

The complaint

Mr H complains that when dealing with a claim on his legal expenses insurance policy, Aviva Insurance Limited restricted his choice of legal representation, passed information to third parties without his consent and caused delays with the claim.

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

What happened

Mr H is a joint policyholder with his wife but as this claim only concerns Mr H, I have referred to him throughout.

In June 2023 Mr H made a claim on the policy to cover the legal costs of pursuing a claim against his employer. He provided an email from solicitors he had consulted advising there were reasonable prospects of his claim being successful, said he only had one month to issue his case before the limitation period ran out and asked Aviva to instruct his solicitors so he could issue his claim at the employment tribunal.

Mr H also said that as he was about to start proceedings he was entitled to choose his own solicitor and did not give permission for Aviva to send his documents to any of its panel solicitors.

Aviva said it needed to validate his policy. Mr H was unhappy about this as there was a very short time until the limitation date, which was in July 2023.

Aviva accepted the claim and referred it to a panel firm of solicitors. Mr H was unhappy about his information being passed to counsel for advice on the case. After some correspondence with Aviva he agreed to instruct counsel but expressed some reservations, again saying he should be able to choose the solicitors as he'd already provided legal advice on the prospects of his case and was about to issue proceedings.

Aviva said his freedom of choice was not in dispute but it needed to assess the claim in line with the policy terms.

While waiting for a decision on the claim, Mr H issued proceedings in the tribunal in order to protect his position.

Counsel's advice was provided on 7 August 2023 and referred to Mr H's solicitors on 10 August. Mr H's solicitors said they wouldn't agree to the costs rate of £100 per hour offered by Aviva.

Mr H found another firm that would act for him and they were appointed by Aviva in September 2023 but in October they said they would no longer act for him. Mr H then instructed another firm of solicitors. The case continued in the employment tribunal, with a preliminary hearing held and directions given for managing the case.

In January 2024 Mr H told Aviva he was unhappy with his solicitors and had now found another firm to act for him.

Mr H was unhappy with the way the claim had been handled. He had a number of concerns, in particular that he should have been able to instruct his own solicitors straightway and Aviva's insistence on obtaining legal advice had delayed things. He said there had been lots of delays answering his correspondence and Aviva hadn't made allowances for the fact he had a disability.

Aviva said it obtained the legal assessment and sent terms of appointment to Mr H's solicitors promptly, and didn't accept there had been any unreasonable delays in responding to correspondence or that he had been treated less favourably than others.

When Mr H referred the complaint to this Service, our investigator didn't think it should be upheld. He said:

- The policy terms set out the hourly rate and an insurer can limit costs as long as this doesn't make the policyholder's choice meaningless. Aviva could have been clearer in correspondence but if it had offered panel firms, it's likely Mr H would have refused them as he wanted to choose the solicitors – and he did find more than one firm that would act for him at the rate offered.
- It was reasonable for Aviva to obtain counsel's advice, which was helpful when appointing solicitors.
- Aviva dealt with correspondence reasonably. Although there were some occasions when it could have replied more quickly, this had not caused unnecessary delays and Aviva had not discriminated against him.

Mr H disagrees and has requested 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.

Mr H has provided detailed comments. We 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's 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 relevant industry rules and guidance say insurers must deal with claims promptly and fairly; they should provide helpful and accessible support to their consumers and consider if someone is in a vulnerable situation when dealing with them; and not unreasonably reject a claim.

The policy provides cover for Mr H's claim but, as with all insurance, there are terms and conditions that apply. In particular, the policy only provides cover if a claim has reasonable prospects of success. So Mr H needed to show he was more likely than not to be successful in his claim against the employer.

I'd expect an insurer to obtain legal advice on whether a claim is likely to succeed. Provided it's a properly reasoned advice from someone suitably qualified and experienced, the insurer is entitled to rely on that advice unless it's obviously wrong. It's standard industry practice for the insurer to refer a claim to one of its panel firms of solicitors to assess.

Mr H is unhappy that Aviva referred this to panel solicitors. He says that, as he was at the point of issuing proceedings, he was entitled to instruct his own solicitors and Aviva should not have referred it to a panel firm.

Once someone is at the point where they are ready to issue proceedings, they are entitled to choose their own legal representative to act for them in the legal dispute. But that only applies once the claim has been accepted and cover is in place. At the point when he made his claim on the policy, Mr H hadn't yet got to that stage.

Aviva was entitled to assess whether the claim was covered by the policy and his case had reasonable prospects of success before agreeing to provide cover. In line with normal practice, it sought legal advice on this. That legal advice was given to Aviva to inform its decision on whether to cover the claim; the solicitors were not, in relation to that, acting for Mr H.

Aviva says it will always obtain its own prospects assessment and the policyholder needs to provide any information needed for this. The policy terms say *"our lawyer will assess the merits of the matter and therefore in order for us to proceed we will require your permission to obtain this..."*

That's the starting point and it will usually be reasonable for Aviva to refer the claim to panel firm to assess prospects.

Insurers sometimes decide not to obtain a prospects assessment if the policyholder already has one. Mr H provided an assessment. However, that assessment was very brief – it wasn't a fully reasoned legal opinion. And the solicitor said they might think differently after carrying out a full review. Mr H obtained a second view on prospects of success from another solicitors but as he himself accepts, that was an informal view. In these circumstances I think it was reasonable for Aviva to request a more detailed assessment from panel solicitors. And to do that, it needed to pass information on to the lawyers who were reviewing the claim; they wouldn't have been able to advise without it.

I do appreciate this matter was extremely important for Mr H and he was concerned about how quickly Aviva would deal with the claim. When he made his claim Mr H was under pressure because of the deadline for issuing proceedings. As a result, he was in frequent contact with the claims handlers and wrote to them whenever he thought they weren't responding quickly enough. Having reviewed the correspondence, there were times when Aviva could have replied more quickly, but I don't think it caused any unnecessary delays to Mr H's claim. In view of the volume of emails Mr H sent, it wouldn't have been practical for Aviva to reply to every single one, especially as many were following up on the same points. Generally speaking, correspondence was dealt with in a reasonable time.

Mr H refers to his health and the fact he's disabled, and says he feels Aviva discriminated against. I appreciate he feels this way but having looked at everything I don't think it has done so or has acted unreasonably. Aviva generally dealt with his correspondence in line with its service standards and as I've explained, it was reasonable to seek legal advice on the claim before confirming cover. I don't think the claim was delayed unnecessarily or Mr H was prevented from making use of the benefits provided by his insurance.

Once the claim was accepted, Mr H was entitled to freedom of choice of solicitors. The policy terms allow this and it's in line with relevant law. But that doesn't mean Aviva had to pay any rate Mr H's solicitors requested. Insurers can limit the costs they pay, provided the policyholder's freedom of choice is not rendered meaningless.

The policy terms set out that the maximum Aviva would pay for Mr H's choice of solicitor is £100. So the starting point is that a policyholder can expect Aviva to pay that rate to their solicitors. But Aviva may vary this from time to time and Mr H noted that it had allowed higher rates for his other legal claims in the past.

In fact, Mr H's solicitors did agree to act for him at the rate offered – and he later found other solicitors who were also willing to act for him. In these circumstances I don't think it can be said his freedom of choice was rendered meaningless, as he was able to find solicitors of his own choice and it was reasonable for Aviva to pay those solicitors the agreed rates.

Finally, Mr H is unhappy that Aviva didn't agree to provide information he requested under the Data Protection Act. He says it breached the relevant law about this. It's not for me to determine whether there was a breach of that legislation; if Mr H wishes to have a formal determination on that, it's something he would need to refer it to the Information Commissioner's Office.

I know this will be disappointing for Mr H, given what's at stake for him in his dispute, but for the reasons set out above I think the way Aviva dealt with the matters complained about was in line with the policy terms and was fair.

My final decision

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

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 14 June 2024.

Peter Whiteley
Ombudsman