

## **complaint**

B's complaint is about Aviva Insurance Limited's decision to turn down a claim on its commercial insurance policy. The claim was for legal expenses insurance cover.

The complaint is brought by Mr M, a Director of B. Mr M says that Aviva hasn't acted fairly.

All references to Aviva include their claims handlers.

## **background**

I issued a provisional decision on this matter on 6 August 2018, part of which is copied below:

*"B made a claim for cover to appeal a decision made by its regulator. The decision was initially to restrict, then cancel its ability to run its business. Aviva considered the claim and eventually declined it on the basis that the cover B had purchased didn't extend to appealing the decision made by the regulator. Aviva said that there would have been cover available under another section of the policy, but B hadn't purchased this.*

*Mr M says Aviva have misinterpreted the policy terms that it did purchase and that these would have covered the action it wanted to take. He also says B complained to Aviva's Chief Executive Office but no response has been received.*

*Our investigator considered B's complaint and concluded that it shouldn't be upheld. She said that Aviva were correct to turn down cover in the way that they did. She also thought that although information about cover should've been explained a month earlier, this didn't have a significant impact on B as it was being represented in the matter it was seeking cover for and cover would not have been provided in any event.*

*B doesn't agree. Mr M says that the wording of the policy does extend to covering the type of action B wanted cover for. As such I've been asked to consider this complaint afresh.*

## **my provisional findings**

*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 think it should be upheld. I'll explain why.*

*The starting point is the policy terms. They say:*

*"2E Statutory Notice*

*At Your request We will represent the Insured Person in appealing against the imposition or terms of Statutory Notice issued under legislation affecting Your business."*

*The issue for me to decide is whether the claim made by B falls within appealing against the imposition or terms of a Statutory Notice. The policy doesn't define Statutory Notice. Mr M says that, all this means is a notice issued under statute.*

*Our investigator said the term described the minimum time required by law that B could be made to do something before there were legal consequences. And because the notices claimed for didn't include a list of actions that needed to be completed within a specific time -but rather were intended to take immediate effect - the claim didn't fall within cover.*

*In response Mr M has said that the notices did actually require something to be done - namely appeal them, otherwise they would take immediate effect. Alternatively Mr M says B could've taken actions in response to the notices, such as co-operate with its regulator with a view to having the notices modified or withdrawn or to do something to satisfy them that any recommendations contained within the notices had been met.*

*I've considered all of this in light of the two notices issued. I've also thought about the meaning of 'statutory notice'. Ordinarily it refers to the minimum length of time required under law for a specified notice. The first notice served on B was intended to restrict its ability to admit new service users. The second notice sought to cancel its registration entirely. They didn't include a list of actions that needed to be completed before the notices took effect. But I don't think this was necessary. There is nothing in the ordinary meaning of 'statutory' notice that meant this was a requirement and I haven't seen anything to suggest that this should be the case. So to my mind, B was seeking to appeal against the imposition or terms of a statutory notice as it didn't want them to be imposed after the time specified within them expired.*

*That said I understand Aviva's point that there was a specific part of the policy that could have covered representing B in "appealing to the relevant statutory or regulatory authority, court, or tribunal following an event which results in the relevant licensing or regulatory authority suspending, or altering the terms of or refusing to renew, or cancelling your licence or statutory registration...". B didn't purchase this particular aspect of cover which Aviva says was intended for the situation B was claiming for. But I don't think this means that it was excluded from cover under S2E of the policy. In the absence of the policy defining 'Statutory Notice', I think the only reasonable meaning to be applied is the ordinary one I've set out above.*

*I know that B is also unhappy with the time it took for its claim to be reviewed and the fact that no response was received to its complaint to Aviva's Chief Executive Office. Aviva accept that there was some confusion around the claim being recorded as a claim rather than a request for legal advice. So I think this could've been made clearer. I've also noted that it took longer than I would've reasonably expected for cover to be declined for the reasons Aviva have set out. In particular there seemed to be protracted correspondence surrounding the timing of the claim as well as the nature of it between Aviva and B's representative. But I don't think this prejudiced B in pursuing its appeal. B was represented throughout that process so although Aviva could've checked policy cover and confirmed their position sooner, I don't think B was prejudiced. Because of this I don't think any further award is appropriate.*

*I understand that B is unhappy that Aviva's Chief Executive Office didn't respond to its complaint. Aviva did issue B with a final response letter to its complaint, which is what I would've expected it to do. That letter gave referral rights to this service, which is the correct recourse if B remained unhappy. So I don't think it can be criticised for not doing what it should have."*

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I asked both parties to provide any other comments or information they wanted considered in response to my provisional decision.

Both Aviva and Mr M have responded. They've both confirmed they have nothing further to add. In the absence of any further submissions from either party, I remain of the view that B's complaint should be upheld for the same reasons set out in my provisional decision.

**my final decision**

I uphold B's complaint against Aviva Insurance Limited.

Aviva should reconsider B's claim for cover in line with the remaining policy terms.

If the claim is one that falls within cover then Aviva should consider B's reasonable costs from one month after the date it contacted the legal helpline.

If Aviva does make a payment to B in respect of the costs it has incurred then it should also pay simple interest of 8% per year \* from the date B paid those costs, until they're reimbursed.

B should keep in mind that even though my view is the claim is one which is capable of attracting cover under S2E, it's possible that it might not fulfil the remaining requirements of the policy. That's something that Aviva should seek advice on by obtaining the benefit of a suitably qualified legal opinion, where appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 5 October 2018.

Lâle Hussein-Venn  
**ombudsman**

\* HM Revenue & Customs requires Aviva Limited to take off tax from this interest. Aviva must give B a certificate showing how much tax it's taken off if it asks for one.