

The complaint

Mr H is unhappy with how Aviva Insurance Limited handled a claim he made on his legal expenses insurance (LEI) policy.

Any reference to Aviva includes the actions of its agent.

What happened

The circumstances of this complaint are well known to both parties, so I've summarised events.

- Mr H has an LEI policy which is underwritten by Aviva. Aviva appoints an agent – who I'll refer to as "B" – to deal with the day-to-day handling of LEI claims on its behalf, which includes deciding whether a claim is covered or not.
- B is also authorised to issue a final response on behalf of Aviva. But because Aviva is ultimately responsible for B's actions, Aviva is the appropriate respondent business in this complaint – and so, any reference to Aviva includes the actions of B.
- Mr H made a claim on his LEI policy in September 2022 when a builder positioned a large container in front of Mr H's garage whilst building works were being carried out. Mr H said the builder refused to move the container therefore preventing him from accessing his garage for five months – where his car was stored.
- Following some back and forth, Aviva accepted the claim towards the end of October 2022 and referred it to a panel firm of solicitors for a prospects of success assessment.
- The solicitors requested further information in November regarding the respondent's information, and in December 2022 advised the claim didn't enjoy reasonable prospects of success against the named respondent, but that there was potentially a claim against two other parties.
- Aviva asked the solicitor to complete a prospects of success assessment against the two other parties, but before this was provided, the container was removed and so, no further action was required.
- Mr H subsequently complained about how Aviva had handled the claim saying there had been delays. And he didn't think the policy was fit for purpose.
- Both Aviva and B issued final responses saying the claim had been handled fairly and promptly.
- Mr H remained unhappy and so, brought a complaint to this Service. An Investigator considered it but didn't uphold it. Because Mr H disagreed, the complaint has been passed to me for an Ombudsman's 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.

Having done so, I agree with the outcome our Investigator reached. I appreciate this will be disappointing for Mr H, but I hope upon reading my decision, he'll understand why I'm not upholding this complaint.

Delays and communication

The Insurance Conduct of Business Sourcebook (ICOBS) requires insurers to handle claims promptly, fairly, and must not unreasonably reject a claim. So, I've considered what this means in the context of Mr H's complaint.

Mr H complains Aviva caused avoidable delays whilst handling his claim. I've looked at the timeline of events and from what I've seen, I'm satisfied Aviva (which includes B's actions), handled Mr H's claim promptly. I'll explain why.

Whilst things were delayed for a short period whilst Aviva satisfied itself Mr H's claim was covered under the policy, I don't consider it referring Mr H to his previous insurer to be unreasonable. I say this because the information available to Aviva at the time Mr H submitted his claim indicated the legal claim he wished to pursue first arose before the policy with Aviva started – meaning the claim was excluded under the policy. It was only once Mr H's previous LEI provider confirmed the legal matter Mr H sought to pursue was new and arose after its policy expired, was Aviva furnished with the information it reasonably needed to progress the claim.

Though I appreciate any delay would have been frustrating for Mr H - owing to the time sensitive nature of his situation - I'm not persuaded Aviva's actions here were unreasonable as ultimately, it's entitled to satisfy itself the claim is covered in the first instance before appointing a solicitor to consider whether the legal matter enjoys reasonable prospects of success.

Once it was established the legal claim was covered, Aviva progressed the claim as I'd expect, with a legal opinion on the prospects of success being obtained. As Aviva isn't a legal expert, it's standard practice for an insurer to obtain legal advice from a solicitor as to whether the legal claim enjoys reasonable prospects of success. So, whilst this adds to the time things take, it's a necessary step and one which is set out in the policy terms and conditions.

I note a subsequent prospects assessment was sought in early January 2023 soon after Aviva received solicitor's advice that a legal claim *might* be pursued against two other parties. But no further action was required with the container having been removed towards the end of January 2023. So, up until the point the container was moved, I'm satisfied Aviva did what it needed to do.

Having considered the above – and the absence of persuasive evidence which shows Aviva failed to keep Mr H up to date with how his claim was progressing - I'm satisfied Aviva progressed the claim promptly and fairly.

Legal helpline

Mr H has said he's unhappy Aviva's legal helpline didn't identify at the outset that a legal claim could have been pursued against other parties. He said it shouldn't have taken until

the matter was reviewed by a solicitor for this to be identified.

Whilst I appreciate Mr H's position, the legal helpline wouldn't reasonably be able to provide a prospect of success assessment because that's the role of a solicitor, who would provide advice on receipt of all the available information.

As the policy explains, the helpline will *"help you understand what your legal rights are, what course of action is available to you, if that action can be taken by you or whether you need to consult a lawyer."* Here, having initially advised Mr M to send a pre-action protocol letter to the respondent, the helpline subsequently advised Mr H would need to consult a lawyer and the matter was referred to B. So, I'm satisfied Mr H's claim was handled accordingly in this respect. Furthermore, I've been given nothing to suggest the initial claim was assessed against an incorrect party, it simply didn't continue because it didn't have prospects of success.

Distress and inconvenience

Mr H has said being without access to his garage - and in turn his car - for five months caused him a great deal of stress, both physically (owing to his mobility issues) and mentally. And he's said Aviva should compensate him for this.

I don't doubt this was a very frustrating and stressful situation for Mr H, and understandably, was one he was keen to have resolved. But when considering compensation, I can only award this if I'm satisfied Aviva was responsible for the distress and inconvenience he experienced. But having looked at things, I'm not satisfied it was. And I say this for two reasons.

First, Mr H's stress primarily arose from another party (the builder) placing the container in front of his garage therefore, preventing access to his garage - which isn't something Aviva can be held responsible for. Second, I haven't seen anything to persuade me Aviva's handling of the claim caused avoidable delays which meant the situation with the container went unresolved longer than necessary. So, in the circumstances of this complaint, I don't consider it reasonable to hold Aviva responsible for the stress Mr H experienced, and it follows that I won't be awarding compensation.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 February 2024.

Nicola Beakhust
Ombudsman