

The complaint

Mr and Mrs G are unhappy Aviva Insurance Limited turned down a claim Mr G made on their legal expenses insurance policy.

What happened

In May 2022 Mr G contacted Aviva to make a claim. He said after leaving the firm he worked for (in which he was also a shareholder) the company's accountants had assessed the value of his shareholding. He thought the valuation was wrong and had been carried out negligently (and provided counsel's opinion in support of that). And he sought assistance in bringing a claim.

Aviva considered whether the claim was covered under the consumer disputes section of the policy and didn't think it was. That was because there was no agreement between Mr G and the accountants to carry out the valuation; it was between them and his former employer. It also said the policy only covered disputes about an agreement taken out for personal and not business use.

Our investigator accepted that the outcome of the valuation was for Mr G's personal benefit (as it related to the value he'd receive for his shares). But she didn't think he'd arranged the contract or paid for it personally. It was his former firm which had done that. So she thought Aviva acted correctly in concluding his claim wasn't covered.

Mr G didn't agree. He said the accountants had acted for him in a personal capacity in relation to his own tax affairs and he thought they owed him a duty of care when preparing the valuation report. He'd made payment (albeit indirectly) for the report through a deduction in the value of his shareholding. And while the value of his claim was substantial that shouldn't preclude him from benefiting from the cover offered by his legal expense policy in his capacity as a consumer.

So I need to reach a final 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.

The relevant rules and industry guidelines say Aviva has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Mr G's policy. He feels the accountants had a duty of care (because of work they'd carried out for him personally). However, while that might be relevant to a claim against that firm for professional negligence, that isn't one of the insured events covered by his legal expenses policy.

I think the only insured event his claim might fall under is 'consumer disputes' which covers *"a dispute regarding an agreement for the sale, purchase, or hire of goods or services that are not for your business"*. And it's for the insured to show an insured event under the policy has taken place (if they can it's then for the insurer to show that an exclusion or condition applies which means it can turn down an otherwise valid claim).

In this case Mr G has said although his underlying claim is substantial that shouldn't impact whether he's covered under this part of the policy. And he's highlighted other high value claims the policy could potentially cover. I agree with him on that. I don't think the *"for your business"* wording of the consumer disputes clause would preclude cover in his case either. Mr G had left the firm he worked for and the amount he'd receive for the shares he held was something he'd personally benefit from.

But Aviva says the agreement in this case was between his former employer and the accountant's firm. And I can see that under the terms of his shareholding agreement with his firm it was for them to instruct the accountants to carry out the valuation (and I understand Mr G had resigned at the point that was done). I haven't seen clear evidence to show he entered into the contract in question (and he's acknowledged he didn't make direct payment for it).

But unlike other similar policies Mr G's doesn't say the agreement must be one he's taken out. So I don't think Aviva can rely on the fact he didn't, in isolation, to turn down the claim. However, I think it's reasonable to say that for cover to be provided the agreement in question must be one under which he has a right to take action for a breach of its terms. I think that's supported by the fact the policy excludes *"any claims made by anyone other than you or your family..."*

If Mr G was able to show the agreement did give him the right to do so (so for example if he met the provisions of the Contracts (Rights of Third Parties) Act 1999) this might be a claim his policy should cover. But in this case I don't think Mr G has provided a copy of the contract between his former firm and the accountants they instructed. I appreciate he did provide some legal advice from his counsel. But while that references the shareholders agreement between Mr G and his former firm it doesn't demonstrate Mr G would have the right to take action for a breach of contract in relation to an agreement between his former firm and its accountants. And I haven't seen other evidence to show that would be the case.

I can understand why it might be difficult for Mr G to obtain further information on this but, as I've explained, it's for him to show that an insured event under the policy has taken place. I don't think it was unfair of Aviva to conclude, on the basis of the evidence that was available, Mr G hadn't done that. Nevertheless, if he is able to provide specific information about this contract which could impact the coverage position I'd expect Aviva to review matters.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 23 August 2023.

James Park
Ombudsman