

The complaint

Ms D is unhappy with what Aviva Insurance Limited did following a claim on her legal expenses insurance policy.

What happened

Ms D sought assistance from her legal expenses policy with an employment and related personal injury claim. Issues with the handling of the claim were previously considered by our service in 2020. Subsequently the claims were progressed by Ms D's solicitor with funding for them being provided by Aviva. In May 2023 a Tomlin order was agreed between the parties.

In September 2024 Ms D contacted Aviva as she was concerned costs had been deducted from compensation amount due to her. She thought that was contrary to the wording of the order (which made no order as to costs) and the policy terms. And £96,000 had been wrongly taken from her. Aviva said it hadn't taken any deductions from Ms D's settlement and if she had concerns about how this was agreed she should contact her solicitors.

Our investigator said Ms D had appointed her own solicitors to progress the claim. And the policy terms she'd referenced related to compensation where a panel solicitor was involved. So she didn't think they applied here. The terms did say the policyholder must instruct their solicitor to take every step to recover costs and expenses relating to the case. And that's something her solicitors were aware of. She accepted the Tomlin order didn't make an order for costs but it did break down the settlement and part of that included £96,000 for this. So there was no liability for Aviva here as that amount had been paid by the third party.

Ms D didn't agree. She said her solicitors would have been unaware of the policy wording in relation to costs not being deducted from compensation. And she reiterated that the Tomlin order made no order as to costs. She thought there had been money deducted from her settlement to pay costs which was against the terms and conditions of her policy. 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.

In her submissions Ms D has focussed on a policy term which says *"If you use a lawyer provided by Aviva whether you win or lose you will not be liable for any payment (unless costs go over above the amount shown on your Schedule, and options will be discussed with you before this situation arises). If you are awarded compensation as part of your case then you keep all of it"*.

However, that term goes on to say *“If you use a lawyer of your choice and you are awarded compensation, we cannot guarantee that you will be able to keep all of it as a proportion may be retained by your lawyer”*. As Ms D did choose her own solicitor it’s that second part of the clause that would apply to her circumstances. She’s explained the reasons why she wanted to do that which I understand. But that doesn’t change the fact she didn’t use a panel firm to progress the claim and so the term she’s referenced doesn’t apply.

In any case I don’t think that’s the key issue here. Ms D says costs have been deducted from the compensation she was awarded. And she says the Tomlin Order said *“there be no order as to costs”*. However, the court didn’t need to make any separate order for costs because that issue was addressed in the schedule. And the Order confirmed that schedule had been agreed by the parties. The overall settlement of the personal injury claim set out there was £725,000. But the schedule goes on to break that down and costs are awarded *“in the total sum of £96,000”*. After other deductions the balance *“in respect of damages and interest on the personal injury claim”* is around £596,000.

It’s those damages which represent the compensation Ms D was awarded and no costs have been deducted from that amount. Costs were taken from overall settlement but that’s in accordance with the breakdown the schedule contains. And Ms D’s policy says *“if you are successful with your claim, you must instruct the lawyer to take every available step to recover for us all costs and expenses relating to your case”*. That’s what happened here; as part of the settlement an award has been made for the costs Ms D’s solicitors incurred in pursuing the matter.

If that hadn’t been possible then, subject to the other terms of the policy, Aviva would have had a potential liability in relation to those costs. But Ms D’s solicitors were clear in correspondence with Aviva that costs had been recovered as part of the settlement; in May 2023 they said *“I am pleased to report that we had a successful mediation on Monday. The settlement included the payment of all outstanding legal costs for [Ms D]”*. I think Aviva has acted fairly and reasonably in concluding there was no further action it needed to take here.

My final decision

I’ve decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I’m required to ask Ms D to accept or reject my decision before 30 April 2025.

James Park
Ombudsman