

## **The complaint**

Mrs B complains about Aviva Insurance Limited's handling of her claim for legal expenses insurance (LEI).

Where I refer to Aviva, this includes their agents and claims handlers.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In August / September 2021 Mrs B sought to make a claim on her LEI policy which was underwritten by Aviva. She wanted to take legal action for a breach of contract against a builder that she'd contracted with to do work at her home.

Aviva passed the claim to one of their panel solicitors who I'll refer to as 'M'. M conducted an assessment of Mrs B's claim and in an opinion dated 29 October 2021 said at that time it didn't have reasonable prospects of success (a requirement for cover under the policy). They also raised potential concerns about the proportionality of proceeding. The legal opinion asked that Mrs B provide an expert report that comments on the standard of the builder's work and quotations for any remedial works that may be required.

Mrs B challenged the legal opinion. She pointed out that key information she'd provided (such as the contract between her and the builder) clearly hadn't been taken into consideration by M. Aviva say that on 15 November 2021 M emailed them to say that they now believed the claim had reasonable prospects of success, but that an expert report was required to confirm the value of the claim and the works required.

Mrs B complained to Aviva. She wasn't happy with being required to fund the expert report. She was also unhappy with Aviva's supervision of M and the service she'd received. Aviva provided their written response to the complaint on 22 November 2021. In a broad summary they didn't agree they'd done anything wrong and explained why they believed they'd acted within the terms and conditions of the policy.

Mrs B referred her complaint to our service. One of our Investigators didn't recommend that the complaint should be upheld. Mrs B disagreed and asked for an Ombudsman to review her complaint.

In July 2022 I issued a provisional decision in which I said:

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

*I agree with our Investigator that I can't comment on the actions of Aviva that took place after they issued their complaint response. This isn't intended to be obstructive, but before our service can become involved, a business is entitled to have an opportunity to respond to a*

*complaint and put things right if required. As such, I'll be keeping my findings to Aviva's actions prior to 22 November 2021.*

*Like most LEI policies Mrs B's includes a provision that it is proportionate to continue to fund any legal action under the policy. The policy says: "If, in the lawyer's opinion:... your claim has reached a point where incurring further costs and expenses would not be reasonable then we will not pay any further costs and expenses towards it..."*

*I don't think this is inherently unfair. Litigation can be expensive and a privately paying client wouldn't generally spend more on legal action than they stood to recover if successful. So, I don't think an insurer should have to either.*

*Our longstanding approach has been that it's for a policyholder to show that they have a valid claim. Overall, I think Mrs B went some way towards doing that, but I don't think Aviva requiring further evidence as to the value of her claim was unreasonable.*

*Mrs B had provided photographs and information about the defects of the work that she was complaining about. She also provided an email from her local building control department. This highlighted that there was damage to her roof caused by the builder which had created a contravention of building regulations.*

*Aviva initially asked M to review Mrs B's claim. As I've mentioned above, their advice in October 2021 was that the claim didn't have 'reasonable prospects of success'. That same advice raised concerns about the proportionality of the claim. Specifically that Mrs B had withheld a payment from the builder – and that if this was greater than the costs of remedial work, then the value of the legal claim might be so low that it wouldn't be proportionate to pursue.*

*I note that M later changed their position on the prospects of success – this is documented in an email in November 2021. But again, the issue of proportionality was raised, and it was explained that further information was required to evidence that the claim was proportionate to pursue.*

*Aviva themselves aren't legal experts. So, I think it's fair that they rely on suitably qualified legal advice when making decisions about a claim. Unless that advice is so obviously wrong that I could expect a layperson to identify that. I appreciate that Mrs B has concerns about the quality of the legal advice from M. And that certain documents she'd provided hadn't been referenced in the initial legal advice. I've considered this, but I still think it was fair for Aviva to rely on what M said about the proportionality of progressing the claim.*

*Whilst I agree Mrs B had evidenced she had a dispute with the builder that was potentially covered by the policy – she hadn't ever evidenced that the claim was proportionate to pursue. I acknowledge these considerations can be balanced. But in the circumstances of this complaint, I think Aviva requiring evidence that the claim was proportionate to pursue and was therefore 'valid' was reasonable. There had been concerns about proportionality from the start. I don't consider evidence to support that the claim is valid to be a part of the evidence gathering process that I'd expect a panel solicitor to go through when preparing the underlying legal case on an accepted claim.*

*There is further provision for this within the policy terms: "Should you wish to pursue a claim the lawyer will need you to provide as much information as possible to support your case. This could include: copy of contracts, witness details, correspondence with anyone regarding your claim etc. You are responsible for providing evidence to support your case at your own cost."*

*Mrs B says that the examples given are all relatively easy to provide at little cost. She doesn't believe it is fair for her to be expected to provide further expensive reports and if that is the expectation, then this should be given greater prominence in the policy documents. I've considered this but I don't necessarily agree. The list above includes examples but isn't exhaustive. It also makes clear that further evidence or information may be required at the policyholder's cost. I've considered all that Mrs B has said in this regard, but I think the policy makes sufficiently clear that she has to provide evidence to support her claim and that she would be responsible for the costs incurred when doing so.*

*However, the further evidence required was repeatedly described as an 'expert report'. Mrs B duly went and obtained such a report at a significant cost of £2,100. I think Aviva could and should have been clearer with Mrs B as to what was required from her. All Mrs B needed to do was to evidence a valid claim. And as prospects had been confirmed, she only needed to show that the claim was likely to be proportionate to pursue. For this, I think that quotations from builders would have been sufficient to enable her to evidence the value of her claim.*

*I think Aviva should have highlighted the difference between evidence and information to give an idea as to the value of the underlying claim, and court compliant expert evidence to help present such matters at trial if required. I think Mrs B only ought to have been responsible for the former, and if the claim was found to be proportionate to pursue then Aviva would have been responsible for the costs of the latter as a part of the evidence gathering process in preparing a legal case. I don't think Mrs B needed to obtain expert evidence to comment on the workmanship of her builder to evidence the value of her claim.*

*I think Aviva's failure to clearly explain and define what Mrs B needed to obtain to evidence a valid claim resulted in her instructing the expert to compile his report. And I think this was at far greater cost than getting builders quotes that would have been sufficient to indicate the value of her claim (the extent of Mrs B's responsibility and likely could have been done at no cost). I don't think Mrs B acted unreasonably by seeking an expert report and incurring that cost as she effectively followed the guidance she was given.*

*As such, I'm intending to direct that Aviva reimburse Mrs B the cost of the report, along with 8% simple interest (yearly) from the date she paid the expert, until the date of settlement.*

*I've also considered the service provided by Aviva within the period relevant to this complaint. Aviva aren't responsible for the day to day running and management of the legal work, M are. And even though M were being funded by Aviva under the policy, this doesn't mean Aviva are responsible for the service or quality of the legal advice that M provide. I can see that Aviva responded appropriately in passing on Mrs B's concerns such as when she questioned the qualifications of her contact at M. This is what I'd expect them to do in those circumstances.*

*It seems the expert report was obtained promptly (as the date of inspection was in early December 2021). So I don't think this would have impacted the progression of any underlying legal action. And even though I think Aviva ought to have been clearer about the nature of the further evidence Mrs B was to provide, I don't think this caused avoidable distress or inconvenience such that a compensation award is appropriate. Mrs B would still have been required to obtain quotes along with any inconvenience that would have involved. I don't think that is significantly different to the inconvenience of instructing an expert and I've made provision for any financial impact with my intended interest award.*

*I'm mindful that Mrs B has had a particularly difficult time in the circumstances surrounding her claim. But it wouldn't be fair for me to hold Aviva liable for all the distress and inconvenience she's experienced. As I've mentioned before, Aviva aren't responsible for the*

*actions of M in their day to day management of her legal claim. Nor are they responsible for the actions and the behaviour of any of the contractors involved.*

*Mrs B has also expressed some concerns about the wider actions of Aviva in the context of other customers who may not be as experienced as she is in navigating insurance claims. I'm pleased to see that our Investigator has already explained that we can only comment on the circumstances of Mrs B's individual complaint. And the Investigator correctly referred her to the industry regulator in this regard."*

Aviva responded and said they had nothing further to add. Mrs B provided a further response which I'll address below. Now both parties have had a further opportunity to comment, I can go ahead with my final decision.

### **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.

Mrs B agreed with my intended award of the cost of the expert report. But much of Mrs B's further submissions relate to her concerns about the decisions taken by Aviva with regard to proportionality, their interpretation of the policy terms and her concerns about M's lack of specialism (with regard to planning law).

One example of this being that she believes the evidence from the planning department was sufficient to confirm that her home was unsaleable. As such, she believes the potential value of the claim to be the same as the value of her home.

I've considered all of this. But as before, Aviva provided their complaint response in late November 2021. At that time, they required an expert report to evidence the proportionality of proceeding with the claim. I maintain that it was reasonable for Aviva to rely on what M had said about proportionality at that time. M had the information from the building control department and so I'm satisfied it would have been taken into consideration. I don't agree that this was a complex part of planning law, indeed Mrs B herself says she pointed out that her house was unsaleable at the time. The evidence from M suggests that they valued the claim at the cost of putting things right (to get Mrs B's home back into a saleable position) rather than being equal to the value of her home which would have maintained a significant inherent value despite the situation at the time.

The expert report is dated 1 February 2022. I agree with Mrs B that further, similar issues are involved that arise from the same set of circumstances. But any decision Aviva took in relation to the claim based on the expert report, is something that can't have been considered in the November 2021 complaint response. These were new decisions based on further information and Aviva are entitled to investigate a complaint about the same before our service becomes involved. As such, it would be inappropriate for me to comment on that in this decision.

To a certain extent, the same applies to Mrs B's concerns about M not being specialists in planning law. I'm satisfied they didn't need to be for Aviva to rely on their opinion about proportionality and requiring the expert report in November 2021. In the event of the claim being accepted, I'd expect Aviva to provide suitably qualified legal representation, but again that isn't something I can comment on in this decision.

I've also considered a further complaint response that Mrs B shared that came from Aviva themselves (as opposed to their LEI claims handler). Part of this relates to Mrs B's home

insurance rather than the LEI although it touches on similar issues to Aviva's LEI claims handler's complaint response. But nothing in this response changes my mind as to the outcome of this complaint.

I appreciate that Mrs B has described some very frightening and concerning circumstances involving threats she's received from the builder that have required police involvement. I don't doubt this has been incredibly upsetting. I've also taken into account Mrs B's individual circumstances when thinking about the service she received from Aviva in the time period relevant to this complaint. And whilst I accept it's been a difficult time, I can't fairly attribute distress caused to Mrs B by the wider circumstances or parties other than Aviva (or their agents). I remain satisfied Aviva appropriately passed on Mrs B's concerns to M. And in the context and scope of this complaint, I don't think Aviva have treated Mrs B unfairly such that a compensation award is appropriate.

### **My final decision**

For the reasons outlined above, my final decision is that I uphold this complaint.

Aviva Insurance Limited must pay Mrs B the £2,100 cost of the expert report. They must also add 8% simple interest (yearly) to this amount which is to be calculated between the date Mrs B paid the expert and the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 28 September 2022.

Richard Annandale  
**Ombudsman**