

## **The complaint**

Mr E complains that Aviva Insurance Limited rejected a claim on his legal expenses insurance policy.

Where I refer to Aviva, that includes its agents and claims handlers acting on its behalf

## **What happened**

Mr E made a claim on his policy for costs relating to a dispute with his neighbours. He said they had trespassed on his property, caused damage, and had been harassing him.

Aviva referred the claim to its panel solicitors to assess. They advised that the claim wasn't likely to be successful, which is a requirement under the policy terms for cover to be given. So Aviva said it wouldn't cover Mr E's claim.

Mr E complained but Aviva didn't change its decision, so he referred the complaint to this Service.

Our investigator didn't think the complaint should be upheld. He said it was reasonable for Aviva to say it wouldn't cover the legal costs of Mr E's claim against his neighbours unless he was able to provide further evidence showing he had a valid claim.

Mr E disagrees and has requested 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.

The policy provides cover for the type of claim Mr E wished to make. But cover is only available if the claim has reasonable prospects of success and is proportionate to pursue. Almost all legal expenses policies include terms like this.

In the first instance it's for the policyholder to show they have a valid claim. So Mr E had to show that he was more likely than not to win his case and that the costs would be proportionate to the value of the dispute.

I'd expect an insurer to obtain legal advice on the prospects of success and it's entitled to rely on that advice unless it's obviously wrong. Aviva did that, referring the claim to its panel solicitors to assess. The legal advice was that to establish there were prospects of success they needed an expert's report. In particular, the solicitors said Mr E hadn't provided enough evidence of where the boundary of his property was or evidence of the damage caused to his property.

The solicitors' letter is very detailed. It reviews the various claims Mr E might bring and sets out the reasons for saying the claim didn't have prospects of success.

If Mr E had provided enough information to show, on balance, he was likely to have a good

claim and further evidence was simply needed to confirm that, then Aviva should have provided cover for this to be pursued further. Aviva asked the solicitors if they thought the case was likely to have prospects and expert evidence was needed to confirm this, but they said that wasn't the case – they advised that on the evidence available the claim wasn't likely to succeed. Aviva explained to Mr E that if he provided further information it would reconsider. That was fair.

Mr E is unhappy that the advice was given by paralegals rather than qualified solicitors but the correspondence from the solicitors shows they were supervised by a partner in the firm.

He also says he should have been able to choose his own solicitors. The policy terms allow a customer to choose their own lawyer if court proceedings are issued, there's a conflict of interest, or the claim is complex and requires a specialist lawyer. That's broadly in line with the relevant law that allows policyholders to choose their own lawyers in certain circumstances.

At this point, the solicitors were not acting for Mr E and were only giving advice to Aviva to help it decide whether the claim should be covered. There was no conflict of interest and he hadn't shown the case was particularly complex or unusual. In these circumstances Mr E didn't have a right to choose his own solicitors. It was reasonable for Aviva to obtain advice from panel solicitors.

Mr E has referred to providing further information to this Service. Given the information I've seen, including the policy terms and the panel solicitors' legal advice, I'm satisfied I have enough for me to determine the complaint. I know it's disappointing for Mr E that Aviva hasn't provided cover for his claim, but in the circumstances set out above I think its decision was fair. The crux of the matter is that Aviva was given legal advice on whether the claim had prospects and it was reasonable for Aviva to rely on that advice. If he's able to provide further evidence Aviva may consider that and obtain further legal advice if necessary. If Mr E is still unhappy after that, he's free to make a further complaint.

### **My final decision**

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 15 December 2023.

Peter Whiteley  
**Ombudsman**