

The complaint

Mrs B has complained that Aviva Insurance Ltd (Aviva) have accepted instructions from her brother to provide insurance in her name without her knowledge. When he then charged back the premiums he had paid, this generated default notices in Mrs B's name which she does not think she should be liable for.

What happened

Mrs B's brother (Mr Z) asked her to help him buy a car as his credit rating was poor. She agreed to buy the car in her name and took out the finance in her name on 9 July 2015. This car was a white saloon. Mr Z made the payments on the finance. Mrs B insured the car in her name and added Mr Z as a named driver. This policy was not with Aviva but was taken out with Mrs B's knowledge and consent.

Shortly afterwards, Mr Z decided that he no longer wanted the car and sold it. He didn't tell Mrs B that he had sold it until afterwards.

Mrs B told us that following this she didn't give her brother authority to take out any further insurance in her name.

In December 2015 an application for a quote was made online with Aviva to insure another car. It stated Mrs B as the policyholder, and her brother, Mr Z, as the named driver. On the quote application Mrs B's marital status is stated as "married" and Mr Z's marital status is noted as "single". The e mail address given on the application is for Mr Z.

Mr Z rang Aviva to complete the purchase of the policy. During that call the call handler said she was unable to set up the policy without speaking to the policyholder. However, Mr Z told the call handler that he was Mrs B's husband and the named driver on the policy. The call handler went away to check if she could "make an exception". When she came back she asked if Mr Z had Mrs B's permission, to which he replied that he did, and the call handler then went on to set up the policy.

Mr Z agreed to pay the premiums by direct debit from his own account. He made an initial payment with his card and gave his own residential address, which was different from Mrs B's. Mr Z gave his e mail address for the documents to be sent, and the call handler advised him to use the link to My Aviva to make any changes to the policy. There is nothing to suggest that Mrs B was aware of this policy at the time it was set up.

This policy was renewed in 2016, 2017 and 2018. There were four changes of car during the life time of the policy with Aviva, and approximately 40 phone calls on record with Aviva, all of which were made by Mr Z purporting to be Mrs B's husband to make changes. There is no record of anyone at Aviva speaking to Mrs B.

On 12 January 2020 Mrs B received a default notice from Aviva by post, advising that a direct debit was unable to be collected on 5 August 2018. A further default notice was

received on 6 February 2020 which related to the direct debit from 5 September 2018. On contacting Aviva, Mrs B discovered that these default notices were being generated because her brother, Mr Z, was charging back the premiums he had paid on direct debit, creating a debt in her name. A total of £2615 had been charged back by him and was continuing to increase as further chargebacks were made.

Mrs B had been through a similar incident with another insurance company in November 2019 when Mr Z had taken a policy out in her name. In that case the insurer agreed to cancel the policy and Mrs B reported this to the police.

Mrs B complained to Aviva that she knew nothing about the policy and shouldn't be liable for the debt being created as this policy was nothing to do with her.

Aviva consider that Mrs B is liable for the payments under the policy as they say she authorised the policy being taken out in her name and she had received several letters during the lifetime of the policy regarding changes. They consider any dispute between Mrs B and Mr Z is a family dispute and does not alter her liability.

Mrs B brought her complaint to us.

Our investigator didn't uphold Mrs B's complaint. She thought that this was a domestic issue between Mrs B and her brother, and that Mrs B would need to challenge this herself.

Mrs B disagreed with our investigators view, and so the case has come to me to review

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.

Having done so, I have not upheld the complaint, and I will explain why below.

What I need to consider here is whether Aviva have acted in accordance with their own processes when setting up the policy and issuing the default notices, and whether this was fair and reasonable in the circumstances.

Mrs B alleges that the policy was set up fraudulently by her brother in her name, and without her knowledge and consent, and therefore she should not be liable for the debt which is now accruing as a result of the direct debits being charged back.

Listening to the inception call with Aviva and viewing the record of amendments and calls made since the policy inception, it does appear that Mr Z is controlling the policy. In the inception call, he is reluctant to let the call handler speak to Mrs B and he tells her that he is Mrs B's husband, despite the policy application indicating otherwise. Mr Z makes all the payments, and he uses his own e mail address for correspondence about the policy, asking for the documents to be sent online.

However, Aviva have confirmed that an agent does not need to speak to a policyholder to set up a policy on behalf policy of a policyholder. This can be done online or on the phone and is done on the understanding that the policyholder has given permission. Aviva have told us that it is not unusual for another person to make payments on a policyholders behalf, nor to use another e mail address.

As this is Aviva's process, I am unable to say that Aviva have done anything wrong in setting up the policy or dealing with Mr Z in the inception call.

Aviva's processes further say that once the policy is set up, a spouse, with the policy holders permission, can make payments and mid term changes to the policy. Mr Z told Aviva that he was Mrs B's husband and that he had permission, and so Aviva took instruction from Mr Z without question.

Aviva's procedures don't require any kind of verification of identity of a spouse, just the spouse to verify that they have authority. So, whilst I understand Mrs B's concerns, Aviva haven't breached their procedure.

All of the above seems to support Mrs B's account that she was not aware of the policy being set up in her name. I do not agree with Aviva that Mrs B admits she gave consent for the Aviva policy at the outset. Having listened to the calls between Mrs B and Aviva, I think it is clear that Mrs B gave consent for a policy on a white saloon in July 2015 for which she took out finance, but there is no evidence that she gave consent for the first policy with Aviva in December 2015.

However, despite this, I am unable to accept that Mrs B knew nothing at all about the policy. Aviva have provided us with evidence that they sent 12 letters to Mrs B at her address during the time the policy was active, including renewal letters, all to her home address. Mr Z did not live at that address and so I can't see how at least some of the letters would not have reached Mrs B.

In 2017 Aviva also issued a letter to Mrs B at her home address following concerns being raised by the police after pulling Mr Z over. The letter asked Mrs B to provide a copy of her driving licence, the V5, and a recent bank statement. These documents were subsequently returned to Aviva in line with the request.

Mrs B told us that her brother has a copy of her driving licence, and that he completed all the V5 changes online using her name. However, even though changes can be made online, a paper copy of the V5 is always sent. It therefore seems unlikely that Mr Z would have been able to respond to this request from Aviva without Mrs B's knowledge.

Although Mrs B may not have had the benefit of the policy if Mr Z was driving the car most of the time, she is still liable for the payments as the named policyholder. The fact that Mr Z had made the payments does not remove her liability, and Aviva have no legal relationship with Mr Z under which they can enforce payments. As such, when Mr Z charged back the payments, the liability falls to Mrs B to discharge the debt.

Having decided that Aviva have followed their procedures properly, I have also considered whether Aviva have acted fairly and reasonably in doing so. Whilst I can understand Mrs B's distress at being faced with the escalating debt being caused by the premium being charged back, I don't think Aviva have acted unfairly in issuing the default notices. The policy has been in force, providing insurance protection for the whole period, and a claim was paid out in 2017 under the policy. As I am unable to accept that Mrs B didn't become aware of the policy in her name, I can't find that Aviva have acted unfairly in issuing default notices to Mrs B when they did.

I note that any action has been suspended pending the outcome of this complaint.

My final decision

I will not therefore be upholding this complaint or asking Aviva Insurance Limited to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 11 May 2021.

Joanne Ward
Ombudsman