

The complaint

Mr C complains that Aviva Insurance Limited (“Aviva”) has unfairly handled a legal expenses insurance (LEI) claim he made under his home insurance policy, as well as treating him unfairly by communicating with him in a particular way.

Any reference to Aviva includes its agents or appointed representatives.

What happened

The background of this complaint is well known to both parties. So, I’ve summarised events.

- Mr C had LEI cover with Aviva. He sought to use it to pursue a legal claim related to the actions of medical staff.
- Aviva had one of its panel solicitors (Company L) assess the claim’s prospects of success. Company L determined the claim did not have reasonable prospects and following a back and forth with Mr C and review from a more senior Company L solicitor, it stood by its position. And it said if Mr C provided a legal opinion from a suitably qualified person that reached a different conclusion, it would have the matter reconsidered by a barrister. And if the barrister’s opinion supported Mr C’s legal claim, Aviva would accept the claim.
- Mr C complained to Aviva, saying he did not want the matter to be looked at by Company L due to previous interactions with them related to another claim, and that the matter had been poorly considered by a junior solicitor. He also said he has asked Aviva and its agents to comply with a reasonable adjustment by not using the term “*dear*” within correspondence as he finds it offensive.
- Aviva stood by its position on the claim, saying Company L’s decision had been reviewed by a senior member of staff, so was correct. It reiterated the options available to Mr C to appeal this decision by providing an alternative legal opinion. And Aviva apologised for any mistakes in communication in using a term Mr C did not like.
- Mr C brought the complaint to this Service, asking for the matter to be referred to a different solicitor for review, and compensation. So, one of our Investigators looked into things. She didn’t uphold the complaint, saying:
 - Mr C’s policy required any LEI claim to hold reasonable prospects of success to be taken forward. And here, Company L’s reasoning was detailed, and provided by a qualified individual (and in this case supported by a more senior member of staff). So, it was reasonable for Aviva to rely on this advice.
 - While Aviva could’ve sourced an alternative firm - given Mr C’s strength of feeling - she didn’t think it was reasonable to direct it to obtain a second opinion on this basis.
 - She was unable to make a finding on whether Aviva’s actions amounted to a breach of discrimination law but based on the facts and what she considered fair and reasonable, she didn’t direct it to do anything further.

- Mr C disagreed, and he referred to a different complaint that this Service had considered, relating to another claim. Within this, the respective Investigator made a direction regarding Company L's actions. Mr C said this showed the firm had a history of poor decision making. And he reiterated his strength of feeling regarding the term that he finds offensive.

As Mr C didn't agree, the complaint has been passed to me for 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.

My role is to focus on what I consider the crux of the complaint to be - which means I will only comment on those things I consider relevant to the decision I need to make.

This means I won't necessarily comment on everything Mr C has said but I can confirm I have read and considered everything provided by both parties when determining the outcome that I deem to be fair and reasonable.

- In this case, Aviva agreed an insured event has taken place under Mr C's policy. So, I don't need to consider that aspect. But Aviva says the claim is without 50% chance of success – which is required under the policy.
- Policies of this nature require claims to have reasonable prospects of success – typically defined as at least 51% and which would recover losses or damages. This means if Mr C's claim was shown to have 51% or greater prospects of success and would recover his losses or damages then the claim should be covered (subject to the remaining terms and conditions of the policy).
- In determining if Mr C's claim had reasonable prospects, Aviva relied on the opinion of Company L's solicitor. This outlined the potential claim Mr C may be able to make and assessed prospects at less than 51%.
- This assessment has been shared with Mr C so I won't repeat it here. But I'm satisfied this was well reasoned and clear. And Aviva is entitled to rely on the legal advice it is provided with – unless that advice is obviously wrong. I've been given nothing to suggest this is the case.
- Mr C raised concerns with the level of seniority of the member of staff who issued the legal opinion on prospects, but I'm satisfied their opinion was agreed with by a senior member of staff as Aviva has outlined. So, this hasn't changed my mind. Mr C has also said Company L should've never reviewed the matter due to its decision making on a separate claim. And it's clear he feels strongly about this. But who Aviva chooses to appoint remains its decision providing this is fair and reasonable. And in the circumstances, I don't think an unrelated assessment from this Service should mean Aviva be limited in offering a firm's services.
- Following Aviva's decision to decline the claim, Mr C was invited to obtain a conflicting legal assessment if he disagreed. And it set this out to him on several occasions. He hasn't done so, so I see no reason to consider Aviva needs to reconsider this matter any further.
- Mr C has been clear he does not wish Aviva to use the term "*dear*" in correspondence as he finds it offensive. And he believes in doing so Aviva has breached relevant discrimination laws.
- It's not our role to say whether a business has acted unlawfully or not – that's a

matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things into account including relevant law and what we consider to have been good industry practice at the time.

- So, although it's for the Courts to say whether or not Aviva has breached any equality legislation, I have taken this into account, amongst other things when deciding what is fair and reasonable in the circumstances of the complaint.
- In these circumstances it's evident that despite Mr C's request to stop using the term "*dear*", Aviva still has done so on several occasions. In its final response letter it has apologised for this and explained it had put an alert on his file to avoid this term being used, but this had been overlooked due to human error. It apologised, and stated that it had never intended any offence, harm or discrimination as a result. In these circumstances, I'm satisfied Aviva's acknowledgement of its mistake, apology and explanation is sufficient to put things right and so I'm not going to direct it to do anything further.

My final decision

For the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 November 2023.

Jack Baldry
Ombudsman