DRN-5434191

## The complaint

Mr and Mrs S complain that they were mis-sold a household insurance policy by Avantia Insurance Limited.

## What happened

Mr and Mrs S arranged their household insurance policy through Avantia in 2021 and it renewed in 2022 and 2023. The policy included legal expenses cover.

Mr and Mrs S recently tried to make a claim under the legal expenses cover, as they wanted cover to take legal proceedings for clinical negligence. However, the insurer rejected their claim, as the legal expenses cover excludes clinical negligence claims. Mr and Mrs S say they were misled by Avantia about the cover and had been led to believe that clinical negligence claims would be covered. They therefore complained to Avantia and asked for compensation for the fact their legal fees are not being covered.

Avantia does not accept it did anything wrong. It says it sent the policy documentation that set out the cover and these were sufficiently clear.

Mr and Mrs S remained unhappy with Avantia's response to their complaint, so they referred it to us. They have made a number of points in support of their complaint. I have considered everything they have said but have summarised their main points bellow:

- The documents sent to them at renewal in August 2023, included an Insurance Product Information Document ("IPID") that specified that personal injury claims were included.
- The documents did not specify that clinical negligence was excluded and so they were led to believe that they had cover in place for a personal injury claim being a medical/clinical negligence claim.
- It is only the full policy document sets out that personal injury cover is only for the result of a specific or sudden accident and that clinical negligence is excluded, which is at odds with the other documentation.
- The fundamental policy cover should accord with the but the cover very distinctly diverges from the IPID.
- Avantia was required by the relevant regulations and rules to highlight significant and unusual policy terms and so should have specified in the IPID and policy booklet that clinical negligence was excluded. As it did not, they were misled about the cover.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld, as she was satisfied that the policy was not mis-sold.

Mr and Mrs S do not accept the Investigator's assessment, so the matter 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.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulator's rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

As Mr and Mrs S have highlighted, the Financial Conduct Authority ("FCA") Handbook sets out a number of rules and guidance that are applicable to this case. These include the Insurance Conduct of Business rules ("ICOBS") and FCA's high-level standards: the Principles for Businesses.

The Insurance Conduct of Business Sourcebook says that those selling insurance have a responsibility to provide appropriate information about a policy in good time, in order to put the customer in a position where they can make an informed choice about the insurance they are buying. This includes providing clear information about the main cover and any significant or unusual terms before the conclusion of the sale.

And the FCA Principles: "*A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading*."

If the seller is also making a recommendation or advising a customer to take a particular policy, then they should specify the customer's demands and needs and propose a policy that's consistent with them as far as is reasonably possible and take reasonable care to ensure the suitability of its advice.

The policy was first sold in 2021 and renewed in 2022 and 2023. It is the 2023 renewal that Mr and Mrs S have particularly referred to. Therefore, while I have taken account of what happened in 2021, it is the sale in 2023 that I am addressing.

Avantia says this was a non-advised sale and as such no recommendation was made to Mr and Mrs S that the policy was suitable for them. The documents sent to Mr and Mrs S state that it is a non-advised sale. I have not seen any evidence to suggest that a recommendation was made, so I accept this was a non-advised sale.

Essentially Avantia needed to provide Mr and Mrs S with clear information about the cover being provided, in order to put them in a position where they could make an informed choice about the insurance they were buying, before they went ahead with it. The more significant, unusual or onerous a policy term the greater the effort to bring it to the customer's attention should be, so that a customer can understand easily how the policy will work in practice.

The policy was originally taken out over the phone. Avantia has provided recordings of the sales calls. The policy included basic legal expenses insurance cover but in 2021, Mr S was offered upgraded legal expenses cover, which he accepted. Mr S did not ask any questions about the legal expenses cover in the phone calls I have listened to.

Avantia has provided a copy of the documents that were sent to Mr and Mrs S in August 2023 when the policy was due for renewal. These included a cover letter with a link to the full policy document and advice to read it carefully alongside the other documents provided; a policy schedule and statement of fact and IPIDs for the main home insurance cover and the legal expenses cover.

Avantia is an insurance broker, it is responsible for selling the policy but it was not responsible for the production of the documents themselves, which were produced by the insurer. However, it is still responsible for providing appropriate information, so it would have a responsibility to clarify anything that was deficient in the documents.

ICOBS requires the IPID to be a short (normally restricted to 1-2 sides) stand-alone document, drafted in plain language, which summarises the main terms of cover and main exclusions. It is intended to be a summary, in a standardised format that means customers generally can understand the main and most significant policy terms. It does not replace the full policy documents and it cannot (and is not expected to) set out all the policy exclusions for every section of cover.

The IPID provided to Mr and Mrs S set out the events that would be covered under the legal expenses policy: employment, contract disputes, property protection, legal defence, tax protection and personal injury. In relation to personal injury it stated:

> *"Personal Injury*
>
> *Sudden or specific accidents causing your death or bodily injury".*

The IPID did not mention clinical negligence. However, I do not agree with Mr and Mrs S that it needed to, or that the fact it didn't created an obligation on Avantia to highlight the lack of cover for clinical negligence claims in its covering letter or other means.

I say this because, there is nothing to suggest that clinical negligence claims would be covered. The IPID lists the insured events that will be covered and specifies that claims for personal injury resulting from sudden and specific accidents were covered. I do not think, as Mr and Mrs S have suggested, that the confirmation that personal injury claims would be covered would reasonably be interpreted as meaning that clinical negligence would be as well.

The full policy document set out the full cover and exclusions that apply to each section of cover and stated that clinical negligence claims were not covered. I do not think the fact the IPID says it covers personal injury claims but does not set out every exclusion to that part of cover is misleading in itself. I am satisfied that the IPID provided the information that would reasonably be considered significant and it made clear it should be read with the full policy document. I also do not agree that the full policy terms were at odds with the IPID. It confirms there was cover for personal injury claims and does not have to specify every exclusion to that.

In addition, in my opinion, the policy exclusion of clinical negligence claims is not objectively one of the most significant terms for those considering legal expenses cover. I acknowledge Mr and Mrs S will likely say that it is significant to them, as they now wish to make a clinical negligence claim, but that is not the test.

Overall, I am satisfied that Avantia provided appropriate information in good time to make Mr and Mrs S aware of the information needed to be able to make an informed decision about whether the policy was suitable for their needs. Having considered everything carefully, I do not therefore think that the policy was mis-sold.

However, even if, for argument's sake, I am wrong about this and the policy was mis-sold as the information provided to Mr and Mrs S during the sale process was deficient and Avantia should have specifically highlighted to them that clinical negligence claims were not covered (which is not my finding), I do not think that it would have made any difference to Mr and Mrs S's position now. I will explain why.

We are not a regulator, so I have no power to penalise or fine a financial business for any wrongdoing. My remit it to consider if any wrongdoing has caused financial or other loss and assess what needs to be done to put that right. In the case of a mis-sale, we would consider what the customer would have done if they had been aware of the policy term at the outset that subsequently meant their claim was not met.

Having considered this carefully, I think it is likely Mr and Mrs S would have still taken this policy. I say this because it seems to me that the legal expenses cover was not their main focus when arranging the policy, as it was an add on to the home insurance, which was the main purpose of the transaction with Avantia. And there is no evidence available to me that would suggest that cover for clinical negligence claims was a particular concern for them. There is therefore is no reason to think, if they had been told in August 2023 clinical negligence claims would not be covered, that this would have influenced their decision to go ahead with the policy such that they would have taken another household insurance policy with additional legal expenses insurance, or sought out a stand-alone legal expense policy.

Given this, even if the policy was mis-sold (which again is not my conclusion) I do not consider that there is any award I can reasonably make to redress it.

Having considered everything carefully, I do not consider that the policy was mis-sold.

**My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 1 May 2025.

Harriet McCarthy
**Ombudsman**