

The complaint

Mr D complains about Aviva Insurance Limited withdrawing cover under his legal expenses insurance policy.

Where I refer to Aviva, I include the agents who handled Mr D's claim on their behalf.

What happened

Mr D had legal expenses insurance (LEI) with Aviva. In June 2022 he made a claim under the policy for cover to pursue a property claim.

After previously declining the claim on grounds Mr D felt were spurious, Aviva agreed to consider it under the property disputes section of the policy. They referred the case to their panel solicitors for a legal assessment.

The solicitors first advised in mid-August 2022. They said Mr D's claim didn't have reasonable prospects of success and it wasn't proportionate to pursue. Aviva said that they couldn't support Mr D's claim in light of the solicitors' assessment. And they explained if Mr D disagreed he could:

- submit any further information or documents which he hadn't already provided for the solicitors to review to see if it changed their advice; or
- submit a legal assessment, at his own expense, from a suitably qualified solicitor of his own choice who had seen all the available facts and evidence, and who must set out their opinion of prospects of success in percentage terms with full reasoning; if the advice was supportive Aviva would arrange and pay for a barrister's opinion; if that was also supportive they'd accept the claim and pay for the costs of the advice Mr D had got.

Mr D disagreed with the solicitors' advice. He raised his concerns with them. And they issued a further letter at the end of September 2022. Mr D thought the solicitors had accepted then that his claim was more valuable than they'd originally advised, and that it was therefore proportionate to pursue. He didn't agree with their conclusion he'd need to get additional valuation evidence and thought the basis on which the solicitors said the property should be valued was wrong. He wanted them to clarify why they said the prospects of success weren't more than 51%. And he complained his case had been reviewed by a paralegal rather than a lawyer, which he said breached the terms of the insurance contract.

The solicitors advised further in October 2022. They still thought prospects were below 51% and said they'd need more valuation evidence to consider things further. They let Mr D know he'd need to obtain that at his own expense, and they'd close their file without it. Aviva confirmed they were withdrawing cover under the policy shortly afterwards. And they explained again the steps Mr D could take to challenge the legal advice.

Mr D raised a complaint in April 2023.

In early June 2023, Mr D said his legal claim had been "reset" and he had the chance of

resubmitting his pleadings to the court. He asked Aviva for a reassessment of his claim by a solicitor of his own choice. Aviva didn't agree and said they were entitled to rely on the legal advice they'd already got. Mr D said as his case had been reset, he couldn't get his own legal opinion on the terms Aviva had set out since the information on which it would be based had changed. By the time they responded to Mr D's complaint in November 2023, Aviva said they hadn't received any further information from him.

Aviva didn't uphold Mr D's complaint. They said they'd been entitled to rely on the solicitors' assessment that his legal claim didn't have reasonable prospects of success; the policy said they would appoint a suitably experienced legal professional; they had complied with that since the paralegal who did the work had been supervised by a qualified solicitor; and although Mr D had said his legal case had been reset, he hadn't provided any information about that to enable them to consider his claim further. Since Mr D didn't agree, he brought his complaint to the Financial Ombudsman Service.

Our investigator said, in summary, it was reasonable for Aviva to have relied on the advice the solicitors provided since, though written by a paralegal, it had been supervised by a suitably qualified lawyer with relevant knowledge, and it wasn't obviously wrong; Mr D could challenge the legal opinion if he provided his own in line with the policy terms; Aviva had reasonably offered to send any new information he could provide to their solicitors for reassessment, failing which there was no basis on which they should look at it again; and there was no evidence Aviva previously declining the claim had affected their decision to decline it this time.

Mr D didn't accept our investigator's view. He didn't agree it was reasonable for Aviva to rely on the solicitors' assessment as it hadn't been clear, well-reasoned and not obviously wrong. He said errors in the solicitors' advice had been pointed out to them but ignored. And he didn't agree with our investigator that his case had been handled by a suitably experienced legal professional in line with the policy terms.

Since Mr D's complaint hasn't been resolved, it's been passed to me to decide.

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.

I note Mr D's strength of feeling about his complaint. However, whilst I understand he will be disappointed, I've come to the same outcome as our investigator for similar reasons, as I'll explain.

As background I've looked at the available information about what happened when Aviva initially declined Mr D's claim. We've pointed out Mr D is too late to bring his complaints about that to us and he's confirmed he isn't asking us to look at them. I'm not persuaded Aviva was trying to find ways of avoiding the claim as Mr S suspects or that the earlier issues have affected Aviva's decision to withdraw cover here. They reached their decision to withdraw cover based on the panel solicitors' advice.

Mr D was unhappy not only with the advice the solicitors gave, but also the time they took in providing it. We don't generally hold insurers responsible for the way in which their panel solicitors carry out litigation day-to-day. Once the insurers have appointed the solicitors they generally have little control over the way in which the case is handled, and their role is limited to funding the legal costs. When Aviva instructed the solicitors on Mr D's behalf he became their client. Any concerns he had about the service the solicitors gave had to be raised with them direct. I can see Mr D complained to them and they responded. If Mr D was

unhappy with the response, he'd need to take his concerns to the Legal Ombudsman Service. I don't have the power to consider them.

In line with relevant Financial Conduct Authority rules, we expect insurers to consider claims fairly and promptly, and not to decline claims unreasonably. I'll consider Mr D's complaint against that background. The starting point is the LEI policy.

Subject to its terms and conditions, Mr D's policy provided cover for reasonable legal costs, up to a specified limit, of pursuing or defending the sorts of legal claims described in the "Insured Events" section. Although they didn't initially agree, Aviva accepted Mr D's claim fell within the property section of the policy in the end.

The relevant sections of the policy said:

- If Mr D's claim was accepted Aviva would provide him with a lawyer who specialises in the law relating to his claim. He would not have to find his own lawyer as Aviva had access to a range of leading expert lawyers.
- The lawyer would first assess how likely Mr D was to win his case. Aviva called that 'prospects of success' and the lawyer acting for Mr D would decide that. If the lawyer believed Mr D was more likely than not to win his case then they would pursue it for him, and Aviva would pay their costs and expenses up to the amount shown on the policy schedule.
- The lawyer would also consider proportionality. That meant the amount of damages being pursued compared with the estimated cost of pursuing the case. And it would take into account a number of factors, including whether the court would consider the claim a waste of time and whether the costs were reasonable.
- "Lawyer" meant "a suitably experienced legal professional".

It's common for LEI policies to require a claim to have reasonable prospects of success - in other words, to be more likely to succeed than not – and to be proportionate to pursue for there to be cover. We don't think that's unfair. If there aren't reasonable prospects, the LEI insurer runs the risk not only of paying the customer's costs, but also those of the other side if a claim fails. Since it's unlikely an individual funding their own case would be prepared to take that risk, we don't think it's fair to expect an insurer to either. And we don't think an individual would want to pay the costs of running a case if they are likely to be higher than the value of the claim.

I note Mr D's expectation was that his case would be dealt with by a qualified solicitor with relevant experience and expertise. But that isn't what the policy said. It didn't guarantee he'd be advised by a "qualified" lawyer. Generally, we'd expect prospects to be assessed by a qualified lawyer with the legal knowledge and expertise needed to advise on whether a case is likely to succeed at court. However, where an assessment is carried out by a paralegal, as here, we'd usually think that was acceptable provided the paralegal was working under the supervision of a suitably qualified lawyer with experience in the area of law being considered.

I can understand Mr D was concerned there hadn't been proper supervision since, when he complained to them, the solicitors didn't identify a qualified lawyer who'd been supervising the paralegal's work. They explained later that the paralegal who prepared the advice had a law degree; they were supervised and trained by a senior paralegal who had a law degree and over five years' experience; and overall supervision and training was done by a senior associate solicitor with over ten years' qualifying experience. The solicitors have since

identified the qualified solicitor who provided supervision. From the information I'm able to access about that lawyer, I'm satisfied they had appropriate experience to supervise the paralegal's work. And I've no reason to doubt the solicitors' evidence that they provided supervision.

Bearing that in mind, it was reasonable for Aviva to rely on the solicitors' advice provided it was properly written and reasoned and didn't contain any obviously wrong information that even a lay person would be able to spot – such as a mistake about the facts or some obvious misunderstanding about what had happened.

Mr D's concerns about the solicitors' advice focussed largely on the valuation evidence he'd got and the basis on which the solicitors said that should have been obtained and prepared. I wouldn't expect Aviva to have had the expertise to challenge the solicitors' conclusions about that. Even though Mr D felt mistakes had been made, he had detailed knowledge of his own case. Any mistakes there may have been wouldn't have been obviously wrong to a lay person without such knowledge. And even though Mr D let Aviva know why he didn't agree with the solicitors' conclusions, I wouldn't expect them to have accepted his view over that of the legal professionals. Overall, the solicitors set out clearly why they didn't think the case had prospects of success. So, I think it was reasonable for Aviva to rely on the updated advice once the solicitors had considered Mr D's points and confirmed their view.

I note Mr D was particularly unhappy with the solicitors' conclusions about the value of his claim and the proportionality of pursuing it. But I don't think that affects the outcome of his complaint. That's because, based on the information available at the time, the solicitors didn't think the claim had reasonable prospects of success because of issues relating to the valuation evidence. The policy term relating to prospects of success wasn't met, regardless of the position on proportionality.

I think Aviva acted reasonably in letting Mr D know the steps he could take if he wanted to challenge the legal advice from the solicitors. The steps they mentioned initially were in line with the mechanism in the policy for resolving any disagreement about the lawyer's advice. And they also referred him to the relevant wording in the policy itself.

Mr D said in around June 2023 his legal claim had been "reset" and he'd been given the chance to resubmit his pleadings. He said the basis of the claim on which the paralegal had assessed things had changed and he'd be unable to get an opinion based on the same information. I'm not aware Mr D provided any further information about what had changed or other new information for Aviva to pass onto the solicitors to consider – as they'd reasonably said they would. So, I don't think it was unfair for them to stand by their withdrawal of cover.

Although Mr D got a barrister's opinion in June 2023, I'm not aware he passed that on to Aviva either. Bearing everything in mind, there's no basis on which Aviva ought to have reconsidered Mr D's claim. So, I don't think they acted unreasonably.

I'm aware Mr D is unhappy with how long it took Aviva to respond to his complaint. They were outside the eight weeks the relevant rules allow for issuing a full response. However, they let Mr D know in time that he could bring his complaint to us. He did that and we were able to look into his complaint, so I don't think his position was prejudiced by Aviva's delay.

Bearing all of the above in mind, I don't uphold Mr D's complaint

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 23 April 2024.

Julia Wilkinson
Ombudsman