

The complaint

Mrs J's complaint is about a claim she made on her Aviva Insurance Limited ('Aviva') legal expenses insurance policy, which was declined.

Mrs J says that Aviva treated her unfairly.

In this decision all references to Aviva include their claims handlers.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

Having done so, I don't uphold Mrs J's complaint for broadly the same reasons set out by the investigator.

Before I explain why, I wish to acknowledge both the volume of submissions Mrs J has made and her strength of feeling about her complaint. Whilst I've read everything she's said, I won't be addressing it all. That's not intended to be disrespectful. Rather, it's representative of the informal nature of the Financial Ombudsman Service. Instead, I'll focus on the crux of Mrs J's complaint, namely whether Aviva treated her unfairly.

The starting point is the policy terms. They say:

"For the insured events described below, which once we have agreed to and authorised, we will pay your costs and expenses to:

- a. Pursue or defend a claim for damages*
- b. Pursue the enforcement of an agreement*
- c. Seek an injunction e.g. to stop a neighbour being noisy*
- d. Seek other legal remedy"*

The insured incident Mrs J is claiming for in this case falls within the property disputes section of cover.

I've considered the sort of claim she's seeking cover for. It's clear from all the information, both she and her Barrister have provided that she wants cover for her legal costs in relation to defending a claim made against her in the Upper Tribunal (Lands Chamber). The claim made against her is to modify/vary restrictive covenants which benefit her property. Because the claim is one she is defending, the only applicable section of cover her is "a. Pursue or defend a claim for damages". That's because the remaining sections of cover relate to pursuing or seeking other remedies. And that is not the action Mrs J currently wants cover for. So, I don't accept that any other sections of cover apply here as contended.

When considering the claim made against Mrs B, I would need to be satisfied that the party bringing the claim is making one against her for damages. But that is not what is being sought in these proceedings and I have seen no evidence in the form of pleadings that support this. Rather the claim is specifically for the modification or variation of existing restrictive covenants. I accept that depending on the outcome of that claim, the other party might start a claim for damages against Mrs J for the costs they've accrued in stalling their development, but that's not currently the case. Equally a claim for costs in the action against Mrs J don't in themselves amount to a claim damages. They are simply a consequence of the claim being brought against her. On that basis, I agree that Aviva were entitled to decline her claim for cover and that she is not currently entitled to have her legal expenses covered by them to defend this specific claim.

I appreciate Aviva gave different reasons for declining Mrs J's claim and even sought a legal opinion on the matter. It's not uncommon for insurers to consider submissions and respond to them based on the information they have at the time. Mrs J made several submissions in response to each declination which I can see Aviva addressed them differently each time. I don't think this was unreasonable. I appreciate they also sought legal advice on the question of policy coverage. I think that was largely because they didn't understand the nature of the claim Mrs J was seeking to defend given the volume of submissions she'd made about it. Aviva aren't legally trained and, in this case, I can quite understand why they wanted legal advice about whether the assertions Mrs J was making were ones that meant that the claim was covered. The panel firm's advice was that they were not, largely because a claim that would likely be covered had yet to be made. That's because Mrs J was not yet in a position to claim against the other party as she was still defending litigation about their entitlement to modify or vary the existing restrictive covenants. The question of prospects of success and proportionality of the claim is therefore largely academic in my view. The issue here is whether the claim is capable of cover and for the reasons I've set out above, I don't believe that in its present form, it is. That may change depending on the outcome of these current proceedings and what action the other party takes. If that happens Mrs J will be entitled to seek assistance from Aviva again.

For the reasons I've set out, I won't be addressing any submissions on the merits of the claim, proportionality or Mrs J's Barrister's submissions about why he thinks her defence in the Upper Tribunal will succeed as they make no difference to the outcome of this claim because it is not one which is covered under the policy terms.

Mrs J is unhappy that Aviva didn't provide her with the identity of the lawyers they instructed to provide them with legal advice. I don't think they needed to in this case. The advice they sought was to enable them to determine policy coverage. Arguably they didn't require this advice given the nature of the claim, but I can understand why they sought it given the various submissions Mrs J made to them. Either way I don't think they did anything wrong by not providing the details of the firm they instructed in this case to Mrs J as this was sought for their own purposes.

My final decision

For the reasons set out above, I don't uphold Mrs J's complaint against Aviva Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 3 December 2025.

Lale Hussein-Venn
Ombudsman