

The complaint

C, a limited company, complains about the way Aviva Insurance Limited has handled several claims under their legal expenses insurance (“LEI”) policy.

Where I refer to Aviva, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I’ll only summarise the key events here.

- In 2016, C made a claim under their LEI policy to pursue legal action for breach of contract against their bank and a recipient bank regarding a transaction on their account.
- Aviva subsequently declined the claims. It said C didn’t have a contract in place with the recipient bank so there was no insured event under the policy. And, after taking advice from its panel solicitors, it said the claim against C’s bank didn’t enjoy reasonable prospects of success – which is a requirement for cover under the LEI policy.
- In 2023, C sought their own legal advice from a barrister. It concluded that a claim against the recipient bank had reasonable prospects of success and a claim against C’s bank would enjoy reasonable prospects if C was successful in achieving an amendment to the pleadings. C asked Aviva to reimburse the cost of the barrister’s advice and reinstate funding for his claims.
- As Aviva maintained its decision to decline the claims, C raised a complaint which he brought to our Service.
- Our Investigator didn’t uphold the complaint. He was satisfied that the claim against the recipient bank didn’t fall within the scope of cover available under the LEI policy. And, as C hadn’t amended the pleadings, reasonable prospects hadn’t yet been established on their claim against their bank.

As C didn’t agree with our Investigator, the complaint has 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.

Having done so, I’ve reached the same outcome as our Investigator, and for broadly the same reasons. Before I explain why, I wish to acknowledge the parties’ submissions in respect of this complaint. Whilst I’ve read them all, I won’t comment in detail on every single point that has been made. Instead, I’ll focus on the key points that are relevant to the

outcome I've reached. That's in line with our remit, which is to resolve complaints promptly and with minimal formality.

Recipient bank claim

The terms and conditions of C's LEI policy say there is cover for contract disputes, defined as:

"Contract Disputes

We will represent You in any Legal Proceedings for civil action relating to a contractual dispute arising from that agreement or that alleged agreement which has been entered into by You or on Your behalf for the

- 1) sale*
 - 2) provision*
 - 3) purchase*
 - 4) hire*
- of goods or services."*

It's not in dispute that C doesn't have a contract with the recipient bank; they aren't claiming breach of contract. Rather, they're claiming the recipient bank breached its duty of care to them.

Whilst that claim may enjoy reasonable prospects, it doesn't fall within the scope of cover offered by the policy. I haven't identified any head of cover which this claim would fall under. As such, it's not an insured event.

For this reason, I don't think Aviva were unreasonable in declining the claim.

Bank claim

The terms and conditions of C's LEI policy says cover is available *"provided that...prospects of success exist for the duration of the claim"*. It defines prospects of success as *"it is always more likely than not that an insured person will...recover damages or obtain any legal remedy which we have agreed to"*. We consider this to mean 51% or above in percentage terms.

This is a requirement of virtually all legal expenses policies, and we don't think it's unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it's unlikely to succeed. And we wouldn't expect a legal expenses insurer to either.

Where an insurer has declined or withdrawn cover as a result of insufficient prospects of success, it isn't for us to evaluate the merits of the underlying claim. Instead, we look at whether the insurer has acted fairly. As long as it's relied on legal advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes.

In this case, C has obtained counsel's advice. And it's the opinion of the barrister that this claim *would* enjoy reasonable prospects of success *if* C amended the pleadings. As such, it was for C to amend the pleadings in order for their claim to satisfy the policy requirement for prospects of success. I'm not aware that they did so.

I appreciate C feels Aviva should've accepted the claim based on the barrister's opinion and funded the cost of amending the pleadings. But I don't agree. At the time of the barrister's

opinion, the claim didn't enjoy reasonable prospects because the pleadings hadn't been amended. The policy is clear it will cover the costs to pursue a claim which has reasonable prospects; it doesn't cover the costs to get a claim into a position where it has reasonable prospects.

I'm also mindful that one of the bank's lines of defence was that the claim was statute barred. And the barrister said there were no grounds or justification for extending the limitation period. They said the claim would fail on that ground, if it didn't fail on the other lines of defence raised by the bank. I understand this claim was later struck out, and one of the reasons for that was because the claim was brought outside of the limitation period.

Having reviewed the information Aviva had available, in particular the barrister's opinion, I'm not persuaded Aviva acted unreasonably when declining this claim as C hadn't satisfactorily shown their claimed enjoy reasonable prospects of success required by the policy.

I understand C now wishes to appeal the decision made to strike out his case and he wants Aviva to cover the legal costs. The policy terms and conditions remain the same for an appeal; that the claim needs to enjoy reasonable prospects of success. C would need to satisfy this policy requirement before cover can be agreed.

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 C to accept or reject my decision before 25 December 2025.

Sheryl Sibley
Ombudsman