

## **complaint**

Mr T complains about Aviva Insurance Limited's decision to decline his claim for legal assistance on his business policy.

All references to Aviva Insurance Limited include reference to its claims-handling agents.

## **background**

In 2009 Mr T took out a policy covering his business underwritten by Aviva Insurance Limited.

The policy included "Commercial Legal Protection" which provided cover for legal costs in the event of specific 'contingencies,' including debt recovery.

In 2012 Mr T issued an invoice to a customer, requiring payment within 28 days. The invoice was not paid and he made a claim for legal expenses of recovering the debt under this policy. Aviva referred the claim to its panel solicitors.

The panel solicitors considered that Mr T had a good chance of obtaining a court judgment against his debtor. However, having made enquiries, it appeared that the customer did not have any assets. The solicitors therefore thought that it was unlikely they would be able to enforce any court judgment and succeed in actually recovering the debt from him. The panel solicitors therefore thought that the claim did not have sufficient chance of succeeding to be covered under the policy (which requires any legal case to have at least 51% chance of succeeding). Aviva withdrew indemnity for the claim as a result of the solicitor's assessment.

Mr T was unhappy with this and obtained an 'asset enquiry report' at his own expense. Aviva subsequently agreed to get another panel firm of solicitors to review the case; however, they agreed with the first panel solicitors that it was unlikely that they would be able to enforce any judgment that was obtained. However, Aviva reimbursed the cost of Mr T's report as a goodwill gesture.

Mr T complained about Aviva's rejection of his claim. He feels he has been mis-led about the cover provided to him. Before he took out the policy (via a broker) he had made enquiries with Aviva direct about the legal protection cover for unpaid debts, as it was a particular concern to him. He says he was told that the policy would cover the legal costs of recovering any money which was owed, with no mention of the requirement for a claim to have prospects of success and none of the paperwork he received had made any mention of it either. He says that the policy is worth little if it only covers cases where there is no risk to the insurer and all costs can be recovered from the other party.

Our adjudicator did not recommend that the complaint be upheld. In common with all insurance policies, the cover provided to Mr T was subject to various terms and conditions and Aviva was entitled to rely on the term in question here. It was also entitled to rely on the panel solicitors' advice about the chances of recovering the debt.

The adjudicator tried to obtain a recording of the telephone call Mr T made to Aviva. It said that as the call was made before he took out the policy, it would not have been noted on Mr T's file automatically. However, it may be able to get a recording if Mr T can give details of when the call was made, as well as the telephone number dialled and the number from

which he called. At the moment, the recording is not available. However, the adjudicator thought that any answers he received to his enquiries were likely to have been general.

Mr T disagreed with the adjudicator's conclusion and requested a review. He has made the following submissions:

- the asset search carried out by the solicitors was "superficial".
- He believed that the customer had funds to pay the debt but he was told that they could only check whether he owned a property or a car and they could not access any bank accounts.
- He had asked the solicitors to at least send a letter to the debtor threatening court proceedings. In the end he had to pay for them to do so.
- His telephone call to Aviva had been very specific. It should have explained the conditions to him, or referred him to his broker for more information.
- He feels very let down and considers that Aviva should either meet his claim or pay him the amount of the debt.
- Mr T does not have any further details of the call and does not feel that it's reasonable to expect him to be able to provide such details. He had been assured at the time that he would be covered and he had been misled.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The starting point is the terms and conditions of the policy. The policy provided that Aviva would negotiate for the Insured person's legal rights, including enforcement of a judgment to recover money and interest due from the sale or provision of goods or services. This is subject to various conditions, including that:

*"in civil claims it is always more likely than not that the Insured Person will recover damages (or obtain any other legal remedy which the Claims Administrator have agreed to) or make a successful defence."*

This requirement is common to all legal expenses insurance policies, of which I am aware. And I do not consider it to be inherently unfair or unreasonable.

An insurer will normally appoint a lawyer to assess how likely it is that they will be able to recover the debt. I have not seen anything that would suggest that the opinions provided by the two panel solicitors are incorrect. Although Mr T says that the enquiries made about the customer's assets were superficial, the solicitors thought that they were sufficient to be able to decide if they were likely to recover the debt. Even if Mr T was correct and his customer had money in his bank accounts at the relevant time, this is no indication that the money would still be there if he had taken proceedings. I therefore see no reason to require Aviva to pay for any more financial enquiries or any further work on the case. It was entitled to rely on the solicitors' opinions to decide whether or not to accept a claim. In my opinion, therefore Aviva was entitled to reject the claim and refuse to fund any further enquiries or work in relation to Mr T's case.

Mr T says that effectively Aviva should not be entitled to rely on the policy term because he was not aware of it until he made this claim. As the adjudicator explained, Aviva did not sell the policy to him (and Mr T has made a separate complaint about the broker that did sell it)

but he is right that it still had a general obligation to treat him fairly when he called to enquire specifically about the cover for debt recovery.

Although I do not have a recording of that conversation, I have no reason to doubt what Mr T has said about it. However, having said that, I do not consider that it means his complaint should be upheld. Mr T says he enquired specifically whether debt recovery proceedings were covered and was told they were but he was not told that this was subject to any conditions. Even if that is correct, I do not accept that this was mis-leading - the policy does cover debt problems. I do not consider it reasonable for him to have assumed that this would be entirely unconditional but - even if he were mis-led into believing it would be - this was incorrect. The policy does have conditions and does require it to be more likely than not that the debt will be recovered. I am satisfied that Aviva is entitled to rely on those terms, even if Mr T was not made aware of them during that call, or by those that sold him the policy.

Mr T says that if he had known the policy required any legal action to have a reasonable chance of succeeding, he could have shopped around. But as stated all legal expenses policies that would have been available to him would have a similar clause – even if he had been unhappy about it - so it would not ultimately have made any difference to his position.

I can understand how disappointing this must be for Mr T. Through no fault of his own he has lost a significant amount of money. However, I do not consider that Aviva is responsible for this.

### **my final decision**

I do not uphold this complaint against Aviva Insurance Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr T to accept or reject my decision before 27 March 2015.

Harriet McCarthy  
**ombudsman**