DRN-5110015

The complaint

Miss M has complained that Aviva Insurance Limited ('Aviva') declined her claim for fire damage to her home and voided her home insurance policy. For the avoidance of doubt, the term 'Aviva' includes its agents and representatives and reference to Miss M includes submissions made by her representative on her behalf.

What happened

Unfortunately, Miss M's home suffered fire damage in April 2022. She claimed for the damage under her policy, however Aviva declined the claim and voided her policy. It said that it hadn't been made aware prior to policy inception in late January 2022 that the property had a thatched roof, rather than tiles or slate as stated when the policy was purchased.

As Aviva maintained its decision following complaint by Miss M, she then referred her complaint to this service. She said that she'd never received inception documents from Aviva, and that it ought to have been aware of the type of roof construction as she'd provided her address to Aviva, but it continued to take the premium payments anyway.

Regarding the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'), the investigator explained that the onus was on Miss M to ensure that all the details were correct and accurate when taking out the policy. He noted that if Miss M had correctly recorded the roof construction, then Aviva wouldn't have offered cover. Aviva confirmed that it had returned the premium paid by Miss M. As such, the investigator considered that Aviva had reasonably concluded that there had been a careless misrepresentation. He was also of the view that the inception documents were sent to the correct email address and these showed the property details entered on purchase.

Miss M was unhappy with the outcome of her complaint, and the matter was therefore referred to me to make a final decision in my role as Ombudsman.

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.

The key issue for me to determine is whether Aviva acted in a fair and reasonable manner in declining Miss M's claim and in voiding her policy. I consider that it did so, and I therefore don't uphold Miss M's complaint. I'll explain why.

In reaching this final decision, I've considered the parties' submissions as summarised below. Miss M explained that she'd completed her application for cover on-line, having previously had insurance with Aviva. Although she received no communication from Aviva, she believed that her application had been accepted as monies were taken from her account by direct debits. She only became aware of an issue when she made her claim. Miss M said that she'd filled out the forms correctly, advising Aviva of the nature of the property. She said

that she'd never had an opportunity to review any forms or policies as these weren't sent to her, and if she'd seen them, the issue could have been easily corrected.

Miss M considered that Aviva knew that the property was thatched prior to the claim in any event, *'as she had entered thatch into your database even though the quote was apparently declined.'* As such, she stated that the detail would have been contained in Aviva's data base. She considered that its processes and procedures would flag up such a change when the person *'tries to insure the same property a short time later with such a fundamental major structural change. If your system does not do that then it is fundamentally flawed.'* Miss M also thought that Aviva's automated decision-making tool to advise on the suitability of insurance and property would have flagged the nature of the property and that Aviva had a duty of care to its customers in this respect.

Miss M also stated that at no time did she receive a copy of her policy documents via e-mail to check that what she had entered on the on-line system was correct and to then recognise the error. She felt that there was a breakdown in Aviva's governance and process and procedures. She didn't consider it should activate a policy without the agreement of the policy holder. She also felt that it should make the customer aware of the right to cancel within the statutory 'cooling-off' period. She felt that Aviva should obtain proof that customers had received their policy and signed to accept it.

In summary, Miss M felt that the insurer's *'overall negligence'* had led to an 'unfit for purpose' insurance policy being activated based on an assumption that the detail was correct. She said that she was never aware of the difference between the first and second quotation that she filled in and had insured her property in good faith.

I now turn to Aviva's submissions in response to Miss M's complaint. It had noted from its systems that quotes had been obtained by Miss M in January 2022 and both referenced a tile and slate. It noted a further quote was obtained in relation to a thatched roof following Miss M's claim and that this was declined.

The policy had been set up online, with tile and slate being recorded on the policy documents that were issued. Aviva said that it had sent correspondence to the e-mail address which had been provided by Miss M. This adcised that the policy would now become live, with a link that would show the full documents for review and checking. Aviva stated that it offered both paper and an electronic version of the document upon inception, with electronic only being the chosen method by Miss M.

Aviva explained that it wasn't therefore made aware of the roof construction until the claim was made. In the circumstances, Aviva rejected Miss M's claim and voided the policy, back-dating this to inception. It said that it had also reviewed its call records but could find no instance where it had been contacted regarding the roof construction prior to the claim. Finally, Aviva's case-notes showed that policy documents were issued via e-mail at the end of January 2022 for the policy to go live a week later.

I now turn to the reasons why I'm unfortunately unable to uphold Miss M's complaint. I can appreciate that the fire itself and damage to her home must have been devastating for Miss M, and that her distress will have been compounded by the lack of insurance cover. However, unfortunately for Miss M, I can't say that Aviva acted in an unfair or unreasonable manner in declining her claim and in voiding her policy.

The starting point for my consideration of the matter is the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'), relating to 'misrepresentation'. This states that it's the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer. If a consumer fails to take care in giving or confirming information, the insurer then

has certain potential remedies where there is a 'qualifying misrepresentation'. For there to be a qualifying misrepresentation, the insurer must show that it would either have offered the policy on different terms or indeed that it wouldn't have offered the policy at all if the consumer hadn't made the misrepresentation. The insurer's remedy depends on whether any qualifying misrepresentation was deliberate, reckless, or careless. If deliberate or reckless premiums paid may be withheld.

In this case, I've noted from Aviva's insurance criteria that it wouldn't have offered insurance to Miss M for a property with a thatched roof, and this is borne out by a recorded attempt by Miss M to obtain an Aviva quote in such circumstances. Aviva have confirmed that the day after the claim was made, a quotation was run for the property but with the correctly entered type of roof construction, however this was declined due to it being a thatched roof.

Under Section 5 of CIDRA, a qualifying misrepresentation is deliberate or reckless if the consumer '*knew that it was untrue or misleading or did not care whether or not it was untrue or misleading,'* and knew that this was a relevant issue to the insurer or didn't care whether it was relevant to the insurer. It's presumed, unless the contrary is shown, that the consumer had the knowledge of a reasonable consumer, and *'that the consumer knew that a matter about which the insurer asked a clear and specific question was relevant to the insurer.'*

I'm satisfied that roof materials form a key part of a property's construction and that a thatched roof is a relatively uncommon roof type, which can clearly present some unusual challenges and risks. When answering pre-inception insurance queries, I consider that the reasonable consumer will therefore be expected to have known that the question about the roof's construction was very relevant to the insurer. Under Schedule 1 of CIDRA, if a qualifying misrepresentation was deliberate or reckless, the insurer could avoid the contract and refuse all claims, and indeed not return any of the premiums paid.

If the misrepresentation was careless, then to avoid the policy, the insurer would need to show that it wouldn't have offered the policy at all if it wasn't for the misrepresentation. I'm satisfied from the evidence on file that this is the case. In addition, Aviva gave the benefit of the doubt to the customer, and under CIDRA it accepted that the misrepresentation was careless, as it refunded the premium back to the date of inception of the policy. Whilst I appreciate Miss M's representative's argument that there would be no logic as to why an individual would misrepresent something so major as the construction of the roof *'when in fact it is one of the main reasons you are insuring your property',* the available evidence indicates that the roof construction was indeed unfortunately misrepresented in this case.

I note that Miss M assumed that Aviva would automatically be aware of the nature of the property. Nevertheless, when a customer purchases an insurance policy, whether the system is an automatic or manual one, the insurer relies on the information which its customer supplies in setting up a policy. Unfortunately, however, from the available evidence and on the balance of probabilities, I'm satisfied that Miss M did make this careless misrepresentation which, in turn, then provided statutory remedies for the insurer.

As such, I can't say that Aviva acted in an unfair or unreasonable manner in declining Miss M's claim and voiding her policy. The onus is upon the customer to ensure that the responses which they provide to key questions are correct, true and accurate, regardless of whether the insurer's systems may or may not have been capable of detecting the roof construction of a property's roof at any particular time.

I appreciate that Miss M stated that Aviva didn't send the relevant policy documents to her for checking, however Aviva's records indicate that they provided the means to access the documents by following Miss M's instructions for e-mail only correspondence. Whilst the parties have conflicting positions in this regard, I've no reason to doubt that Miss M didn't in

fact see or review her policy documents. Nevertheless, it's vital that consumers check policy documents to make sure that they provide the expected cover on inception. I therefore consider that due to the importance of these documents, the onus was upon Miss M to contact Aviva if she felt that she hadn't received her policy documents in the days running up to its inception.

In conclusion, whilst I have much sympathy with the difficulties which Miss M will be facing as a result of the lack of policy cover, I can't say that Aviva had acted in an unfair or unreasonable manner.

My final decision

For the reasons given above, I don't uphold Miss M's complaint and I don't require Aviva Insurance Limited to do any more in response to her complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 17 December 2024.

Claire Jones
Ombudsman