

The complaint

Mr and Mrs H are unhappy with what Aviva Insurance Limited did after they made a claim on their legal expenses insurance policy.

Although the policy is in joint names, as the claim relates to Mr H, I'll mainly refer to him in this decision.

What happened

In February 2024 Mr H sought assistance from his legal expenses policy. He said a company which handled legal expenses claims (A) hadn't complied with a subject access request. In April, Aviva said it had asked one of its panel firms of solicitors to review the claim. The following month it said the claim wasn't one the policy covered. Mr H thought it would fall within 'employment disputes'. Aviva didn't agree.

Aviva didn't provide us with information about the claim. So our investigator reached a view based on the information she did have. She agreed the claim relating to the subject access request wasn't covered by the policy. But she thought there had been delay in dealing with it. Aviva appeared to have paid £150 compensation for that but there had then been further delay. Aviva hadn't then reviewed a further claim Mr H said he wanted to make against A for not making reasonable adjustments for him. She said Aviva should do so and pay Mr H an additional £200 in compensation.

Mr H didn't agree the subject access claim wasn't covered by his policy. And he reiterated that he wanted to pursue a claim about A not making reasonable adjustments. He said he was happy with the compensation awarded for delay. Aviva said as A hadn't dealt with this claim then there wouldn't have been any reasonable adjustments it needed to make.

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.

Mr H contacted Aviva in February 2024 because he wanted assistance to pursue a claim against A for not providing information in response to a subject access request he made. In order for any claim to be covered by his policy it needs to fall within one of the insured events it contains. The onus is on a policyholder to show, on balance, that's the case.

Mr H says his dispute should be covered by the 'Employment Disputes' section of his policy. That covers:

- *A dispute with your employer regarding your contract of employment including unfair dismissal.*
- *A breach of your legal rights under employment law.*
- *Checking and advising on the terms of a settlement agreement.*

But Mr H wasn't employed by A and this claim doesn't relate to a settlement agreement. So the only section his claim could fall within is "*a breach of your legal rights under employment law*". In support of that he's provided counsel's advice on a different claim (from 2021) which said employment law was a broad label for which there was no technical definition. And it encompassed legal rights that arose beyond strict employment relationships (for example relating to workers). Counsel felt that claim (which was being brought under the Equality Act) would probably fall within the terms of the policy.

However, I don't think it was unreasonable of Aviva to say there wasn't a read across from that claim to the situation here. Counsel was clearly advising on policy coverage for an entirely different claim (involving the section of the Equality Act relating to 'Work'). He did say there was no technical definition of employment law and I appreciate an employee could make a subject access claim to their employer.

But I don't think that means the relevant legislation (the Data Protection Act 2018 and General Data Protection Regulation) could reasonably be considered employment law where a claim was made to a business with whom (as is the case here) the claimant had no employment relationship or anything that could be considered analogous to that. And I don't think (and Mr H hasn't argued) this claim would be covered by any of the other insured events the policy covers. I think it was correct and fair of Aviva to conclude the claim wasn't covered and turn it down on that basis.

However, I agree there was delay in him being provided with that decision. I appreciate that as A act as claims handlers for Aviva an alternative needed to be found. But that took too long and there were periods with little obvious action being taken. Mr H was offered £150 for delays up until mid March but there doesn't appear to have been any significant update given to him until May. There were then further delays in responding to points he raised.

Mr H then said in June his claim also included a failure by A to make reasonable adjustments for him. I don't think it was clear from his correspondence whether he was raising that as a complaint or wanted to pursue a legal claim. But that's something Aviva could have clarified with him (and it could also have obtained more information on when he thought those failings had taken place).

I've gone on to think about what the right way for Aviva to put things right is. I think the delays I've identified will have caused Mr H some avoidable distress and inconvenience over a number of months. I appreciate Aviva has already paid some compensation in relation to this but I think the additional £200 our investigator recommended is appropriate to recognise the impact on Mr H of the further delays which then took place.

I also agree Aviva will need to consider the further claim Mr H is seeking to bring against A which he's told us he does want to pursue as a legal claim. I'm not clear that's something which would be covered by his policy but once Aviva has established from Mr H what the issues giving rise to this claim are (and when they took place) it can explain its position on that to him.

Putting things right

Aviva will need to obtain information from Mr H about the claim he wants to bring against A for not making reasonable adjustments for him. It will then need to consider whether that's something his policy covers. If it does it will need progress that in line with the terms. If not it will need to explain to Mr H why that is. And it will need to pay him £200.

My final decision

I've decided to uphold this complaint. Aviva Insurance Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 13 June 2025.

James Park
Ombudsman