

## The complaint

Mr D's complaint is about the handling of two legal expenses claim under the legal expenses section of his home insurance policy with Aviva Insurance Limited.

Aviva is the underwriter of this policy, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints on its behalf. As Aviva has accepted it is accountable for the actions of the agent, in my decision, any reference to Aviva includes the actions of the agents.

## What happened

In June 2022, Mr D made two claims under his policy in relation to a vehicle he purchase in late 2021. Mr D wanted cover to take legal action against the seller of the vehicle, as it was not as advertised; and also to take legal action against another party he had employed to inspect the vehicle prior to purchase for failing to pick up on damage and faults during that inspection.

Aviva asked for some further information to be able to consider the claim. Aviva passed the matter to one of its panel of pre-approved solicitors to consider in early December 2022.

In March 2023, Mr D called for an update as he says he had been waiting to hear from the solicitors and had not received any communication from them. It was found that Aviva had given the solicitors an incorrect email address for him in error (one letter was missing from the address) and the solicitors had closed the file in January 2023, as they said Mr D had not responded to them. Aviva contacted the solicitors and in May 2023, they were reinstructed to look into the case.

In July 2023, the solicitors said the claim could not be covered, as the sale of the vehicle had taken place abroad and the policy only covers legal matters that fall within UK, Channel Island or Isle of Man jurisdictions. Aviva also said there were no reasonable prospects of success. The solicitors had not been asked to consider the potential claim against the party that inspected the vehicle.

Mr D was very unhappy about this and complained.

Aviva accepted that there were some unreasonable delays due to the error with the email address and that it should also have contacted the solicitors in April 2023. Aviva offered £200 compensation for this. Aviva did not change its position that there was no cover for the claim against the seller.

In September 2023, Aviva also agreed to consider the claim against the vehicle inspector and asked for more information to support his.

Mr D remains very unhappy with Aviva's handling of the matter and says that errors and delays on its part meant he could no longer negotiate with the seller about his losses. Mr D has made a number of points in support of his complaint. I have considered everything he has said but have summarised his main points below:

- Aviva had all the necessary information about the claim he wanted to make against the vehicle inspector from the outset but it failed to ask the solicitors to assess this at the same time as the other claim against the seller.
- It delayed sending the first claim to the solicitors to assess as well.
- Aviva delayed the claim and didn't respond to him for months, and only then because he had chased it for an update.
- When he spoke to Aviva about the solicitor closing the file, he was asked "*What do you want me to do about it?*" which was rude.
- Aviva was not clear about the assessment and said there were no prospects of success.
- The issue about jurisdiction should have been spotted immediately but took the solicitors several months to identify.

One of our Investigators looked into the matter. He said Aviva had not been sufficiently clear in its response to the complaint about the terms relied on in the policy to refuse the claim. However, the claim against the seller was excluded as there is no cover for any claims where the insured incident or any proceedings, are conducted outside the UK or the Channel Islands or the Isle of Man and the sale of the vehicle, so the insured incident, did happen outside of these areas.

However, the Investigator considered there had been an error with the email address that was caused by Aviva. This led to a delay in the handling of the claim and assessment by the panel solicitors of the claim against the seller; and it had failed to progress the claim against the inspector. The Investigator recommended Aviva pay a total of £500 compensation for this (to include the £200 already offered). The Investigator also said Aviva should progress the claim about the vehicle inspector and if it is determined that it has reasonable prospects of success, as required under the policy, it should meet that claim.

Aviva agreed to pay the £500 compensation recommended. It also said it had asked the panel solicitors to assess the inspector claim but they said Mr D had not returned the signed form of authority for them to do so as of May 2024.

Mr D does not accept the Investigator's assessment. He says the seller had agreed to repair the intercooler before he made the claim to Aviva but after he discovered other more serious issues with the vehicle, he decided to make a legal claim for everything. He says the agreement about this still stood in August 2022 (as confirmed in a letter from the seller provided). However, the unacceptable delay in the panel solicitors dealing with his claim means he can no longer pursue the repair of the intercooler.

Mr D says if he had known sooner there was no cover for this claim, he could have gone back to the seller in a reasonable time frame and it is likely the seller would have engaged with him and at least honoured the agreement for the cost of the intercooler, given all the other more serious issues (undisclosed damage, suspension, weight issues, wrong year of manufacture). So Aviva should pay him the cost of the intercooler at least, which was around £3,000, so the £500 recommended by the Investigator is not enough to compensate him for Aviva's mishandling of the matter.

The Investigator said he did think Mr D has lost any opportunity to pursue the repair of the intercooler as a result of anything Aviva had done wrong, as there was no evidence he had gone back to the seller after the rejection of his claim by Aviva.

Mr D responded and said he had tried to contact the seller several times after the late rejection of the claim by Aviva but got no response. However, he has provided a copy of a letter from the seller dated August 2024 confirming they are not willing to repair the intercooler "*two years after purchase and usage of the vehicle*".

Mr D also says he is having problems dealing with the panel solicitors in relation to the claim against the inspector. The investigator explained we cannot consider any ongoing issues with that claim, as that would have to be dealt with separately now; and any issues with the solicitors themselves (rather than Aviva) would have to be referred to the Legal Ombudsman.

As the Investigator was unable to resolve the complaint, it has been passed to me.

### **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.

#### Is there cover for the claim against the seller of the vehicle?

Mr D's policy provides cover for legal costs and expenses in relation to a number of potential legal disputes, including contract disputes. However, there is an exclusion that says Aviva won't be liable for claims:

*"Where the incident leading to any claim occurs, or any proceedings are conducted, outside of the United Kingdom or the Channel Islands or the Isle of Man."*

The sale took place outside these jurisdictions, so I am satisfied there is no cover for any claim against the seller of the vehicle.

#### Handling of claim about the seller

Mr D made the claim in early June 2022 via the legal helpline. Further information was needed about the potential claims and it was not until early December 2022 that it was passed to the panel solicitors to assess.

There was a delay of around a month in getting the claim questionnaire to Mr D, as the helpline had noted his email address down incorrectly. There was also a period between early October and end November 2022 when I think Aviva could have been clearer about what it needed to be able to progress the claims.

However, there were also delays on Mr D's part between June and December 2022: he took just over three weeks to send back the completed questionnaire and on 4 August 2022 Aviva asked him for more information in support of the claim which was provided by him around two months later on 7 October 2022.

Overall, I'd estimate that the claim could have been passed to the solicitors around three months earlier than it was but for delays on Aviva's part.

There was then a further delay in the solicitors dealing with the matter, as they had been given the wrong email address by Aviva and closed their file in January 2023. And after that was discovered, Aviva did not ask the solicitors to progress the assessment as quickly as they reasonably should in my opinion.

Mr D also says that when he contacted Aviva to say the solicitors had closed his case, it asked him what he wanted them to do about it, which was unhelpful and he took as being rude. The notes on Aviva's file of the call say: *"Insured called to advise he received a phone call from ... [the panel solicitors] and they have closed their claim, I asked how I could help, insured said I can't and hung up"*. I have not listened to the call, so cannot be sure of the

tone that was used. Aviva's notes suggest a different context to the words and that it was simply trying to establish how Mr D wanted to proceed. It is as stated, difficult for me to be sure. Overall though I think Aviva could have been more helpful at that stage in getting the case back to the solicitors to assess and the claim progressed.

If the error with the email address had not happened, it seems to me that the solicitors would reasonably have been able to assess the claim and provide the response about cover by around mid-February 2023. I say this because after they were reinstructed in May 2023, they had assessed the claim and cover by end July 2023, so a period of approximately two months.

Mr D says the fact the claim was not covered as he had purchased the vehicle abroad, should have been immediately obvious. However, I cannot consider any complaint about the time taken by the solicitors, who act as independent professionals subject to their own professional regulations.

Overall, I think there was another delay of around five months in progressing the assessment of this claim, and therefore Mr D being made aware it was not covered by the policy. I agree with the Investigator that some additional compensation is warranted for this. I will address this below.

Mr D also says he suffered financial loss as a result of these delays, as he was prevented from being able to initiate the agreement already made with the seller about the intercooler and to start negotiations about the other issues with the vehicle. Mr D says if he had been told sooner that the claim was not covered, he'd have been able to go back to the seller within a reasonable time frame to get them to fulfil the agreement to repair the cooler.

Mr D says he did try and make contact with the seller after the solicitors rejected his claim but got no response. The Investigator asked if he had any evidence to support this but Mr D said he had no call logs of this. Mr D has however, provided a letter from the seller dated August 2024 which confirms its refusal to deal with the intercooler more than two years after the sale of the vehicle and after it had been used. So the only evidence of Mr D contacting the seller again about the issues with the vehicle is around a year after knowing the claim was not covered. Given this, it is difficult to conclude that if he had been told in say January / February 2023 the claim was not covered, that Mr D would have gone back to the seller then.

I have considered this very carefully. While I can understand how frustrating the delays on Aviva's part would have been and it would have then also been disappointing that after those delays, there was no cover, I am not persuaded that but for these errors on Aviva's part Mr D would have received a settlement from the seller, or had the intercooler repaired at its expenses. I say this because in total Aviva is responsible in my opinion for around seven months delay in the two year period between the sale and when Mr D can evidence he made contact with the seller again (*i.e.* August 2023). And there is no convincing evidence that if Mr D had been told in early 2022 the claim was not covered, that he would have gone back to the seller then *and* that the seller would have agreed to the cost of the intercooler or any other issue that needed rectifying on the vehicle. Even though the seller was still in agreement about the intercooler in August 2022, given after that Mr D had raised numerous other issues with the vehicle, it may not have agreed to any repairs. Mr D says it is likely it would have done as it would have considered it had got off lightly given the other issues but it seems to me, it may also have denied responsibility for any issues.

Overall, I am not persuaded that the error with the email and the other delays on Aviva's part, are the sole or overriding reason the seller is no longer willing to pay for the intercooler repair.

### Handling of the claim against the vehicle inspector

Mr D submitted the claim to Aviva in June 2022. He says it should have been clear from the outset he wanted to bring a claim against the seller and the vehicle inspector separately. However, in October 2022 Aviva said it was not clear what Mr D wanted to claim for and asked for more information. I do think that by the time the seller claim was ready to be passed to the solicitors to be assessed, it should have been clear to Aviva there were two claims and so Aviva should have also asked the solicitors to consider the claim against the vehicle inspector alongside the seller claim.

In September 2023, Aviva agreed to progress this claim. Mr D has referred to difficulties since then with the solicitors and Aviva has recently told us he had not returned the authority form to allow the solicitors to continue. As mentioned above, I cannot consider any issues with the solicitors but I do think that Aviva should do what it reasonably can to ensure this claim can be progressed, including making clear to Mr D what the solicitors require in order to proceed.

I have not seen any evidence that these delays have had any impact on the potential claim against the inspector but I do think some additional compensation is warranted as they have undoubtedly caused unnecessary trouble to Mr D. I will address this below.

### Compensation

Having considered all the evidence, I agree with the Investigator that the £200 compensation already offered by Aviva is not sufficient to reflect the trouble caused by its delays. I also agree that the sum of £500 is appropriate and in line with awards made in similar scenarios, to include the delay in consideration of both claims.

### **My final decision**

I uphold this complaint in part and require Aviva Insurance Limited to pay Mr D the sum of £500 compensation for the distress and inconvenience caused to him by its handling of his claims. (This is to include the £200 already offered. If that amount has already been paid then Aviva only needs to pay the remaining £300.)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 October 2024.

Harriet McCarthy

**Ombudsman**