

The complaint

Ms J's complaint is about the handling of a claim under her legal expenses insurance cover 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 February 2023, Ms J made a claim under her policy with Aviva, as she wanted cover for the legal expenses of a claim for professional negligence against her trade union. Aviva passed the matter to one of its panel of pre-approved solicitors to assess the legal claim Ms J wanted to make, to see that it met the policy criteria.

The panel solicitors asked Ms J for some information and to sign a client consent form. The solicitors closed the file as they didn't receive this information. Ms J brought a complaint to us about this. One of our Investigators looked into the complaint but did not recommend it be upheld.

In September 2024, Ms J contacted Aviva again to ask to use her own solicitor to deal with her claim and sent their details.

Aviva said that as the claim has still been assessed as meeting the policy criteria, Ms J's right to choose her own solicitors to act for her has not yet been triggered. Aviva says that once there is a valid claim, Ms J can choose her own solicitors if court proceedings are necessary, there is a conflict of interest, or her claim is particularly complex and requires specialist expertise. Aviva says none of these apply to Ms J's case at present. However, Aviva said it would agree to Ms J's own choice of solicitor, if they agree to panel rates which is £100 per hour. Otherwise, Aviva said that if Ms J wants the panel solicitors to complete their assessment, she should provide the information they need.

Ms J said she does not want the panel solicitors dealing with her claim, as she considers there is a conflict of interest with them. Ms J complained but Aviva did not change its position, so she referred her complaint to us. Ms J wants cover for her solicitors to assess the claim and compensation for the stress she has suffered.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld, as she was satisfied that Aviva had acted fairly and reasonable and she did not consider that it had to agree to Ms J's own solicitors acting for more than it would pay its panel solicitors to assess the claim.

Ms J does not accept the Investigator's assessment. She has made a number of points in her initial complaint and in response to the Investigator. I have considered everything she has said but have summarised her main points below:

- A third-party told the panel solicitors that her policy does not cover claims against a union. This was then discussed between the panel solicitors and Aviva before any assessment of the merits had been carried out, therefore not following the procedure set out by Aviva when conducting an independent assessment.
- The panel solicitors told Aviva her claim might not be covered and Aviva told the panel solicitors to assess her claim but to reject it.
- Aviva and the panel solicitors have a financial interest in the outcome of her claim and make decisions influenced by personal interests.
- The relationship between Aviva and the panel solicitors causes a conflict of interest, which compromises their ability to act impartially and in her best interests.

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.

Ms J's policy provides cover for legal costs and expenses in relation to a number of potential legal disputes, including consumer disputes about the "*purchase or hire of goods or services*", which is the section of cover Ms J's claim is being considered under. However, as with virtually all legal expenses insurance policies, it is a re-requisite of cover that any claim have reasonable prospects of success. We would consider this to be a 51%, or more, chance of winning the legal case and achieving the remedy sought.

It is a principle of insurance law that it is for the claimant to establish, on the balance of probabilities, that they have a valid claim under a policy – so this would include establishing that it has reasonable prospects of success. However, it is usual in legal expenses policies for the insurer to appoint lawyers to assess the prospects of a legal claim at its own cost, rather than insist on policyholders doing so at the outset of a case.

Aviva offered to do just that and instructed one of its panel of solicitors to assess Ms J's claim.

Most legal expenses insurance policies work in the same way, with insurers having a panel of pre-approved solicitors. The insurers will usually have pay agreements with these pre-approved solicitor firms, which is aimed to make this more cost effective and they will have been audited and checked for their suitability to deal with certain legal issues.

Ms J says that this creates a conflict of interest but I do not agree. Solicitors are independent professionals, subject to their own regulation. This is the case whether the solicitor is on the insurer's panel of pre-approved solicitors or not. Panel solicitors will have some agreements in place with insurers but it does not change that their primary duties are to the courts and their clients (in this case Ms J).

And reference to a policyholder being able to use their own solicitor in the policy due to a conflict of interest is referring to situation where there is a true conflict where the panel solicitors might be regarded as being '*professionally embarrassed*', e.g. because they previously acted for the assured's opponent or because they have a vested interest in the subject-matter of the legal dispute, etc. I do not consider that the relationship between Aviva and the panel solicitors creates a conflict of interest, such that Aviva should be required to pay Ms J's own chosen solicitors to assess the claim to see if it meets the requirements for cover under the policy.

I have also not seen any evidence that Ms J's case is especially complex, for example that it concerns a novel or unusual point of law. In the absence of any such evidence, it seems to me that the panel solicitors would be suitably qualified and experienced to assess her claim.

Ms J says that recordings of phone call between Aviva and the panel solicitors show that they discussed the claim, and that they didn't believe a claim against the trade union would be covered, before the panel solicitors had assessed it.

I have listened to the call between Aviva and the panel solicitors. Aviva was returning a call to the panel solicitors, as they could see it was a claim against a union and they had received counsel's opinion on a different case that said that a claim against a trade union would not be considered a consumer dispute, so there would not be cover under the policy. The solicitors asked Aviva to confirm if it wanted them to continue with the assessment, given this. Aviva's representative spoke to a colleague and then told the solicitors to complete their assessment but at the end of it let Mrs J know that it is not a consumer dispute and therefore not covered by the policy.

I do not think that this amounts to undue influence on Aviva's part. I note the counsel's opinion was on a different case but if it involved the same issues, then it is relevant knowledge that can reasonably be applied to other cases the solicitors are involved in. And it was the solicitors that considered Ms J's claim would likely not be considered to be a consumer dispute, which would mean it is likely not covered. I think it was reasonable that they raise that with Aviva and it seems to me that Aviva acted reasonably in asking the solicitors to continue with the assessment of the merits of the claim, and simply asked that the solicitors should add the fact they thought the dispute was not a consumer dispute and therefore not covered by the policy in their advice. I am not persuaded that this meant either Aviva or the panel solicitors were not acting properly or were acting against Ms J's interests.

Ms J is unhappy with the panel solicitors continuing to assess her claim and provided details from two different solicitors' firms, one that charges £150 plus VAT per hour, and another that charges £215 – £450 per hour depending on the fee earner appointed.

I do not consider that Aviva is obliged to pay Ms J's own solicitor to establish that there is a valid claim under the policy. This is because until it has been established that there is a valid claim under the policy, there is no obligation on Aviva to provide any cover. As stated it is for a claimant to establish their own claim.

However, in this case Aviva did say it would pay Ms J's own chosen solicitor but only at the same rate it would have costs it to get a panel solicitor to assess the claim. I do not think that is unreasonable given it has no obligation to do so and the panel solicitors are able to assess the claim.

If Ms J wants to proceed with her claim, Aviva has said the panel solicitors will assess it, if she provides the information it has requested, or it will pay her own solicitors the panel rate to do so. I think this is reasonable and do not intend to ask Aviva to do anything further.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 9 May 2025.

Harriet McCarthy

Ombudsman