

The complaint

Mr and Mrs R complain that Aviva Insurance Limited (“Aviva”) unfairly declined their claim for legal expenses insurance.

Aviva uses intermediaries to administer its legal expenses insurance and manage claims on its behalf, so any reference to the insurer within this decision should be read as including the acts or omissions of such intermediaries.

What happened

Mr and Mrs R hold a legal expenses policy with Aviva. They made a claim in May 2021 for assistance in pursuing a nuisance claim against a haulage company working near their house, due to the noise pollution and the associated loss in property value.

Aviva declined the claim due to a policy term that excludes cover for class action suits. It said the legal action could affect the outcome of other claims that could potentially be brought after theirs. However, Mr and Mrs R complained this was unfair as they were not aware of any other person making the same legal claim.

Our investigator upheld the complaint. She didn’t think Aviva had applied the exclusion fairly, as there were no other individuals making the same claim as Mr and Mrs R, so their claim couldn’t reasonably be described as a ‘class action’ in line with the policy definition. Aviva disagreed, so the matter has been escalated 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 agree with the conclusions reached by the investigator and have decided to uphold it.

The policy exclusion Aviva has sought to rely on states that the insurer will not cover:

“disputes relating to class actions, e.g. if you are part of a group of people who are all making the same claim”.

Aviva said that the nuisance Mr and Mrs R were seeking to remedy also affected several of their neighbours, who had all previously pursued a complaint with the council about the haulage company. As a result, the insurer said it would be caught by the class action exclusion set out above.

However, I do not agree that Aviva have applied the exclusion fairly in these circumstances. I accept that Mr and Mrs R’s neighbours may have been involved in a previous complaint and may even have an interest in the outcome of Mr and Mrs R’s the claim. But if none of the neighbours are in fact pursuing a legal claim themselves (or joined to a group action in line with the same), then it cannot reasonably be said that Mr and Mrs R’s claim is a ‘class

action' according to the policy definition, as there isn't a group of people making the same claim.

The claim in this instance has been made by Mr and Mrs R alone. There are no other joint claimants listed, and neither has it been proposed that the claim will be pursued via collective proceedings (such as a group litigation order or representative action in the courts, for example). I understand that some of the neighbours may have previously raised complaints about the noise. But that is not the same as making a legal claim against the haulage company, so it cannot be said that there is a '*group of people who are all making the same claim*' in this instance.

Mr and Mrs R have confirmed that they do not know of any other people seeking to take the same action against the haulage company, and neither have Aviva shown that the same legal action is being taken by any of the other neighbours. And while I understand that some of the neighbours would also have the right to make a claim, the exclusion only applies to a group of people who *are* all making the same claim. In my judgment, this wording does not serve to exclude claims in circumstances where there are others who simply *could* make the same claim as is the case here. So, I do not consider Mr and Mrs R's claim to fall within the example definition of a 'class action' as set out in the policy exclusion.

Aviva says that the outcome of Mr and Mrs R's claim could *potentially* affect the outcome of other claims brought after theirs, and that it will also benefit others. But the policy terms and conditions do not specify this as circumstances that constitute a class action. The insurer cannot fairly or reasonably make amendments to or insert additional words in the exclusion retrospectively. The application of the exclusion must be assessed based on the actual words used within the policy terms and conditions, which do not make any mention of others obtaining a benefit from the policyholder's legal action.

So, overall, based on the exclusion as it is worded in this policy document, I do not consider that Aviva can fairly or reasonably decline Mr and Mrs R's claim on the basis of it being a 'class action' in these circumstances.

I'm also satisfied Mr and Mrs R have likely experienced distress and inconvenience as a result of their claim being unfairly declined, and the delay this has no doubt caused. The investigator recommended an award of £150 to recognise the impact of Aviva's handling of matters, which I also consider to be fair compensation in the circumstances.

My final decision

For the reasons given above, I uphold this complaint and direct Aviva Insurance Limited to:

- Reconsider the claim in line with the remaining policy terms and conditions;
- Pay Mr and Mrs R £150 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Ms R to accept or reject my decision before 17 March 2022.

Jack Ferris
Ombudsman