

The complaint

Mr L complains about the way Aviva Insurance Limited has handled a claim under his legal expenses insurance (“LEI”) 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 June 2024, following a protected conversation with his employer, Mr L was offered a settlement agreement and given ten days to accept it.
- Mr L made a claim on his LEI policy for the legal costs of checking and advising on the terms of the agreement. He asked to use a solicitor of his own choice.
- Aviva said:
 - The policy only allows a policyholder the freedom to choose their own solicitor once court proceedings become necessary.
 - A panel solicitor could be instructed to review the settlement agreement but there was no cover under the policy for the solicitor to negotiate the terms.
- Mr L says that by the time he’d heard from Aviva, the ten-day deadline had already passed and he’d been left with no option but to appoint a solicitor privately. He asked Aviva to reimburse the legal costs incurred.
- Aviva said the policy doesn’t costs incurred without its prior approval.

Mr L raised a complaint, which he brought to our Service. But our Investigator didn’t uphold it. As Mr L didn’t accept this outcome, the complaint was passed to me to decide. And I issued the following provisional decision.

My provisional decision

I’ve reached the same outcome as our Investigator, but for different 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.

Mr L’s LEI policy covers employment disputes including “*checking and advising on the terms of a settlement agreement*”. But it specifically excludes “*negotiating with your employer the terms of a settlement agreement*”.

Looking at the timeline of events, Mr L received the settlement agreement on a Friday. And he submitted his claim to Aviva on the following Monday; day three of the ten-day deadline.

Aviva acknowledged receipt of Mr L's claim the following day; day four of the ten-day deadline. But he didn't hear any further until the day after the deadline expired, by which time it was too late.

I've asked Aviva for details of its internal triage process for new claims to ensure cases with short deadlines are actioned sooner than its usual five working day turnaround time. Aviva says if a claim is submitted and the insured is restricted by deadlines, this is highlighted by its first response unit as urgent. That doesn't appear to have happened here.

I've been provided with a copy of Mr L's claim form, and I can't see that he mentioned the urgency of his situation or the ten-day deadline. On the form, Mr L only says "*my employer engaged in a protected conversation with me and have now presented a settlement agreement to consideration*". And where asked for the outcome he hopes to achieve, Mr L answers "*settlement of my exit on best terms*".

I'm also not aware of any follow up calls or emails by Mr L to Aviva, highlighting the urgency of his claim or the imminent deadline. So, on the face of it, I'm not persuaded Mr L did enough to put Aviva on notice that his claim needed to be prioritised.

That said, Aviva is familiar with legal expenses claims. And it should reasonably be aware that employment disputes have shorter deadlines than any other type of claim. In particular, settlement agreements commonly have only a matter of weeks to be accepted. And given this particular policy specifically offers cover for checking and advising on the terms of a settlement agreement, I'd expect Aviva to be aware that it needs to prioritise these cases outside of its usual process and to have an adequate system in place to do so.

On that basis, I'm not persuaded Aviva handled this claim promptly. So I've thought about what would've happened had it prioritised the claim as it should have. But I don't think this would've changed the outcome or that Mr L would've received cover under his policy. I'll explain why.

The policy would've only ever covered the cost of a panel solicitor. And it's clear Mr L wanted to use a solicitor of his own choice. He said so on his claim form. And that he'd already taken advice from, and instructed, a solicitor. I'm aware Mr L had instructed them several months prior to the settlement agreement being offered. So I'm not persuaded Mr L would've been prepared to use a panel solicitor in place of a firm who were already acting for him and who were aware of the background to his employment situation.

Furthermore, the policy would only ever cover the cost of checking and advising on the terms of the settlement agreement. Cover for negotiating the terms is specifically excluded. Looking at the invoice provided by Mr L's solicitors, I'm aware they spent 12 hours working on the settlement agreement. Whilst no time / cost breakdown has been provided, I'm not persuaded it took 12 hours to read the agreement and advise on it. It's more likely these costs include some negotiation with Mr L's employer to ensure he exited on the best possible terms, which is what he wanted cover to achieve.

So even if Aviva had prioritised the claim and offered Mr L cover with a panel solicitor earlier on in the ten-day timeframe, I'm not persuaded on the balance of probabilities that Mr L would've opted to use his policy for the limited cover available. And even if he did, he wouldn't have received the level of advice and representation that he's been charged for by his chosen solicitor.

As such, I can't fairly say Aviva are responsible for the legal costs Mr L has incurred.

Responses to my provisional decision

Mr L doesn't agree with my provisional decision. I'm summarised his key reasons why below:

- He'd instructed his own solicitor on an unrelated matter several months before receiving the settlement agreement. He suggested to Aviva that they *could* be instructed due to their familiarity with the circumstances, but that he was open to using a panel firm.
- At no time did his chosen solicitor negotiate the terms of the settlement agreement directly with his employer.
- The settlement agreement was unacceptable and severely prejudicial to Mr L. His solicitor carried out considerable work to alter/craft suggested edits to reposition the agreement in Mr L's favour. And had to research and advise on provisions around payment of his pension.
- He accepts that he's incurred costs in excess of what his policy would cover, and he's prepared to accept a contribution in line with what Aviva would've covered.

Aviva accepted my outcome.

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 considered Mr L's further comments, my opinion remains unchanged to that set out in my provisional decision. I'll explain why.

Mr L says he suggested to Aviva that his chosen solicitor act for him due to their familiarity with the case as they'd been instructed on an unrelated matter. But he was open to using a panel firm. But the evidence available doesn't support this.

The claim form Mr L submitted shows that in answer to the question about using a panel firm, he selected the option "*I want to use a different firm of solicitors*". And to the question "*have you already instructed this firm?*", Mr L answered "*yes*". There is nothing within the commentary on the form where Mr L says he is open to the option of using anyone other than the solicitor he'd already instructed.

I don't agree the solicitors were acting on an unrelated matter. It appears Mr L had an ongoing employment issue which the solicitors were acting on. And the settlement agreement follows this chain of events. It wasn't an isolated, unrelated incident. I asked Mr L to provide a copy of the client care letter from his chosen solicitor so I could see when he instructed them to act for him on the settlement agreement. He's provided the engagement letter from when he first instructed them. As there isn't a separate retainer, I think it's fair to say the solicitors considered this to be the same issue which they were already instructed to act on.

I've also asked Mr L for a time / cost breakdown of the solicitor's invoice on the settlement agreement. This would show when the solicitors first started reviewing and advising on the agreement. Mr L hasn't provided this, despite opportunities to do so. If Mr L was waiting to

hear from Aviva regarding his claim and only used his chosen solicitor when Aviva failed to respond in time, I would expect the solicitors to have started work on the agreement late into the ten-day deadline. And I would've expected to see Mr L following up his claim with Aviva and making them aware of the impending deadline and the urgency of his request for cover. But no evidence of this has been provided.

I can't say for certain what Mr L would've done had Aviva prioritised the case and offered him a panel firm within the ten-day deadline. I appreciate that, in hindsight, Mr L says he would've accepted. But I must determine what I think is more likely to have happened, on the balance of probabilities, based on the information available. And I remain unpersuaded that Mr L would've opted to move his case to a solicitor who was unfamiliar with the background to his situation and take their advice on an agreement which would end his employment.

And even if he had done, the panel solicitor would've only ever checked and advised on the terms of the settlement agreement. This would involve the solicitor reading the agreement and explaining to Mr L what it means and whether it seemed fair or not.

Mr L says his solicitor redrafted terms within the agreement, carried out extensive research into the provision of his pension contributions, and considerable work was done to reposition the agreement more in Mr L's favour. This is far beyond checking and advising on the terms, and I'm not persuaded his policy would not have extended to this level of representation.

As such, I remain satisfied that even if Aviva has prioritised this claim in the way it should have, it's more likely Mr L would've opted to use his chosen solicitor who was familiar with the background of his situation and who would be able to provide the extensive level of support he was looking for.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 10 October 2025.

Sheryl Sibley
Ombudsman