

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 2019, C made a claim under their LEI policy to defend a civil action being brought against them by a government body for an alleged overpayment of loans.
- Aviva declined the claim. It said, whilst the policy covers contract disputes, it specifically excludes claims relating to loans.
- C raised a complaint, which they brought to our Service. And in 2020, our Investigator said it was fair for Aviva to decline the claim because, whilst they weren’t persuaded the loan exclusion applied here, they didn’t think there was a contract between C and the claimant.
- Following our involvement, C obtained counsel’s advice which confirmed there was a contract in place. Based on this, Aviva agreed to cover the claim.
- C successfully defended the claim against them. C says the Judge agreed they were owed fees by the claimant, so they filed a claim.
- In 2024, C’s claim was struck out due to abuse of process. C attempted to appeal this decision but was refused permission. Within the judgment regarding the appeal, the Judge determined that no contract, either direct or implied, existed between the parties.
- Based on this, Aviva withdrew funding from the claim as there was no insured event under the policy. It confirmed it would cover legal costs it had agreed to up to the withdrawal of cover, but it wouldn’t cover any further costs should C decide to challenge the rejection of their appeal.
- C raised a complaint which they brought to our Service. But our Investigator was satisfied Aviva had acted in line with the policy terms and hadn’t treated C unfairly.
- C didn’t agree. They said Aviva had failed to take into account the Contracts (Rights of Third Parties) Act 1999.

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.

The terms and conditions of C's LEI policy say it will cover:

"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..."

In order to be covered by the policy, C must show that they have a valid claim. Initially, they provided counsel's opinion that a contract was in place and, on that basis, Aviva agreed funding. I think that was reasonable in the circumstances. But since that time, a court judgment has concluded a contract doesn't exist. It says:

"I refuse permission to appeal on ground 1 because it is not arguable that there was any direct or implied contract between [C] and the respondent."

Based on this, there is no insured event under the policy. As this has been issued by a Judge, I can't see any reason why Aviva shouldn't rely on it. So it follows that I'm satisfied Aviva acted fairly when withdrawing funding from the claim.

C says Aviva has failed to consider his claim the Contracts (Rights of Third Parties) Act 1999. But I don't agree this applies here.

The Contracts (Rights of Third Parties) Act 1999 provides a statutory exception to the common law doctrine of privity of contract, allowing contracts that fall within its scope to be enforceable by certain third parties. But there are specific requirements that the contract must include; it must expressly provide that it confers a benefit on a third party for them to be able to enforce a term in their own right. But C haven't identified a contract which exists with the government body nor have they shown how they meet the provisions of the Act.

The onus is on C to show they have a valid claim under the policy. I'm not persuaded they have. As Aviva has a judgment to say there is no contract in place, I'm satisfied it's fair for it to conclude there is no insured event for which C can continue their claim.

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 20 March 2026.

Sheryl Sibley
Ombudsman