

## **The complaint**

Ms G and Mr G complain that Aviva Insurance Limited has not agreed to cover a claim Mr G made on their legal expenses insurance policy.

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

## **What happened**

Ms G and Mr G are joint policyholders but the complaint concerns a claim Mr G made in relation to a dispute with the firm he had worked for (and in which he was a shareholder). A valuation had been provided by accountants for his shareholding, which he didn't accept. He said the valuation had been carried out negligently.

Aviva said the claim wasn't covered as the only relevant section of cover in the policy would be for consumer disputes. This would cover a breach of contract claim, but there was no contract between Mr G and the accountants to carry out the valuation; the agreement was between them and his former employer.

Mr G didn't accept that decision and we considered a complaint about that. Another ombudsman issued a decision, where he said:

- The only insured event his claim might fall under is consumer disputes, but for cover to be provided, the agreement must be one where Mr G has a right to take action for a breach of its terms.
- It's for Mr G to show an insured event under the policy has taken place and it wasn't unfair for Aviva to conclude, on the evidence available, he hadn't done that. But if Mr G could show the agreement gave him the right to do so (so for example if he met the provisions of the Contracts (Rights of Third Parties) Act 1999) this might be a claim his policy should cover.
- If Mr G provided specific information about this, he'd expect Aviva to review matters.

Mr G subsequently provided further information and Aviva referred this to its panel solicitors for advice. Their advice was that Mr G would not be able to rely on the Contracts (Rights of Third Parties) Act 1999 or take action to enforce the agreement.

Based on that advice, Aviva again said the claim would not be covered. So Mr G made a fresh complaint.

Our investigator said it was reasonable for Aviva to rely on the panel solicitors' advice and reject the claim.

Mr G disagreed and provided further comments. The investigator considered these but didn't change her view, so he requested an ombudsman's decision.

In summary, Mr G's comments include:

- Aviva didn't handle the claim promptly and there were significant delays.

- To say Aviva only has to seek a legal opinion to justify its decision is in breach of the laws of natural justice. The panel solicitors are not independent; they act for Aviva and have a duty to promote their client's best interests.
- Aviva simply repeated its earlier decision without addressing the key issue – that the contract provides an avenue of redress for him personally.

### **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 relevant rules and industry guidelines say insurers have a responsibility to handle claims promptly and fairly. They should support a consumer to make a claim and shouldn't reject a claim unreasonably.

In the first instance, it's for the policyholder to show they have a valid claim. Mr G needs to show there's an insured event under the policy. The only insured event the claim might fall under is consumer disputes, which covers a dispute regarding "*an agreement for the sale, purchase, or hire of goods or services that are not for your business.*" To be entitled to cover, Mr G needs to show he is able to take action in relation to the agreement with the accountants.

He argues that the contract does allow him a remedy as the valuation report refers to the Contracts (Rights of Third Parties) Act 1999 and, while it seeks to exclude liability to third parties, it does accept a duty of care applies to three shareholders, including him.

Aviva referred this to its panel solicitors. I think that was appropriate. The issue is about Mr G's rights in relation to a contract and the applicability of statute law. So it's a legal matter. It's reasonable for Aviva to seek legal advice about that and, where it receives a reasoned opinion on a legal matter, it's fair for it to rely on that.

The solicitors' advice was that

- They did not consider Mr G had a right to pursue a claim for breach of contract in relation to the agreement. It was expressly stated in the report and the letter of instruction that the contractual relationship was between the accountants and the firm.
- They did not consider the letter of instruction helped Mr G; it makes clear that no responsibility is owed to third parties and so limits Mr G's ability to rely on the Contracts (Rights of Third Parties) Act 1999.
- The Contracts (Rights of Third Parties) Act 1999 provides a statutory exception to the common law doctrine of privity of contract, allowing contracts that fall within its scope to be enforceable by certain third parties. But there are specific requirements that the contract must include; it must expressly provide that it confers a benefit on a third party for them to be able to enforce a term in their own right. That's not the case here.

Aviva has addressed the key issue – the legal advice is that the contract does not provide an avenue of redress for Mr G personally. I appreciate Mr G disagrees, but given a conflict between Mr G's opinion and the legal advice, it was reasonable for Aviva to rely on the advice. He would need to obtain a contrary legal opinion if he wants Aviva to reconsider.

Mr G says the solicitors are not independent and are bound to act in Aviva's best interests. Solicitors are, however, independently regulated and must give their advice in accordance

with their own professional responsibilities.

Mr G is also unhappy about the time taken to deal with the claim after he asked Aviva to reconsider.

He provided further information to Aviva on 29 July 2023. Aviva referred that to the solicitors and they replied on 22 August providing a view. Aviva requested some more detailed reasoning for their opinion, then asked them to conduct a further assessment and chased the solicitors for this. It was received on 25 October and sent to Mr G on 7 November.

I know it then took some time for Mr G's complaint to be dealt with, but I don't consider there was any unreasonable delay by Aviva in reviewing the claim.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G and Mr G to accept or reject my decision before 19 December 2024.

Peter Whiteley  
**Ombudsman**