

The complaint

Mr I says Aviva Insurance Limited didn't arrange for a further assessment to be carried out of his legal expenses claim (as agreed following a previous complaint to our service).

What happened

Mr I invested in property development. As his money wasn't returned, he sought assistance from his legal expenses insurance with Aviva. It considered the claim under the Consumer Disputes section of the policy which covers "*a dispute regarding an agreement for the sale, purchase or hire of goods or services that are not for your business use*". It didn't think the claim was covered because it thought Mr I's investment was for business use. And it didn't think it was an agreement for the purchase of goods or services.

That complaint has already been considered by us. Our investigator didn't think the investment was for business use. And she thought Aviva should consider further information Mr I had provided as to whether it was an agreement for goods or services. Aviva said it would obtain additional information from Mr I and reassess the claim.

In March 2023 Mr I contacted us again as Aviva had now obtained a legal opinion on his claim from panel solicitors. That said the investment wasn't something that fell within the Consumer Disputes section of cover. In any case they didn't think there was a breach of the agreement Mr I had with the investment company. And they didn't think there were reasonable prospects of recovery from them.

A complaint about that has also been considered by us. Our investigator said Mr I had raised questions about the legal opinion (including whether it identified the correct respondent) which didn't appear to have been addressed. As a result she didn't think Aviva could rely on the opinion it had obtained and said it should refer Mr I's questions back to the solicitors to see if these made a difference. Aviva agreed to do so.

In August 2023 Mr I complained he hadn't received a response from Aviva or any updates from it. Aviva apologised for the lack of updates and provided Mr I with the assessment it had by then obtained. It said on the basis of that it didn't think the claim had prospects of recovery and didn't enjoy reasonable prospects of success as required by the policy.

Our investigator thought the revised assessment dealt with the questions Mr I asked and, as this had now been completed, addressed the complaint he'd made to us. Mr I didn't agree. He said we'd previously told him his claim was covered by his policy and Aviva shouldn't now be able to say it wasn't.

I issued a provisional decision on the complaint in December last year. In summary I said:

The relevant rules and industry guidelines say Aviva has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably

I've looked first at the terms and conditions of Mr I's policy. That sets out those insured events for which Aviva will pay costs and expenses relating to a legal expenses claim. I think

it's agreed the relevant one here is Consumer Disputes which says it covers "A dispute regarding an agreement for the sale, purchase or hire of goods or services that are not for your business use". But funding is subject to the claim having prospects of success which the policy says means "it is more likely than not that you will... recover damages or obtain any other legal remedy which we have agreed to".

Mr I says we previously agreed Aviva should accept his claim and it shouldn't be able to go back on that agreement. However, I've reviewed the previous correspondence and I don't agree that is what happened. I appreciate in a previous view our investigator said she was satisfied Mr I "had demonstrated that he had a claim on his policy". But the issue she was focussing on was whether Aviva could turn down the claim on the basis the investment was for business use. Her view was that it couldn't.

The agreed resolution to that complaint was for Aviva to review the further information Mr I provided to see whether the agreement was one for the purchase of "goods or services". Our investigator specifically said "I appreciate the above only resolves the issue regarding the contract for private use but this was the original complaint raised. However, the offer by Aviva to request further information and continue to re-assess the claim means the claim can move forward. I think this is a fair offer". So the previous complaint dealt with whether Aviva had fairly declined the claim on the basis the investment was for business use and concluded it hadn't. However, that doesn't prevent Aviva turning it down for other reasons.

I've therefore gone on to consider whether it's done so correctly and fairly for the reasons it's now given. I can see the solicitors who assessed the claim reiterated concerns as to whether this was an agreement for goods or services and gave reasons for that. However, I don't think that's something I need to reach a finding on because, while Aviva quoted that in its final response, it doesn't appear to have relied on it to turn down the claim. It focussed on the question of whether the claim had reasonable prospects of success (and in particular whether Mr I was likely to recover damages from the respondent).

As an insurer isn't a legal expert, we don't think it's in a position to carry out the assessment of prospects of success. We think it should be carried out by a suitably qualified lawyer who has relevant experience. But where that has been done, we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not.

In this case Aviva did refer the matter to panel solicitors for them to consider. Their initial assessment concluded the respondent didn't have sufficient assets to satisfy any claim made against them. Mr I then raised concerns as to whether that assessment had identified the correct respondent. But I can see that's been addressed in the revised assessment.

That didn't accept Mr I's agreement was necessarily with the company he actually made the investment in but didn't think there would be good prospects of recovery from either respondent based on their accounts as filed on Companies House. Those entries show that, while the companies involved do have assets, they are balanced out by their liabilities. In addition, the initial assessment also found the claim wouldn't in any case have reasonable prospects of success because any agreement Mr I had in relation to his investment didn't specify when any sums should be returned to him.

And Aviva did obtain further comments following on from the concerns Mr I raised about the initial assessment. That didn't lead the solicitors to change their view and they gave their reasons for that. I appreciate the assessments are relatively brief but I think they are nevertheless properly written and reasoned and from someone qualified to provide them. I don't think it was therefore unreasonable of Aviva to conclude the claim Mr I made didn't meet the policy requirement as they relate to prospects of success. But if Mr I is able to obtain a legal opinion of his own which is supportive of the claim's prospects of success

(including his ability to recover his funds) then I'd expect Aviva to review matters in line with the policy terms and our general approach to these matters.

I do agree it took some time for Aviva to obtain the revised assessment of Mr I's claim. It agreed to do so in May 2023 as a resolution to his previous complaint but it wasn't provided for a further three months. However, I can see Aviva was proactive in following this up with the panel firm and I don't think the delay here was one it's responsible for. But it's accepted it didn't provide Mr I with updates on progress during this period. I think that will have been frustrating for him particularly as he made contact with Aviva in June and raised his concerns about this. I recognise Aviva has apologised but I think it should also pay him £100 in recognition of the distress and inconvenience it caused him.

Responses to my provisional decision.

Aviva agreed to pay the £100 compensation. Mr I didn't respond.

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.

As Aviva has accepted what I said and Mr I hasn't provided any further comments for me to consider I don't have any reason to change the findings I set out in my provisional decision.

My final decision

I've decided to uphold this complaint. Aviva Insurance Limited will need to put things right by paying Mr I £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 7 February 2024.

James Park
Ombudsman