

complaint

Mr D's complaint is that Aviva Insurance Limited has declined his claim, citing fraud and breach of a security endorsement. He is also unhappy about the way the claim was handled.

background

I issued my provisional decision in October 2012, which is attached below and forms part of my final decision.

Briefly I considered that there was insufficient evidence of fraud. I was also persuaded that as there was no security endorsement regarding the locks, it was not fair to decline the claim on the basis of statements Mr D made when setting up the policy. I considered that Aviva should reconsider the claim.

Both parties accepted my provisional decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Having done so, I remain satisfied by the conclusions reached in my provisional decision.

As neither party has provided me with any new evidence or argument I do not feel it is necessary to comment further.

my final decision

My final decision is that I uphold the complaint and direct Aviva Insurance Limited to reconsider Mr D's claim in line with the policy's remaining terms and conditions.

Ray Lawley
ombudsman

PROVISIONAL DECISION

complaint

Mr D's complaint is that Aviva Insurance Limited has declined his claim, citing fraud and breach of a security endorsement. He is also unhappy about the way the claim was handled.

background

Our adjudicator ultimately concluded that Aviva had not done enough to prove fraud but that there was sufficient evidence to show that Mr D had not locked the final exit doors before leaving the property. He considered that due to the responses Mr D had given to questions when setting up the policy, Aviva had acted reasonably in declining the claim. Therefore, as Aviva has not voided the policy due to fraud, or placed any fraud markers on the policy, he stated that it had not done anything wrong. He could also see there had been delays with the claim, but was satisfied the £200 compensation offered was fair and reasonable.

Mr D did not agree with the adjudicator's assessment and requested an ombudsman's final decision.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I will just summarise this service's approach to allegations of fraud. Whilst the civil standard of "balance of probabilities" applies, due to the fact that an allegation of fraud is very serious, strong evidence is required to prove it and it is for Aviva to prove its case.

To show fraud I have to be satisfied that there is sufficiently strong evidence that Mr D:

- Made a representation that he knew to be untrue or misleading or
- Failed to disclose information when there is a legal duty to do so.

If done dishonestly and in order to make a gain or cause a loss or risk of loss to another.

Aviva further alleges that Mr D was in breach of his duty of utmost good faith.

The misrepresentations and/or failures that Aviva relies on are:

- Mr D's misrepresentation of the amount of his gambling
- His failure to tell the police about several items including gaming machines and a laptop
- His claim for a designer watch which he appeared to have been wearing when speaking to the police
- His misrepresentation of a conversation with the police concerning the thieves' method of entry

With regard to the gambling it is alleged that Mr D misrepresented that he had stopped online gambling a year or two before the meeting with the loss adjuster and had only bet on football accumulators more recently. In fact in the two weeks before the meeting he had spent a considerable sum through an online betting account. Aviva's concern was that financial pressures can lead to the exaggeration of an insurance claim.

There clearly was a misrepresentation. I do not intend to speculate on why but I have noted that Mr D voluntarily submitted his bank statements when asked for them. I am not persuaded that there is actual evidence of exaggeration (and therefore there is no fraud) as I shall set out below.

I understand that Mr D failed to tell the police about some specific items and only claimed for these afterwards. The police officer's evidence suggests that he was surprised as he considered he had given ample opportunity to Mr D to raise those and thinks he even asked Mr D "*what about a laptop or anything like that?*". However, whilst noting the police's concern, I have to take account of the fact that it is common that things are added to the claim when consumers realise the full extent of their losses. I am not persuaded bearing in mind the strength of the evidence needed that the alternative explanation, namely that he had not yet realised the items were missing, is not valid. I note that the police have not taken any further action.

With regard to the watch, I understand that Mr D made a claim for two watches of different brands, but the police officer identified that Mr D was wearing one. However Mr D has produced evidence of the purchase of the other two watches and photographs.

The allegation is therefore that the watch, laptop and other items were fraudulently added to the claim. I am not persuaded that there is sufficient evidence of fraud.

The alleged misrepresentation in Mr D's conversation with the police is that he suggested that the police told him that the lock had been forced. As set out below, the police did not think at the time that the lock had been forced. Of necessity however the police officer's statement is a summary of the events. I am not persuaded that Mr D deliberately misrepresented what was said. Because of my conclusions set out below I am also not persuaded that the alleged misrepresentation was relevant.

With regard to the breach of "utmost good faith", this service applies what is the legal position, that there is no continuing duty of good faith. There is a duty on the policyholder to deal fully and frankly with the insurer at any time when the insurer may properly require information to be provided. As far as I can see, apart from misrepresenting the extent of his gambling at first, Mr D has co-operated with all enquiries. I do not think that that was sufficient to decline the claim.

I now turn to the question of whether the door was unlocked at the time of the theft. Having regard to the police report which found that the door was not damaged, I think it is unlikely that the door was locked. Alternatively the thieves may have had a key but I have not seen any evidence of that.

Aviva has declined the claim on the ground that Mr D confirmed the following statements at the time of taking out the insurance:

"The main entry/exit door and all other external doors are secured by a 5-lever mortice deadlock conforming to BS 3621

All such locks are put into operation and keys removed when the house is left unattended when your family have retired for the night ..."

I have to decide however whether it is fair and reasonable to decline to pay the claim because of that. I have to bear in mind that the policy itself does not have a *security endorsement* i.e. a condition of the policy that the above matters must be complied with or there will be no cover for theft. It would in my view have been quite straightforward for Aviva to have done that and charged Mr D a lower premium. The policy covers attempted theft. The relevant part of the exclusion to that is that:

"The insurer will not pay for the following unless there has been forcible and violent entry to or exit from the home i) theft of pedal cycles ii) theft of money."

It appears to me therefore whilst Mr D confirmed that he generally kept the doors locked when out it was not a condition of the policy that he did so. My view is that apart from the items specifically excluded in the policy Aviva should reconsider his claim.

I understand that a payment has been made to Mr D of £200 for the delays in dealing with the claim. I do think that that is an appropriate payment.

Overall I am not persuaded that there was fraud in this case. I am minded to conclude that Aviva cannot decline the claim because of the failure to lock the door adequately and that it should reconsider it.

my provisional decision

I am provisionally minded to uphold the complaint and direct Aviva Insurance Limited to reconsider Mr D's claim.

Ray Lawley
ombudsman