

The complaint

Mr M complains that Aviva Insurance Limited hasn't met its obligations when dealing with a claim under his motor legal expenses insurance policy.

Where I refer to Aviva, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

- In 2021, Mr M was involved in a car accident. He made a claim under the legal expenses section of his motor insurance policy to pursue the third-party driver for his uninsured losses.
- Mr M complains that Aviva hasn't dealt with his claim promptly or fairly, that it's refused to provide legal assistance until the matter is resolved under his motor insurance, it failed to respond to his complaint, and it hasn't confirmed that another solicitor has been appointed following the initial solicitor closing his case.
- Aviva says it has accepted Mr M's legal expenses claim and appointed solicitors. It has provided a copy of its complaint response to Mr M which confirms that the initial solicitor closed their file due to a lack of co-operation from him but that an alternative firm has been appointed who are still awaiting Mr M's response to a liability offer of 50/50.
- Mr M brought his complaint to our Service. But our Investigator didn't uphold it as he was satisfied Aviva had acted in line with the policy terms and that cover was available should Mr M choose to engage with the appointed solicitor. He confirmed our Service doesn't have jurisdiction to consider or comment on the actions of the solicitors themselves.

As Mr M didn't agree with our Investigator, the complaint has been passed to me to decide.

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.

Having done so, I've reached the same outcome as our Investigator, and for broadly the same reasons. Before I explain why, I wish to acknowledge the parties' submissions in respect of this complaint. Whilst I've read them all, I won't comment in detail on every single point that has been made. Instead, I'll focus on the key points that are relevant to the outcome I've reached. That's in line with our remit, which is to resolve complaints promptly and with minimal formality.

The terms and conditions of Mr M's legal expenses insurance policy says:

“Legal protection to claim costs or compensation after a motor accident or incident:

If there is an accident and/or incident involving your car which is not your fault, we will provide you with legal protection to pay lawyers' costs to help claim against the person(s) who is responsible.

As part of your claim we will pay to recover your financial losses (such as your excess and travel expenses) and also obtain compensation if, as a result of travelling in, getting into or out of your car, you die or sustain personal injury.”

I'm satisfied Aviva has fulfilled these obligations under the policy. I say this because it has instructed a firm of solicitors to act for Mr M, and it is paying the solicitor's costs to assist him in recovering his uninsured losses – which is what the policy says it will do.

Despite the first solicitor closing their file due to a lack of co-operation, Aviva has instructed a second firm to act for Mr M. I understand they called Mr M in September 2024 to let him know the third-party had put forward an offer to settle liability on a 50/50 basis. But it doesn't appear Mr M engaged with them. I can't hold Aviva responsible for this.

I appreciate Mr M wants his claim paid. But legal expenses insurance doesn't work in the same way other insurance policies do. Whereas motor insurance policies will pay out losses directly, the purpose of legal expenses insurance is to pay the solicitor's fees to recover losses from the party responsible for them.

So Aviva isn't liable to pay Mr M's uninsured losses. Rather, it will pay the solicitor to try to recover them from the third-party. And part of that process will be for the solicitor to determine whether or not the third-party is at fault and on what basis. So agreeing who is liable for the accident is required before it can be agreed whether the third-party should cover the uninsured losses or not.

Overall, I'm not persuaded Aviva has failed to meet its obligations under the policy. Cover is available under the policy should Mr M wish to use it, but to do so he will need to engage with the appointed solicitor.

My final decision

For the reasons I've explained, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 November 2025.

Sheryl Sibley
Ombudsman