

The complaint

Mr V's complaint is about a claim he made on his Aviva Insurance Limited ('Aviva') legal expenses insurance policy.

Mr V says that Aviva treated him unfairly by declining his claim.

All references to Aviva include their claims handlers.

What happened

Mr V made a claim on his Aviva legal expenses insurance policy for cover to bring a claim in respect of two disputes about service charges he was liable to pay. Aviva asked Mr V for further information about his claims, including the background to them.

After Mr V provided that information Aviva, Aviva said they weren't prepared to cover his claims. They concluded the initial dispute or incident leading to the claims happened before cover started, which was excluded by the policy and the information Mr V had provided them with supported that was the case.

Mr V didn't agree. He said his current claims were 1. in respect of a change in the apportionment of service charges applicable to his property in 2022 which related to a specific bill for that year and, 2. following staircasing of 100% in 2022, he received an even higher bill from another party for his service charges, which he felt was open to challenge. Mr V says this is distinct from the earlier dispute he had about service charges before the policy was in place. He says that dispute was about the increase to service charge budgets after he moved into his property in 2019. He's also said that his current claims are in against two different parties but accepts that one of them is against the original party he was in dispute with before the policy was in place.

Overall Mr V feels his claims are different and that it's unfair that Aviva took the view they arise out of a previous dispute, when they're unconnected to that.

Our investigator considered Mr V's complaint and concluded it shouldn't be upheld. She said that although the specific disputes Mr V wanted to claim for were different, they still followed another dispute which predated the policy and amounted to the first in the series of events in relation to service charge disputes.

Mr V doesn't agree with the investigator's findings. He feels it's unfair to group all of his disputes about service charges together when they are different and are against different parties. Because of this the matter 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 won't be upholding Mr V's complaint. I'll explain why.

The starting point is the policy terms. They say:

“Where does the issue/incident need to have happened to be covered under the policy?”

*The incident leading to any claim or any proceedings must have happened within the United Kingdom, Channel Islands or Isle of Man, and the initial dispute, or series of incidents leading to a claim on this policy must happen after this cover starts and before it ends as shown on **your Schedule**”*

So, the issue for me to determine is whether the earlier dispute Mr V had about service charges amounts to an initial dispute or first in the series leading to these present claims.

As a general rule, you take out insurance cover for something which may or may not happen in the future. So, in my judgment, it isn't unfair in principle for a legal expenses insurer to exclude claims for things which started to happen before cover began. There are special policies available which are designed to cover such disputes, but this isn't one of them. Mr V's policy with Aviva started in April 2021 and though Mr V says the event which gave rise to his claims happened during the period of insurance, I don't agree.

Having considered all the documents he's submitted to Aviva, I'm satisfied that the problems he had in relation to service charges more generally started in 2019. Mr V doesn't dispute this. What he disputes however is how the current claims he's made can be said to be the initial dispute or first in a series of incidents leading to his current claims. My view is they can. In 2019, Mr V said:

“... I filed a request to receive the detailed accounts of the 2018/2019 actual service charges. Over the span of 8 months, (the third party) consistently fail to provide the information requested. They essentially indicate that they have not yet audited the actual expenditures and therefore have made the budget into the “actual” amount. I am therefore now dealing with (1) the impression that 251.60 GBP per month for 2018/2019 is too high, and that the increase to 259 GBP for 2019/2020 is completely unsubstantiated. It is also at this time that other residents in the block start escalating the service charge issue as they have been chasing it for years with no evidence of actual costs, and no justification of very significant budget increases”.

It's clear to me that the issue he was unhappy with was about at the time was an increase in service charges. Whatever the reason given for that at the time by the third party, doesn't to my mind make much difference. All three of his disputes are essentially about him having to pay more than he thinks he should. And Mr V might be right about that- but that doesn't mean Aviva need to cover his claims. The term Aviva have relied on is very common and is intended to limit cover for disputes that started to happen before cover was in place. In this case, Mr V's disputes all concern the same common issue- dissatisfaction with the amount of service charges he needs to pay. I accept there are differing reasons in each case and that one of his current claims is against another party. But I don't think that changes anything about the meaning and effect of the term relied on by Aviva here. As such I can't say that Aviva are responsible for funding his claims.

Mr V has commented on some advice he said received when he initially made his claim to Aviva's legal helpdesk. He says he was told to tell the parties he was claiming against that he was taking legal action. I don't have details of the call Mr V says he made but this issue also didn't form the basis of his complaint to this Service. Without Aviva addressing it properly- with reference to the call itself- it wouldn't be fair for me to determine the matter.

Finally, Mr V has asked for clarity on the application of this term in circumstances where different claims are made against the same party both before and after cover is in place. I

can't comment on hypothetical situations. We determine complaints on their own facts so whilst I appreciate why my decision will be disappointing for Mr V, I hope I've provided him with a thorough explanation of why his complaint isn't being upheld.

My final decision

For the reasons set out above, I don't uphold Mr V's complaint against Aviva Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr v to accept or reject my decision before 19 December 2023.

Lale Hussein-Venn
Ombudsman