DRN-5771813

The complaint

Mrs S is unhappy with what Aviva Insurance Limited did after she made claims on her legal expenses insurance policy.

What happened

In May 2024 Mrs S sought assistance with a claim against her neighbour. She said he wasn't taking action to repair a boundary wall which was leaning into her garden. The following month she logged a separate claim as the same neighbour had painted her garage elevation. Aviva thought the events giving rise to the boundary wall claim began in 2021. As that was before Mrs S took out her policy it said cover wasn't available for this claim. It referred the painting claim to a 'prospects assessment team' who advised the "*prospects of pursuing this claim are practically zero without further evidence".* Aviva said it wouldn't be providing funding for that claim either.

Our investigator thought the point at which Mrs S became aware there was a dispute over the boundary wall was in 2024 when her neighbour said he wouldn't be repairing it. As that was within her period of cover with Aviva she thought it had wrongly turned down this claim. In relation to the painting claim she didn't think the advice Aviva relied on had been provided by a suitably qualified lawyer; there was no evidence to show what, if any, legal qualifications the 'prospects assessment team' had. She didn't agree that claim had been correctly declined either.

She thought Aviva should reconsider the boundary wall claim in line with the remaining terms of the policy. And it should arrange for the prospects of success of the painting claim to be assessed by a suitably qualified lawyer. It should also pay Mrs S £150 in recognition of the distress and inconvenience she'd been caused as a result of her claims being wrongly turned down.

Aviva agreed with her outcome. Mrs S didn't agree with the proposed compensation. She said the leaning wall was in danger of collapse and causing injury and she'd endured substantial anxiety and frustration in the 14 months since she first made her claim about this. It had also been upsetting that her property had been painted white. Despite sending Aviva many emails and letters it hadn't assisted with her claim and that had caused her substantial distress and inconvenience and impacted her health. She thought it should pay her £1000.

So I need to reach a 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.

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

Mrs S's policy covers property disputes and Aviva appears to have accepted both claims she made could, in principle, be covered by this section. However, the policy doesn't cover "*claims where the initial dispute or series of incidents leading to a claim on this policy happen before this cover starts or that begin after it comes to an end as shown on your schedule".* Aviva thought that applied to the boundary wall issue because Mrs S and her neighbour discussed the leaning wall in 2021 which was prior to her policy starting.

However, while that does appear to be the case, at the time they both agreed no further action was required. The evidence suggests a dispute only arose in May 2024 after the lean had progressed. Mrs S says she asked her neighbour to carry out repairs which he didn't agree to do. So I agree with our investigator Aviva was wrong to turn down this claim on the basis the dispute happened before cover was in place.

Turning to the claim about the painting of Mrs S's garage it's a requirement of the policy that a claim has reasonable prospects of success (and is proportionate to pursue). It says prospects of success means "*you will recover damages or obtain any other legal remedy which we have agreed to (e.g. being paid compensation or stopping a neighbour from making noise)*".

As an insurer isn't a legal expert we don't think it's in a position to carry out that assessment and it should be carried out by a suitably qualified lawyer who has relevant experience. 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 referred the matter to what it describes as its 'prospects assessment team' who advised on whether the claim was likely to be successful. It subsequently referred to them as its 'legal advisers'. However, I've seen no evidence that team did have any legal qualifications or that, even if they did, they were in a position to advise on this claim's prospects of success. I don't agree their advice was something Aviva was entitled to rely on

Putting things right

As it appears both claims would, in principle, be covered by the policy and Aviva hasn't suggested any other exclusions would apply to them it will need to obtain an assessment of their prospects of success (which could include whether they would be proportionate to pursue) from a suitably qualified lawyer. If their assessment is the claims meet the policy terms Aviva will need to fund these claims in line with those terms.

I've also considered the impact on Mrs S of what Aviva got wrong here. I appreciate it has delayed the proper assessment of her claims and she's been put to some unnecessary time and trouble in pursuing matters. Having said that I think some of the correspondence she had with Aviva was relevant to obtaining supporting evidence for her claims and would likely have been required in any event. I also recognise it has been difficult for Mrs S to deal with the ongoing issues posed by the boundary wall. But I can't conclude that would have been avoided if Aviva had acted correctly. It isn't clear whether this claim would have prospects of success and so be one her policy would fund.

In any event Mrs S says after making her claim to Aviva her neighbour agreed to carry out repairs to the wall. Those discussions now appear to have broken down so a claim may now need to be pursued. But I think it unlikely substantive steps to progress a legal claim would have been undertaken while they were ongoing.

Taking all of that into account I think the £150 our investigator recommended is the right amount to recognise the impact on Mrs S of what Aviva got wrong. I understand she may have further concerns about what Aviva has done more recently in relation to her claims but that's something it would need to have an opportunity to consider first. Once it's been able to do so Mrs S can make a fresh complaint to us about those new issues if she wants.

My final decision

I've decided to uphold this complaint. Aviva Insurance Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 24 September 2025.

James Park
Ombudsman