

The complaint

Mrs D is unhappy with what Aviva Insurance Limited following claims she made on her legal expenses insurance policy.

What happened

In December 2022 Mrs D sought assistance under her legal expenses insurance with a discrimination claim against her employer. Aviva asked panel solicitors to consider whether the claim had reasonable prospects of success (a requirement for cover to be provided). The panel firm advised in January 2023 that it didn't think that was the case. And it maintained that position on receipt of further information from Mrs D. However, given the complexity of the case Aviva agreed to fund counsel's opinion. Counsel's view was also that the claim was unlikely to be successful. And he also had concerns over whether limitation might have expired in relation to aspects of it.

Mrs D submitted further information in June 2023. Aviva again funded counsel to review that who advised in September that his view remained the claim didn't enjoy reasonable prospects of success. In November Mrs D said matters had escalated at her employer and she had further evidence of reasonable adjustments not being made. Aviva agreed to fund a further assessment of those points but said this would be the final time it would do so in relation to this claim. And if counsel's opinion remained negative on prospects Mrs D would need to obtain a positive legal opinion of her own in order for cover to be provided.

In January 2024 counsel confirmed the further information Mrs D provided hadn't changed his previous opinion on prospects which he confirmed to the panel firm were "*20-30% at best*". Aviva said it would only consider this claim further on receipt of a legal challenge to the advice received from counsel.

In March 2024 Mrs D contacted Aviva as she'd now been dismissed from her role. Aviva agreed to seek counsel's advice on the prospects of success of a claim relating solely to that dismissal. However, there was then a dispute over the amount it would pay for that given the significant volume of documents Mrs D had by then submitted. The panel firm told Mrs D in June that Aviva wouldn't be funding counsel's opinion of her new claim.

Our investigator thought it was reasonable of Aviva to rely on the prospects assessments that had been provided by the panel firm and subsequently by counsel. And he didn't think it had then acted unfairly in declining to provide funding for Mrs D's claim.

Mrs D didn't agree. She said Aviva hadn't funded the agreed final assessment of her claim because of a dispute with the panel firm over the cost of this. And that's why she'd brought her complaint to our service. So I need to reach a final 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.

The relevant rules and industry guidelines say Aviva has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably

I don't think it's in dispute the employment issues Mrs D was seeking funding for are something that her policy could, in principle, cover. However, in order for cover to be provided it's a requirement of the policy that a claim has prospects of success which it says means it's more likely than that that "*you will recover damages or obtain any other legal remedy which we have agreed to (e.g. being paid compensation or stopping a neighbour from making noise)*". But if in "*the lawyer's opinion*" the prospects of success are no longer in your favour then Aviva will not pay any further costs and expenses. The policy defines lawyer as "*a suitably experienced legal professional*".

As an insurer isn't a legal expert we don't think it's in a position to carry out the prospects assessment and it should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not.

So in this case I think it was right Aviva referred the claim Mrs D made in December 2022 to one of its panel firms for an assessment of its prospects of success. I also think it was right to agree a further assessment needed to be carried out given the additional information Mrs D then provided. And given the advice from the panel firm about the complexity of the claims I think it was fair of Aviva to agree that counsel's opinion should be sought on the initial claim Mrs D made and following her further submissions in June and November 2023.

I've reviewed those opinions and I don't think they contain any factual errors that should have been apparent to Aviva and are properly written and reasoned. In particular the counsel's opinions give detailed consideration to the points Mrs D made and give a clear rationale for concluding that her claims don't enjoy reasonable prospects of success. And I can see both the panel solicitor who advised on the claims and counsel both specialise in employment law disputes. I don't think there was any reason why Aviva shouldn't have relied on those assessments when declining to provide funding for Mrs D's claim. And I think it was right to advise Mrs D that she would therefore need to obtain a positive legal opinion of her own if she wanted to challenge the position on the heads of claim that were dealt with in the assessments from the panel firm and from counsel.

However, I appreciate that at least some of the issues Mrs D raised in March 2024 are separate from the points previously considered as by that point she'd been dismissed from her role and wanted to bring an unfair dismissal claim relating to that. So I think Aviva were right to say that, while the position on the previous claims remained as already set out, it would obtain an assessment of the unfair dismissal's claims prospects of success. And it asked the panel solicitors to obtain counsel's opinion on that.

There was then discussion over the costs of that assessment. I don't think it was unreasonable of Aviva to query the most cost effective way of obtaining an assessment of the further claim Mrs D had made (particularly given the reasonably significant outlay it had already expended in obtaining previous counsel's assessments). And I don't think that caused delay in any event as the panel firm advised in May 2024 Mrs D had asked for the assessment to be put on hold as she was awaiting further information. Aviva asked the panel firm the following month whether Mrs D had now provided the required information and confirmed it would seek a further update when issuing its final response to the complaint the following month.

I think Aviva acted reasonably here. But it does appear inaccurate information about the position with the counsel's assessment was provided to Mrs D because (based on advice

from Aviva) the panel firm told her at the start of June a further assessment wouldn't be funded which is also reflected in the chronology contained in the final response. That doesn't appear be correct as Aviva has confirmed to us it has agreed to fund a further assessment from counsel (and a quote for that is awaited).

I appreciate Aviva's error will have caused Mrs D some confusion over the true position with her claim. But taking into account that didn't cause any significant delay to its progress during the period I'm considering I don't think there's anything Aviva needs to do to put things right here. If Mrs D has concerns about what Aviva did following its July 2024 final response and whether there's been delay here that's something which would need to form a fresh complaint to Aviva. If she was unhappy with its response we could consider that separately.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 11 December 2024.

James Park
Ombudsman