

## **The complaint**

Mr A is unhappy with what Aviva Insurance Limited did after he made a claim on his legal expenses insurance policy.

Although the policy is in joint names as the claim and complaint have been brought by Mr A I'll refer to him in this decision. All references to Aviva include its agents and claims handlers.

## **What happened**

In October 2023 Mr A contacted Aviva seeking funding under his legal expenses policy for an employment dispute. Aviva referred it to a panel firm for an assessment of its prospects of success (a requirement of the policy). The first panel firm was unable to act so it was referred to a different firm. At the end of October they advised the claim didn't have reasonable prospects of success.

Mr A asked Aviva to contact a different firm of solicitors but it said it was entitled to rely on the advice provided by the panel firm. However, it would ask them to review any further information Mr A wanted considered or he could submit a legal opinion of his own on the claim's prospects of success. Mr A raised concerns about the qualifications and experience of the individual at the panel firm who had carried out the assessment. And he explained why he disagreed with that assessment.

The panel firm confirmed that, while the assessment had been carried out by a paralegal, her work had been supervised by a qualified solicitor. Aviva was satisfied the assessment had been carried out in line with the policy terms. And it wasn't able to consider Mr A's concerns about the outcome of that legal assessment.

Our investigator noted the prospects assessment had been produced by a paralegal under the supervision of a suitably qualified solicitor. She thought the opinion was properly written and reasoned and wasn't obviously wrong. She thought Aviva was entitled to rely on it when deciding Mr A's claim didn't have reasonable prospects of success. She didn't find there were reasonable adjustments Aviva should have made for Mr A and hadn't; she didn't agree accepting his claim would be a reasonable adjustment.

Mr A didn't agree. He thought it would have been a reasonable adjustment to allow him to use his own solicitors or accept his claim without any further requirements. He said his claim involved a complex area of employment law. He thought Aviva was at fault in not allowing him to use his own solicitors after the initial panel firm had a conflict. He reiterated his concerns about the assessment the second panel firm had carried out including the involvement of a paralegal. He thought the subsequent progress of his Employment Tribunal claim showed her assessment was wrong. And he maintained that Aviva hadn't made reasonable adjustments for his disability.

## **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've looked first at the terms and conditions of Mr A's policy. The insured events it covers include "*a dispute with your employer regarding your contract of employment including unfair dismissal*". So it could in principle assist with Mr A's dispute. However, that's subject to a claim having reasonable prospects of success which the policy says means "*how likely you are to win your case*".

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 I think it was right Aviva referred the claim Mr A made to one of its panel firms for an assessment of that. It's unfortunate the first firm it approached was unable to act and Mr A has questioned whether they were conflicted. However, the question of whether a firm is able to act is one for it to make in line with its professional responsibilities.

Mr A says Aviva should have allowed him to use his own solicitors after the initial firm was unable to act. The policy (in line with the relevant regulations) says "*if court proceedings are issued, there is a conflict of interest or if we consider the claim to be complex and requiring a specialist lawyer you are free to choose your own lawyer by sending us in their name and address*". However, when assessing the merits of a claim our normal approach is that it's fair for an insurer to use a panel solicitor because their advice is intended to help the insurer decide whether any cover is available under the policy at all. So I don't think it was unreasonable Aviva referred the matter to an alternative panel firm.

And their assessment said Mr A's claims didn't have reasonable prospects of success. I appreciate he disagrees with that assessment but the question for me whether it was one Aviva was entitled to rely on. I've reviewed the assessment and I think it is properly written and reasoned. It identifies relevant considerations in relation to the claims Mr A made and gives a clear rationale for why it believes these are unlikely to be successful.

Mr A is unhappy that assessment was carried out by a paralegal. His policy says prospects will be reviewed by a lawyer which it defines as "*a suitably qualified legal professional*". I appreciate a paralegal isn't a qualified lawyer but our long standing approach is that an insurer is entitled to rely on an assessment from a paralegal where they're were working under the supervision of a suitably qualified lawyer with relevant experience.

In this case the assessment was checked by a solicitor partner at the panel firm whose profile says he has "*extensive experience of handling complex Employment Tribunal claims and has specialised in employment law since 2005*". Given that I don't think Aviva did have any reasonable grounds to further question the prospects assessment and was entitled to rely on it when deciding it shouldn't provide funding for Mr A's claim.

Mr A says as he has been able to pursue his claim through the Employment Tribunal that support his view the prospects assessment was wrong. But I understand those proceedings haven't yet concluded. And in any event the question isn't whether the legal advice was correct but whether that assessment was one Aviva was able to rely on. For the reasons I've already explained I think it was. Aviva also correctly explained to Mr A what options were open to him in order to challenge that assessment.

Finally, Mr A says Aviva didn't make reasonable adjustments for his disability and should have accepted his claim without further assessment or allowed him to use his own solicitors. In considering this I've taken the Equality Act 2010 into account – given it's relevant law – but I've ultimately decided this complaint based on what's fair and reasonable. If Mr A wants a decision that Aviva has breached the Equality Act he'd need to go to court.

The prospects assessment said it was likely an Employment Tribunal would find Mr A's disability fell within the definition set out in the Equality Act. And he says Aviva failed to make reasonable adjustments for that disability. The Act says where a service provider's provision, criterion or practice puts disabled persons at a substantial disadvantage compared to those who don't have a disability they should take reasonable steps to alleviate the disadvantage. But Mr A hasn't suggested he's been placed at a disadvantage in accessing Aviva's service as a result of his disability; his issue is with its decision to decline cover for his claim. I don't think accepting his claim outside of the terms of his policy is something Aviva should fairly be expected to do in the circumstances of this case.

### **My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs D to accept or reject my decision before 6 March 2025.

James Park  
**Ombudsman**