

The complaint

Mrs C complains QIC Europe Ltd withdrew cover under her legal expenses insurance to pursue a claim against her neighbour for cutting down trees in her garden without permission and causing damage.

Where I refer to QIC Europe Ltd, I include their claims handlers and agents.

What happened

Mrs C had legal expenses insurance (LEI) with QIC Europe Ltd (QIC) that included cover for legal action for neighbour disputes.

In March 2020 Mrs C made a claim on her policy to pursue her neighbour for cutting down trees on her land without permission leading to a loss of privacy, shelter from the wind and damage to property.

QIC initially accepted the claim and appointed panel solicitors to act on Mrs C's behalf in taking action against the neighbour. But QIC withdrew cover in around October 2022 on grounds the prospects of making a recovery were no longer reasonable. They said since Mrs C had made allegations of malicious damage against the neighbour, his insurers wouldn't cover the claim as his policy didn't cover him for malicious damage. And what the panel solicitors knew about the neighbour's personal financial circumstances suggested there weren't reasonable prospects of making a successful recovery against him even if Mrs C's claim succeeded.

QIC said they'd reconsider things if Mrs C could provide evidence the neighbour had assets to pay any judgment against him. She told them about a business the neighbour ran with his sons, property and machinery they'd acquired, and properties she thought they owned. But without independent evidence of what the neighbour owned, QIC wouldn't reopen the claim.

Mrs C complained. QIC didn't uphold her complaint. They said the policy required there to be reasonable prospects of success. Based on the panel solicitors' advice, the prospects here were too low. And the claim was excluded since Mrs C had made allegations of malicious damage which had harmed her case. But if Mrs C could provide evidence of any assets the neighbour owned, they would reconsider the claim. Although Mrs C considered the case to be a criminal one, the policy didn't provide funding to pursue criminal cases. She'd need to involve the police if she wanted criminal charges to be brought.

Since Mrs C didn't agree, she brought her complaint to the Financial Ombudsman Service. Our investigator thought QIC had acted fairly in withdrawing cover. She said independent evidence was needed to confirm the neighbour owned the assets Mrs C had told QIC about. And although Mrs C felt a criminal action should have been started, the policy didn't provide cover for that. Since Mrs C didn't accept our investigator's view, her complaint's 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.

I appreciate Mrs C's strength of feeling about what's happened. I understand the damage to her garden has affected her enjoyment of the property she's lived in for many years and raised concerns about its value. And I'm sorry to hear about the impact events have had on her wellbeing. However, whilst I understand Mrs C will be disappointed, for reasons that are broadly similar to our investigator's, I don't uphold her complaint. I'll explain why.

I note Mrs C feels her claim ought to have been looked at under her buildings policy at the outset. That's not part of the complaint about QIC. I am only considering here Mrs C's complaint about QIC withdrawing funding under her separate LEI policy to pursue a claim against the neighbour.

In line with Financial Conduct Authority rules, we expect insurers to deal with claims promptly and fairly and not to decline claims unreasonably. I've considered Mrs C's complaint against that background. The starting point is the LEI policy.

The policy provided funding for legal costs, up to a limit, and subject to all the terms, conditions and exclusions it contained, in relation to certain "*Insured events*". They included, under "3. *Home rights*" the costs of pursuing civil claims arising out of "*ii A legal nuisance or trespass (a claim that your legal rights relating to owning, living in and using your home have been broken).*" So, Mrs C had cover to pursue a civil claim against the neighbour subject to the remaining terms of the policy.

However, while the fees for *defending* a criminal claim that might be brought against Mrs C for some reason were covered in certain circumstances, the costs of *pursuing* a criminal claim against someone else were not. QIC were right to say the policy wouldn't provide any funding for Mrs C in relation to any criminal action she might wish to take against the neighbour. So, even if the police were expecting QIC to contact them as Mrs C's said, it's unlikely QIC would have got involved in funding any criminal action.

Under "***Claims procedures and conditions***" the policy said:

"If, after receiving a claim or during the course of a claim, we decide that

- i. your prospects of success are too low*
- ii. the costs would be too high considering the value of the claim; or*
- iii. it would be better for you to take a different course of action*

we will write to you giving our reasons why we cannot agree to the claim, and we will not then have to pay any further professional fees for this claim."

and

"We may limit any professional fees that we will pay under the policy in pursuing or continuing to pursue or defend any claim if:

- i. we feel it is unlikely that we will achieve a sensible settlement;*
- ii. the likely settlement amount is not in line with the time and expense needed to achieve a settlement; or*
- iii. your prospects of recovering any amounts you are claiming are not reasonable."*

And the policy also excluded cover for “*pursuing, continuing to pursue...any claim if [QIC] consider it is unlikely that [QIC] will achieve a sensible settlement or if the likely settlement amount is not in proportion to the time and expense involved.*”

In summary, QIC would only fund a legal claim if it was and continued to be more likely than not that there would be a successful recovery. That would mean not only winning the case, but also being able to recover the money from the other side. And the case had to be cost effective.

These are common terms in LEI policies, and we don't consider them to be unreasonable. Court action is expensive. It's unlikely a private individual would spend money on pursuing a legal claim if there weren't reasonable prospects of winning and being able to recover damages and costs at the end of it. We don't think it's reasonable to expect an insurer to either.

We'd expect the prospects of success to be assessed by a qualified lawyer with the knowledge and expertise to advise whether a case is likely to succeed. QIC appointed one of their panel firms to look at that. I understand Mrs C had concerns about the experience of the lawyer who was acting for her. But the lawyer had several years post-qualification experience and handled dispute resolution. The issue in this case was whether the neighbour had sufficient assets to meet any award of damages and costs that might be made against him. It didn't require particular expertise in the field of neighbour disputes to consider that.

From what I can see, Mrs C's claim originally had good prospects of success. The neighbour was insured, and his insurers had admitted liability. I note Mrs C's concern that QIC didn't initially accept there had been an admission of liability. But I don't think that affects the outcome of this complaint. That's because the case seems to have been progressing until Mrs C let the neighbour's insurers know she was alleging he'd caused the damage maliciously.

Mrs C's policy contained an exclusion where Mrs C “*was responsible for anything which [QIC] believe harms [her] case...*”. QIC said the exclusion applied here.

I can understand Mrs C felt it was obvious the damage had been malicious or deliberate since she understood the neighbour had been charged with criminal damage. The panel solicitors said they'd never put the claim against the neighbour on the basis there had been malicious damage. Mrs C felt it should have been. But it doesn't seem the criminal charges against the neighbour were pursued. So, I can understand why QIC would say Mrs C had harmed her case. Telling the neighbour's insurers Mrs C was alleging malicious damage caused them to withdraw cover from the neighbour. So, the possibility of those insurers meeting the neighbour's liability to pay any damages and costs Mrs C recovered was taken away.

Despite that, QIC asked the panel solicitors to look into the neighbour's financial situation to check if he had sufficient assets himself to meet any claim. The solicitors appointed an investigator to advise on that. Although Mrs C felt the investigator hadn't got to the bottom of the neighbour's financial situation, there's nothing obviously wrong with the report the investigator prepared. He'd looked into whether the neighbour owned any properties or companies or other assets. And he couldn't find any. The solicitor's view, based on the report, was that there were no longer reasonable prospects of making a successful recovery. I don't think it was unreasonable for QIC to rely on that advice as it seems to have been a logical conclusion given the investigator's report. And since the prospects of success were no longer reasonable, QIC were entitled to withdraw cover under the policy.

QIC considered Mrs C's concerns that the investigator's report didn't reflect the scale of the neighbour's business and the amount of machinery and equipment he had. They said, broadly, they'd look at any evidence Mrs C could provide about the ownership of those. I think that was fair in the circumstances. Just because Mrs C had seen the neighbour using certain machinery and operating his business out of certain premises, doesn't mean they belonged to him or would be available to satisfy any judgment Mrs C got against him.

Under the terms of the LEI policy - "*4. Carrying out a claim*" - Mrs C was obliged to co-operate with QIC and the panel solicitors and give them evidence and information they asked for at her own expense. So, it was reasonable for QIC to ask Mrs C to provide evidence her neighbour owned the assets she'd identified. QIC said if she could do that, they'd consider the claim further. I think that was a fair way of resolving things given the exclusion I've referred to.

I note Mrs C's unhappy with the work the solicitors carried out and the time things took. The solicitors said failures by the neighbour's solicitors to respond, the difficulty they and Mrs C had had in getting quotes to repair the damage and the neighbour's insurers withdrawing cover had all affected progress. But I'm not aware of any failure on the part of QIC that caused a delay. Even though QIC appointed them, the panel solicitors were acting for Mrs C. She'd need to raise any concerns about the way the solicitors handled things with them. And if she was unhappy with their response, she could then take her complaint to the Solicitors Regulation Authority.

I am sympathetic to Mrs C's difficult circumstances. But bearing everything in mind, I don't think QIC have treated her unfairly in withdrawing cover. So, I don't uphold her complaint.

My final decision

For the reasons I've explained, I don't uphold Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 20 September 2023.

Julia Wilkinson

Ombudsman