

## **The complaint**

Ms B complains that Aviva Insurance Limited declined a claim on her legal expenses insurance policy.

Where I refer to Aviva, this includes its agents and claims handlers acting on its behalf.

## **What happened**

In 2019, Ms B had a new boiler fitted in her home. There was a leak of water, which caused damage to some of the floors and ceilings, and some of the contents. She made a claim on her home insurance in relation to the damage.

In 2020 Ms B contacted Aviva about claiming on the legal expenses section of her policy. She wanted cover to take legal action against the contractor that had installed the boiler. Aviva referred the claim to its panel solicitors for an assessment and they advised the claim did not have reasonable prospects of success, which is a requirement for cover to be provided. So Aviva declined the claim.

Ms B provided further information and Aviva asked the solicitors to review this, but their opinion on the prospects of success didn't change, so Aviva again said the claim would not be covered.

Ms B complained but Aviva didn't change its decision, so she referred the complaint to this Service.

As well as the claim decision, Ms B is unhappy about how long it took for the claim to be dealt with, particularly as the limitation period for her to issue court proceedings was due to expire in March 2025. She says she was left without support at the point when limitation expired.

Our investigator said Aviva's decision was fair, based on the legal advice provided, and she didn't think there had been any unreasonable delay dealing with the claim.

Ms B disagrees and has requested an ombudsman's 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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly, support a policyholder to make a claim and not unreasonably reject a claim.

The policy provides cover for the type of claim Ms B wished to pursue but only where the claim has reasonable prospects of success. This is defined as meaning it must be more likely than not the policyholder will *"recover damages or obtain any other legal remedy we have agreed to..."*

It's a requirement of almost all legal expenses insurance that cover will only be provided if a claim is likely to be successful and the costs are proportionate. I think that's reasonable – it wouldn't be fair to expect an insurer to cover a claim if it's unlikely to succeed, or where the costs will be more than the value of the claim. Insurers will obtain legal advice about this and they're entitled to rely on that advice unless it's obviously wrong.

Aviva referred the claim to its panel solicitors. In August 2023, they advised that, based on the evidence they had, it was unlikely the claim would be successful – they put the prospects of success at less than 51%.

The solicitors said Ms B had referred to some evidence they hadn't seen. Aviva advised Ms B she could submit any further information not already provided and they would arrange for the solicitor to review it. She could also obtain her own legal advice if she wanted to challenge the solicitors' advice.

In 2024 the solicitors contacted Aviva to say Ms B had sent them emails and documents and asked Aviva if it wanted them to do a further assessment.

Aviva referred the claim to the solicitors again in October 2024 to review and the solicitors gave their further opinion. In summary, they said:

- Ms B had referred to counsel's advice having been obtained previously by other solicitors. They had seen a letter from the other solicitors which referred to it and said counsel advised the claim did not have reasonable prospects of success.
- It was evident there was substantial damage in the house but Ms B needed to prove this was caused by the boiler installation and she hadn't provided evidence showing that.

The solicitors provided some further comments in December 2024. They said there were various issues in the property but, although there were lots of documents, none confirmed the issues were caused by the boiler, and they had serious concerns about the claim.

The solicitors also raised some concerns about whether the claim would be proportionate in view of the likely costs that would be involved.

The solicitors asked Aviva if it would fund the cost of an expert report. Aviva said it would not fund a report if it was needed to establish whether there were prospects of success, but would cover the cost if it was to confirm prospects. The solicitors advised it was needed to show if there were prospects and on that basis, Aviva didn't agree to pay for a further report.

I'm satisfied from the above that Aviva considered the claim in a reasonable way. It was entitled to rely on the legal advice, which was a properly reasoned opinion from someone suitably qualified. Aviva asked the solicitors to review the further evidence Ms B provided, and explained that she could obtain her own legal advice if she wished to challenge the panel solicitors' opinion, which is what I'd expect an insurer to do.

It's not for me to review the underlying legal dispute or the legal advice given. But I'm satisfied it was fair for Aviva to rely on the legal advice, given the detailed approach taken by the solicitors – and the fact that another firm of solicitors and a barrister had previously considered the claim and also concluded it did not have reasonable prospects of success.

Those solicitors had been instructed by Aviva (when dealing with the claim on her home insurance) to consider recovery action against the third party. They advised a claim was unlikely to be successful as the third party had provided evidence to support their defence,

and the report Ms B had obtained was 18 months after the event, so not likely to be persuasive. They quoted counsel as saying:

*“...on the balance of probabilities C’s claim against D is likely to fail. It is for C to prove her claim and on the current evidence, she is unable to do so. For the avoidance of doubt I consider prospects of success to be below 50%.”*

Those solicitors also said they had spoken to Ms B’s expert and he said they would struggle to prove the claim.

A key point was that although Ms B had shown there was damage, the evidence didn’t confirm it was caused by the installation of the boiler. And to win her case, she needed to show that. The solicitors advised that Ms B could consider obtaining further expert advice to confirm this. It was reasonable for Aviva not to pay for that further evidence. In the first instance, it’s for Ms B to prove her claim and she hadn’t done that.

Ms B is also unhappy about how long it took for her claim to be dealt with. I appreciate she initially contacted Aviva in 2020 and the claim continued until 2025, but I don’t think that was due to any failing in the way the claim was handled.

When Ms B contacted Aviva in 2020, she was sent a claim form to complete. That wasn’t returned until February 2023. Aviva then referred the claim to the panel solicitors, who gave their advice in August.

Ms B got in touch again in June 2024. Aviva explained that her claim had not been accepted due to the unfavourable legal advice. Ms B provided further evidence which was passed to the panel solicitors. After reviewing that, they provided their further advice.

From the evidence I’ve seen, Aviva dealt with matters in a reasonable time, referring information to the solicitors and acting on their advice. I don’t think Aviva was responsible for any avoidable delays.

I appreciate the matter has been going on for a long time, and it has been very difficult for Ms B. She’s explained the problems she has faced, with damage caused to her home and contents. She has been trying for a long time to pursue a claim against the contractor and this has been distressing for her. But, for the reasons set out above, I don’t think there was unreasonable delay by Aviva, and I’m satisfied its decision was in line with the policy terms and was fair.

Ms B has recently provided further comments about more recent events. In this decision I’m only considering the actions Aviva took up to the date of the final response it sent to Ms B’s complaint in February 2025. If she wishes to complain about further actions since then, she would need to refer that to Aviva first to consider.

### **My final decision**

My decision is that I don’t uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms B to accept or reject my decision before 23 July 2025.

Peter Whiteley  
**Ombudsman**