

The complaint

Mr and Mrs H are unhappy with what Aviva Insurance Limited did after they made a claim on their legal expenses insurance policy.

What happened

Mr and Mrs H have legal expenses insurance provided by Aviva as part of their home insurance. In July 2022 they made a claim on the policy for assistance under the property disputes section. On their claim form they said they wanted support with legal action to obtain physical possession of a property. Aviva said the policy contained an exclusion for any claim relating to or arising from joint property ownership. It thought that applied here.

Mr and Mrs H said the property was in joint ownership but the claim wasn't against the joint owner but against a third party who had been living there (and whose personal belongings remained in the property). Having obtained further information Aviva said in September 2022 it still thought the joint ownership exclusion applied; it believed a co-owner was attempting to force sale of the property against another owner.

Our investigator didn't agree. He thought Mr and Mrs H had provided evidence to show Mrs H (and her sister) were the joint owners. And Aviva hadn't shown the third party who the claim would be progressed against had any ownership rights. Nor did it have any legal advice in support of its view. He thought the claim should be reconsidered against the remaining terms and conditions of the policy. But he didn't think any compensation should be paid to Mr and Mrs H as he thought any impact on them had come about as a result of the normal claims investigation process.

Aviva didn't agree. It thought the exclusion was clear and had been correctly applied. Mr and Mrs H didn't agree either. In summary they said:

- Because Aviva had turned down the claim they sought their own legal assistance which had enabled them to regain possession of the property and this was now on the market to be sold. So Aviva reconsidering the claim would no longer be of any benefit to them.
- The only outstanding issue related to compensation. They drew attention to the time taken by Aviva in dealing with the claim which they thought fell significantly outside a normal timetable and which caused significant stress and anxiety.
- They also said Aviva should allow their current solicitor to act in any future claim relating to the disbursement monies following the sale of the property.

I issued a provisional decision on the complaint earlier this month. In summary I said:

The relevant rules and industry guidelines say Aviva has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably. And it's for the insured to show an insured event under the policy has taken place. If they can, it's then for the insurer to show, on balance, that an exclusion or condition applies which means it can turn down an otherwise valid claim.

In this case the policy covers property disputes and in particular “a dispute relating to the interference of your use, enjoyment or right over your home”. This covers “your main home and, for this section only, includes any other homes you own or rent”. Aviva hasn’t disputed the claim Mr and Mrs H made would fall within this section of cover. So I think it’s accepted an insured event has taken place.

However, Aviva believes the claim is caught by a general exclusion in the legal expenses policy which says “we will not pay for...any claim relating or arising as a result of divorce, separation, matrimonial issues or cohabitation, joint property ownership, joint financial obligations or maintenance, financial or custody arrangements involving children”.

Aviva believes that exclusion is clear. But the question in this case is whether it’s shown, on balance, it applies to the claim Mr and Mrs H made. I don’t think it has. Mr and Mrs H told Aviva from the outset the third party had no legal interest in or ownership of the property. I understand the title deeds show the ownership as being in the name of Mrs H, her sister and her late stepfather. That ownership does appear to have been as ‘tenants in common’ but Aviva doesn’t seem to have any evidence to show Mrs H’s stepfather’s share had passed to the third party or that she had become a legal owner.

And other evidence provided by Mr and Mrs H included a letter from the local authority which said Council Tax liability would be amended to that of Mrs H and her sister as joint owners of the property. The local authority said checks indicated the third party had “no legal interest in the property whilst both yourself and [Mrs H’s sister] are named as joint owners with the late [Mrs H’s stepfather]”. Mr and Mrs H confirmed to Aviva in early August that there was no dispute between the joint owners of the property about what to do; both were in agreement about the need to gain possession.

Aviva doesn’t appear to have had any other evidence to show the claim related to or arose from joint property ownership. So I don’t think it has shown the exclusion applies and I don’t think it fairly turned down the claim. In my view it should have referred this for an assessment as to whether it had reasonable prospects of success (a requirement of the policy) soon after Mr and Mrs H confirmed in early August there was no dispute between the owners of the property.

I’ve thought about the impact of that failing on Mr and Mrs H. I understand after Aviva declined their claim they sought advice from a solicitor. That enabled them to take the necessary steps to repossess the property and market it for sale. So the underlying claim has now been resolved. And Mr and Mrs H haven’t suggested they incurred any costs which would otherwise have been covered by the policy in doing so.

But if they do have evidence of these Aviva will need to arrange for a retrospective prospects assessment to be carried out to establish whether funding would have been provided for Mr and Mrs H’s claim. If it would, it will need to reimburse Mr and Mrs H for any costs and expenses (as defined in the policy) incurred in pursuing this claim.

I also appreciate this was a stressful time for Mr and Mrs H. I think that will at least in part have been due to their ongoing concerns about the situation with the property. I don’t think that would necessarily have been avoided even if Aviva had acted properly because a prospects assessment would itself have taken time to complete. But I do agree they were caused uncertainty about the position with their claim during August and September 2022 and it will have been upsetting in itself for this to be declined incorrectly. I think it would fairly recognise the impact on them of that for Aviva to pay them £200.

Mr and Mrs H also say they want Aviva to appoint the solicitor they used to assist them in any future claim relating to the disbursement of the proceeds of the property. But I think the

compensation I've already recommended is the right amount to put things right in relation to this complaint. If there is a future claim that will need to be considered on its own merits and in line with the policy terms (including as they relate to the appointment of solicitors).

Responses to my provisional decision

Aviva accepted what I said. Mr and Mrs H didn't respond.

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.

As Aviva accepted what I said and Mr and Mrs H haven't responded I don't have any reason to change the conclusions I set out in my provisional decision.

Putting things right

Aviva will need to pay Mr and Mrs H £200.

If they have evidence to show they incurred costs which could have been covered by the policy, Aviva will need to arrange for a retrospective prospects assessment to be carried out to establish whether funding would have been provided for their claim.

If it would, it will then need to reimburse Mr and Mrs H for any costs and expenses (as defined in the policy) they incurred in pursuing this claim.

My final decision

I've decided to uphold this complaint. Aviva Insurance Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 18 September 2023.

James Park
Ombudsman