

The complaint

Mr and Mrs S' complaint is about a claim they made on the legal expenses insurance section of their travel insurance policy, underwritten by Aviva Insurance Limited ('Aviva').

Mr and Mrs S say Aviva treated them unfairly.

In this decision all references to Aviva included their claims handlers.

What happened

Mr and Mrs S had a travel insurance policy which offered legal expenses insurance cover. The legal expenses section of the policy is insured by Aviva.

Following a trip abroad, during which Mrs S was injured, Mr and Mrs S made a claim on the legal expenses insurance element of their travel insurance for a claim in personal injury against a hotel.

Aviva accepted the claim in the first instance and appointed a firm of Solicitors to consider whether it had reasonable prospects of success and was proportionate to pursue. The Solicitor reviewed the claim and said that although there were reasonable prospects of success in terms of liability, the costs likely to be incurred in pursuing the claim would not be proportionate given the amount Mrs S could expect to recover was no more than about £2,000 at most. As such Aviva said they were not prepared to cover the claim.

Unhappy, Mr and Mrs S complained to the Financial Ombudsman Service. Our investigator considered their complaint and concluded that it should not be upheld. Mr and Mrs S don't agree so the matter has been passed 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 won't be upholding Mr and Mrs S' complaint.

Before explaining why, I want to acknowledge Mr and Mrs S' strength of feeling about their complaint and the submissions they've made in respect of it. Whilst I won't be addressing every point they've made, I can assure them I have considered everything they've said. That's not intended to be disrespectful but rather is representative of the informal nature of the Financial Ombudsman Service. In addition, I wish to make clear that in this complaint I will only be addressing Mr and Mrs S' complaint about the claim they made on the legal expenses insurance section of their travel insurance policy, and not their travel insurance claim, which is distinct.

The starting point is the policy terms. It's a requirement of virtually all legal expenses insurance policies that any intended claim has a reasonable prospect of succeeding and is proportionate to pursue. Mr and Mrs S' policy is no exception. That means Mrs S' claim

needed to have over 51% prospects of succeeding and be proportionate to pursue in order for Aviva to cover it.

We don't think this is unfair. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed or the cost of pursuing it would far outweigh the amount they might recover. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers on the merits and proportionality of the claim itself, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. Aviva did this.

I'm satisfied that the person advising Mrs S was suitably qualified and had experience in the area of law Mrs S was asking for help with, and I've seen nothing that suggests her advice in respect of the merits and proportionality of the claim was based on factual mistakes. I appreciate Mr and Mrs S might not agree with the advice received but that's not something I can consider. If they were to provide an alternative reasoned opinion from a comparable Solicitor, then I would expect Aviva to consider that, but as matters stand, I can't say Aviva did something wrong by relying on the legal opinion they received. If Mr and Mrs S remain unhappy with the legal advice they received, they are entitled to complain to that firm directly or through the Legal Ombudsman.

I appreciate that Mr and Mrs S don't agree with the way in which Mrs S' claim was handled. They feel that the fact that their policy purports to provide cover for personal injury means the insurance should have engaged. I understand why they might feel that way, but insurance policies are subject to terms and conditions. They do not provide unlimited cover and the terms Aviva have relied on are very common in legal expenses insurance policies. It's not for us to determine what risks an insurer should take when designing their products. Rather our role is to determine whether they've applied those terms fairly. For the reasons I've set out above, I think they have here.

Whilst I know my decision might be disappointing for Mr and Mrs S, I hope I've provided them with a thorough explanation of why I won't be upholding their complaint.

My final decision

I don't uphold Mr and Mrs S' complaint against Aviva Insurance Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 27 June 2024.

Lale Hussein-Venn
Ombudsman