholders as D and five named individuals. As I understand it, these individuals are the owners of the flats. The Statement of Fact associated with the "renewal" schedule included "*The building is occupied for the sole purpose of the Business and otherwise only as a private dwelling*". Additionally, Aviva's policy schedules for 2014/2015, 2015/2016 and 2016/2017 show "*Occupancy*" of the insured property as "*occupied – residential property*".

And, in any event, I'm not restricted to the terms of the agreement. I take account of what I consider to be good industry practice. Aviva's entitled to categorise the policy as commercial for the purposes of its records and/or for underwriting reasons. And it says an insurance intermediary asked it to cover the property in 2014 under an arrangement for commercial concerns. But none of this detracts from the fact that the building's effectively owned by individuals and is used for residential purposes. Aviva has also mentioned the break in cover between the 2013 "renewal" date and the commencement of cover in 2014. But this makes no difference to what I've said above. So, its response hasn't caused me to change my mind.

Aviva said it's entitled to decide what, if any, cover to offer to D. As I said in the provisional decision, I'd normally agree, but, where it's dealing with a subsidence claim, I think things are different. I also said that, if D or its property didn't meet its normal underwriting criteria, Aviva should send evidence demonstrating this. But it didn't provide any evidence to that effect.

Finally, and as an incidental point, the Certificate of Insurance for the 2016/2017 period takes effect from a date several weeks after the date of my provisional decision. So, despite objecting to the provisional decision, it appears Aviva was content to provide cover for another year on the same terms as for the previous two years.

Having carefully considered the responses to the provisional decision, I remain of the view that I set out there.

my final decision

I uphold this complaint. As long as D and/or its property meet its normal underwriting criteria (other than for the risk of subsidence), Aviva Insurance Limited should continue to provide it with cover for the property unless, cover having been offered, D refuses it. The cover should include damage caused by subsidence.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 19 May 2016.

S Lilley
ombudsman