

The complaint

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

Mr P says that Aviva treated him unfairly.

All references to Aviva in this decision include their claims handlers, unless otherwise stated.

What happened

Mr P entered into a lease agreement ('the lease') with a third party for the supply and maintenance of solar panels, pursuant to a government scheme.

Following a number of issues with the solar panels, Mr P made a claim on his Aviva legal expenses insurance policy for various matters including breach of the lease, trespass, theft, damage to his property and the third party's refusal to supply him with what he thought he'd signed up for.

Aviva considered the claim and allocated it to one of their panel firms to consider. The panel firm initially said the claim didn't have reasonable prospects of success, as required by the policy because claims for breach of the lease were now time barred and would need to have been brought within six years of the lease being entered into.

Mr P didn't agree with the position the panel firm had taken and made further submissions, which they considered. In response the panel firm said that even if the claims weren't affected by a time bar, they weren't covered under the policy because they related to a lease/the letting out of Mr P's home and these matters were excluded.

Unhappy, Mr P referred his complaint to the Financial Ombudsman Service. Our investigator considered his complaint and concluded that it shouldn't be upheld. She said that Aviva were entitled to rely on the opinion of their panel Solicitors and that if Mr P wanted to challenge that opinion, he would need to provide them with a legal assessment of his own. The investigator also thought the claims Mr P wanted Aviva to cover were excluded because they related to the lease, and these were excluded by the policy.

Mr P doesn't agree, so the matter has been passed to me to determine.

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 don't uphold Mr P's complaint. I've explained why below. Before doing so I wanted to assure Mr P that although I haven't commented on each and every submission he's made in this complaint, I have considered everything he's said when reaching my conclusions. This approach reflects the informal nature of the Financial Ombudsman Service.

The starting point is the policy terms. They say:

“Consumer disputes

What is not covered

Any claim related to leases, tenancies or licences to occupy property however these may be covered under the property disputes section”.

“Property Disputes

What is not covered

You will not be covered for a claim which relates, in any way, to the letting out of a property e.g. disputes between, you as the landlord and a tenant of a home you own”

Having checked the policy, I’m satisfied that only claims capable of cover that Mr P wanted to bring against the third party would fall under the consumer disputes and property disputes section of the policy. This includes my considering his claim for harassment which doesn’t fall into any of the sections of cover available under this particular policy. As such it’s not a claim I think Aviva needed to cover.

Claims related to leases under the consumer disputes section are excluded. Whilst Mr P feels that it’s unfair to treat the lease as a traditional lease because it only covers part of his property (i.e. part of his roof), I don’t think this makes any difference. The claim is in relation to a lease between him and the third party for the solar panels to occupy property- specifically part of Mr P’s roof.

Turning now to the exclusion under the property disputes section of the policy; I agree with Mr P that the term isn’t traditionally used to exclude claims like the one he’s making. Rather it usually applies in contexts where there’s a property dispute between a traditional landlord and a tenant. But that doesn’t mean that the exclusion doesn’t apply here. On the lease between Mr P and the third party, Mr P is specified as the landlord and the third party as the tenant. The term excludes claims relating to the “*letting out*” of a property. There’s no policy definition of “*letting out*” so I’ve applied the ordinary dictionary meaning here. *Letting* is defined as “*the activity of allowing your house or land to be lived in or used by someone else in exchange for a regular payment*”. In this case Mr P has allowed the third party to use his property (namely part of his roof). In exchange he receives solar energy. So, although the payment isn’t monetary, he is receiving payment in the form of energy. Whether the energy he receives isn’t what he feels he contracted for makes no difference here because that was the purpose of the lease. As such the nature of the agreement is one which falls into the policy exclusion.

Mr P says that the underwriter of the policy doesn’t agree that the exclusions I’ve quoted are applicable to his claim. He relies on a letter from Aviva Customer Services which says:

“As per our telephone conversation you advised us you tried to get legal help but they said no cover for tenants/ let property.

There may have been some confusion as you are the owner of the property & live there but solar panels are under a leasing contract & are owned by the company that fitted them.

Please call legal team again & advise this is not a let property & you are not a tenant & they may be able to help.”

It’s clear to me that this letter wasn’t from the correct team in Aviva who considered and dealt with his legal expenses insurance claim nor was from the policy underwriter. Rather it was from their generic customer services team. And it seems that the advice given is that if Mr P confirms that this isn’t a let-out property and he’s not a tenant, that the legal team might

be able to help. That's not the same as the correct team, who dealt with his legal expenses insurance claim, fully considering the policy exclusions, and determining that they don't apply here. As such I don't place any weight on this letter, and I'm not satisfied that Aviva have changed their position on the matter.

Given my findings, I'm satisfied Aviva were entitled to turn down Mr P's claims in the way that they did. I haven't gone on to consider whether they were entitled to rely on the advice of the panel firm, because this makes no difference to the outcome of the claim. In this complaint, the interpretation of policy terms is something this Service is able to determine without requiring businesses to obtain legal advice on the issue. So, I've determined this complaint without relying on that advice. And because I don't think the legal advice makes any difference in this case, it's not necessary for me to determine whether Aviva were wrong not to allow Mr P the freedom to choose his own Solicitor on the question of the merits of his case or policy coverage, because that also makes no difference to the outcome I've reached. That's because the claims he was seeking to pursue either didn't fall within cover or were specifically excluded.

Overall and for the reasons I've explained, Mr P's claims that might have been capable of cover fall into the policy exclusions I've quoted above. For those reasons I don't think Aviva need to do anything further.

My final decision

Your text here

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

Lale Hussein-Venn
Ombudsman