

The complaint

Mr M complains about the way Aviva Insurance Limited has dealt with a claim on his legal expenses insurance policy.

Except where otherwise stated, any references I make to Aviva Insurance Limited includes its agents and claims handlers acting on its behalf.

What happened

Mr M had a dispute with his former employer. He made a claim on his legal expenses policy to cover his legal costs for pursuing a claim against the employer.

Aviva arranged for the claim to be dealt with by claims handlers on its behalf. They passed it to one of their panel firms of solicitors to assess the prospects of Mr M being successful. It's a requirement for cover to be provided that the claim has reasonable prospects of success.

The legal advice wasn't supportive and Aviva didn't agree to cover the claim. Mr M made a complaint about that decision, which we have considered previously.

Mr M then made a further claim on the policy to cover a claim against the panel solicitors. He says he discovered they had acted fraudulently and not in his best interests by withholding a positive merits assessment from counsel, this led to his claim being rejected, and he incurred substantial costs as a result.

Aviva passed this claim to a different claims handler, saying there was a conflict of interest between Mr M and the original claims handlers.

Mr M now complains about this decision. He says there's no provision in the policy terms for this to happen, and it delayed the assessment of his claim. He also complains that he provided details of the panel firm acting fraudulently but Aviva hasn't taken any action about this.

Our investigator considered this complaint but didn't find in Mr M's favour. She said

- It was reasonable to pass the claim it to a different claims handler due to concerns about a conflict of interest following Mr M's claims against the first claims handler.
- This happened just before the prospects assessment and led to a delay with that, but Aviva offered £150 compensation for the distress caused and that offer is fair.
- The claims handler wasn't aware of the positive counsel's advice at the time.
- It was reasonable for the claims handler to rely on the legal advice it received.

Mr M disagrees and has requested an ombudsman's decision. He's provided detailed comments in support, including the following points:

- His complaint about fraud should not have been dealt with as a new claim against the panel solicitors – it concerned the way the original claim had been handled.
- There are rules that require Aviva to ensure proper supervision of delegated actions and Aviva didn't comply with these.
- Aviva and its claims handlers may not have been aware of the solicitors' fraudulent

- actions but they should have been.
- Regardless of what Aviva knew, the claims handlers and panel solicitors act as Aviva's agents and should be held to the same standards as the insurer would uphold itself.
 - He has suffered losses and been forced to spend huge amounts of time pursuing his complaints; £150 is not nearly enough to recognise the serious nature of his complaint.

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 industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

We were set up to provide an informal alternative dispute resolution service and our role is to provide an impartial review, quickly and with minimal formality. I use my judgement to decide what is fair, based on the main crux of a case. So I won't comment in detail on every single point that has been raised and will focus on the key points that are relevant to the outcome I've reached.

The policy provides cover for the type of claim Mr M wished to make but, as with almost all legal expenses insurance, cover is only provided if the case has reasonable prospects of success. Aviva's responsible for the insurance claim but when assessing the merits of the legal dispute, it refers that to solicitors to assess. That's in line with normal industry practice.

We've already dealt with a complaint about the decision to decline cover following the legal assessment and I'm not reviewing that.

This complaint concerns two specific points Mr M has raised:

- the decision to pass the claim to a different claims handler; and
- Aviva's failure to take action when he passed details of the panel firm acting fraudulently.

On the first point, it's for Aviva to decide how to handle claims. Legal expenses insurers often use claims handlers to deal with claims on their behalf, which reduces the risk of a conflict of interest. Mr M had raised concerns about the claims handlers, and threatened legal action against them. In those circumstances it was reasonable for Aviva to arrange for another claims handler to deal with it, to ensure the claim was dealt with fairly.

On the second point, Mr M says Aviva is responsible for the actions of the claims handlers and the solicitors. He thinks Aviva should have done more when he told them about the positive counsel's advice.

As the claims handlers were dealing with the insurance claim on Aviva's behalf, it is responsible for their actions.

The solicitors, however, were not carrying out functions delegated to them by Aviva. They weren't dealing with the insurance claim – their role was to give their own independent advice on the legal case. Aviva (or the claims handlers on its behalf) would then consider that advice when making a decision on the insurance claim.

The solicitors are independent of Aviva and would be subject to their own regulatory regime when carrying out their actions. I can't comment on the solicitors' actions or hold Aviva responsible for them.

But I've considered how Aviva responded once Mr M made it aware of what had happened.

Mr M discovered that although the panel solicitors said his claim wasn't likely to be successful, they had received advice from counsel saying the opposite and didn't tell him about that. I appreciate why he might be upset about this. But the solicitors didn't say anything about this to Aviva or its claim handlers either.

Mr M says Aviva has confirmed that, had it known about the positive counsel's advice at the time, it would have provided cover. If this had come to light very soon after, it may have been possible for Aviva to review the claim. But Mr M only became aware of this – and told Aviva about it – much later. By that time Mr M had reached a settlement with his employer.

I appreciate Mr M spent time and costs pursuing the matter himself and says he had an unfavourable settlement due to having to proceed without representation. But that wasn't due to any error by Aviva. And Aviva couldn't undo what had already happened.

What Aviva did was consider a claim on the policy for a negligence and fraud case against the solicitors. In these circumstances, I think that was fair.

Mr M has explained how difficult the whole situation has been for him and no doubt it was made more difficult by not having cover in place. But for the reasons given, I don't think Aviva was at fault in relation to the two points raised in this complaint – other than in one respect.

Mr M was told his claim was being passed to a different claims handler just as he was expecting to receive a prospects assessment and this was delayed. Aviva acknowledged this was frustrating for Mr M and agreed it would have been better to have dealt with this sooner. It apologised for this and offered £150 compensation, which Mr M didn't accept. I agree this was upsetting for Mr M and think that was a fair offer for the distress caused by this.

I appreciate Mr M doesn't think that sum adequately reflects all the harm he has suffered but I've explained why I don't think Aviva was responsible for everything that happened. It is responsible for the short delay which has been acknowledged. Compensation of £150 is a fair amount for this.

My final decision

Aviva Insurance Limited has already made an offer to pay £150 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Aviva Insurance Limited should pay £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 February 2024.

Peter Whiteley
Ombudsman