

The complaint

Mr B's complaint is about a claim he made on his Aviva Insurance Limited trading as Quotemehappy.com ('Aviva') legal expenses insurance policy.

Mr B says Aviva treated him unfairly which led to him incurring significant losses.

What happened

Mr B was involved in a motor incident with another vehicle where he claimed he'd been injured.

Mr B made a claim on his legal expenses insurance policy for cover to pursue the other party for a claim in personal injury. Aviva appointed firm A to assist Mr B. Firm A entered into a "no win no fee" conditional fee arrangement with Mr B. They also had delegated authority from Aviva to act under the terms of Mr B's legal expenses insurance policy.

Firm A brought a claim against the other party on behalf of Mr B. In 2021 the third party obtained permission to amend their Defence to include evidence which called into question the strength of Mr B's claim. Mr B says he was not however advised at the time that his claim did not have reasonable prospects of success or what this might mean for the cover provided by Aviva.

The claim proceeded and in January 2023 Mr B was advised by Firm A to settle the claim, that his policy would not cover him if he discontinued it and that he would also be liable to pay Firm A's costs. Mr B says that on the advice of Firm A he agreed to pay the other party £106,000 in respect of their costs and the return of an interim payment, and that he was asked to pay Firm A's costs which amounted to roughly £105,400. Mr B says the impact of the outcome of these proceedings was that the other party put a charging order on his home for the sums owed to them, that he subsequently sold his home and has since discharged the amount due to them.

Amongst other things Mr B complains that he had not been found to be dishonest in his claim, that he had followed Firm A's advice throughout and settled the claim at a considerable loss to him because he was told no funding was available to assist him at the trial that was due to take place shortly after that advice. Mr B says that he had no contact with Aviva at all about his claim and feels that his policy should have covered him in his circumstances.

Our investigator considered Mr B's complaint and ultimately concluded that it should be upheld. Aviva did not agree, so the matter was passed to me to determine.

I issued a provisional decision in which I said:

"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 uphold Mr B's complaint for substantially the same reasons set out by the

investigator, but I have amended the redress to fully capture the impact on Mr B.

Before I explain why I wish to acknowledge both parties' submissions in this complaint. Whilst I have considered everything they've 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've focused on the crux of Mr B's complaint, namely whether Aviva treated him fairly and if not what they need to do to put things right.

Before I address my findings, I wish to be clear that I can't comment on the conduct of Firm A in their capacity as a provider of legal services. That does not fall within my remit as they are separately regulated independent professionals with their own codes of conduct pertaining to this. I can however determine this complaint against Aviva in respect of Firm A's actions when they were acting for Aviva by exercising delegated authority on their behalf by making decisions about the insurance cover. It's this conduct that I refer to in this decision.

From what I've seen Firm A have maintained they were acting under delegated authority for Aviva under the terms of Mr B's legal expenses insurance policy that was in place in 2017. That policy provides cover for:

"Legal protection to claim costs or compensation after a motor accident or incident".

"On receipt of a claim, we will appoint a lawyer to act for you."

"If at any time it is established that your claim no longer has a reasonable prospect of success, we will confirm this in writing to you. We will pay for all costs and expenses we have agreed or authorised prior to the change in prospects of success. You have the right to continue the legal proceedings but this will be at your own expense and we will not pay any legal costs and fees you may be held responsible for after the confirmation in writing."

"The legal costs and expenses we will pay for

We will pay the following:

- 1. reasonable legal costs and expenses incurred in respect of your claim; and/or*
- 2. legal costs and expenses, which we have agreed to or authorised, which you have been held responsible for or ordered to pay by a court or similar body."*

In this case Aviva instructed Firm A to act for Mr B. From what I've seen Firm A were aware that there was a significant change in the weight of the evidence in 2021, yet Mr B did not receive any advice about this nor was he told that Aviva would no longer cover the claim. It wasn't until shortly before trial that Mr B was told the merits of his claim had changed significantly and that funding was no longer available. Given his proximity to trial he was told to settle the claim or go it alone. I can see the considerable difficulty this would have presented for Mr B. The settlement he entered into was in respect of the other party's costs only together with return of the interim payment made to him. And given funding was effectively withdrawn so late in the day I think that the option Mr B took wasn't much of a choice. The alternative would have been to go to trial alone and potentially pay more in respect of the other party's costs, if he lost, which looked probable at this point based on the weight of the evidence.

Given Firm A had delegated authority on behalf of Aviva, they would have been aware that the claim had no reasonable prospects of success in 2021 when the weight of the evidence in this case pointed to this after the other party's defence was amended. Had Mr B been told at that point that cover would be withdrawn, I think the loss to him would have been far less.

As things stand, the policy provides cover for Mr B's legal costs up until the point he was told his prospects had fallen to below the threshold required. The policy also provided cover for legal costs Mr B had been held responsible for. In this case he was being held responsible for the costs of the other party as part of the settlement because he was effectively discontinuing the claim he'd brought. And whilst Aviva or Firm A didn't authorise those costs being paid by Aviva, I don't think it's fair for them to rely on this here. As matters stand, Mr B was made responsible for costs he should never have been expected to pay as part of the policy, had matters been handled properly and had he been told at the right point in time that cover was no longer available. The purpose of the policy was to protect him in those circumstances.

I appreciate that in this case Firm A have raised questions over the honesty of the claim Mr B was advancing but as Mr B has said through his representatives, that is not something that was determined at trial and there is nothing in the policy terms that suggest that a claim that previously had merit, then later didn't when further evidence was adduced by another party, shouldn't be covered. I'm therefore not persuaded by anything Firm A has said to support that Aviva is entitled to turn down Mr B's claim.

I now turn to the impact Aviva's actions have had on Mr B. It's clear to me that Mr B was left with a considerable bill of costs both for the other party and Firm A's costs. I'm unclear about why Firm A are seeking their costs from Mr B and not Aviva under the policy but whatever the case, for the reasons I've mentioned, these should be covered by Aviva. I also think Aviva should fund the other party's costs because Mr B was effectively held responsible for these given he was provided with little or no choice but to agree to pay them immediately before trial, otherwise cover would be withdrawn. But that doesn't necessarily bring an end to the losses he suffered. A charge was placed on Mr B's property and his property was sold which then discharged the amount due to the other party.

I don't know what losses were incurred by Mr B in his dealing with the charge and whether the sale was prompted by threats of an order for sale or otherwise, but I feel that given this issue arose, further advice should be sought and paid for by Aviva to establish Mr B's losses. As such I feel that Aviva should instruct an independent Barrister to assess the losses Mr B suffered as a result of their failure to tell Mr B the merits of his claim were below 51% in 2021 and that cover had come to an end, which would have ultimately led to them covering Firm A's costs and the other party's costs at that time if he'd discontinued the claim accordingly. For clarity, I don't think Mr B would have been obliged to pick up the other party's costs at this time because those costs would have amounted to something he would have been "held responsible for" in accordance with the policy terms, either by way of a Notice of Discontinuance being filed or by settlement. I've set out how Aviva should deal with the issue of considering further losses in more detail below.

Finally, I have considered the impact this matter had on Mr B personally and I'm satisfied it is on the severe end of our scale of compensation awards. I say so because Mr B was committed to paying over £200,000 almost overnight as a result of these actions which led to a charge being placed on his home that was ultimately sold. The alternative was for him to find around £50,000 to help him represent himself at a trial he was most likely to have lost based on the weight of evidence. If that happened, he would have been ordered to pay even more for the other party's costs. Those are frightening sums to be facing and I can't imagine the distress this must have caused and continued to cause him even after his property was sold. As such I have made an award of compensation commensurate with the extremity of the situation Mr B found himself in.

Putting things right

Aviva should:

- *Cover Firm A's costs incurred in pursuing the claim on Mr B's behalf as well as any fees they might be seeking for chasing Mr B for these sums.*
- *Provide Mr B with confirmation that those costs have been paid.*
- *Reimburse Mr B for all of the sums he paid the other party in this case plus interest at 8% per year simple from the time they were paid, until he is reimbursed. Aviva will be entitled to ask Mr B for evidence the payment of the sums he made to assess this.*
- *Instruct an independent Barrister to assess any additional losses Mr B suffered as a result of being made responsible for the other party's costs. This can include his own Solicitor's costs if the Barrister deems it was reasonable for them to be instructed in the circumstances. Aviva should supply Mr B with three different Barristers to choose from. Mr B will be entitled to provide them with all the evidence and narrative of any losses he is claiming in respect of this as part of that Barrister's instruction.*
- *Pay Mr B £2,500 for the distress and inconvenience caused to him."*

I asked both parties to provide me with any further comments or evidence for me to consider in response to my provisional findings. Both parties have now replied. Mr B has accepted my provisional decision, but Aviva has not. In summary they say:

- They are solely the funding party in this case and Firm A was instructed by Mr B under the terms of a separate retainer. As such they don't have control over the conduct of the proceedings or any related decisions outside of the decision on whether to fund or continue funding the claim.
- If a policyholder is unhappy with the choice of firm, they're entitled to appoint their own Solicitors.
- As Mr B has said, he had no contact with Aviva at all and that is because Aviva had no control over the legal proceedings.
- Mr B pursued a complaint against the Firm A with the Legal Ombudsman which was dismissed.
- They've provided a chronology of the case showing that Mr B was invited to numerous conferences with a Barrister where he was made aware of the significant risks on the case, the balance of prospects and impact on funding.
- Mr B was aware of the allegations being made by the other party in the proceedings from at least 16 December 2021 and still chose to continue the claim.
- They do not agree that Mr B was unaware of or not advised of the claim's prospects of success or the cost implications. Discussions on prospects of success would have been held on 24 May, 20 September and 27 October 2022 with the eventual outcome and the fees and associated cost implications explained as a possibility.
- Mr B contends that dishonesty has not been found but Aviva believe that the video evidence in conjunction with the Particulars of Claim and supporting medical evidence shows that he used this LEI cover to bring a dishonest/exaggerated claim as outlined in their policy terms. This was only brought to their attention after Mr B withdrew his claim.
- In 2021 Aviva were only aware that prospects still existed so they were not investigating the claim as fraudulent. They were not made privy to the CCTV footage until Firm A notified them that they were seeking recover of their fees from Mr B.
- On receipt of the CCTV footage, Aviva determined that the claim was dishonest/exaggerated under the 'Fraud' section of their policy terms which states that they're not obliged to pay the claim.
- The video supplied shows Mr B walking and carrying a loaded basket during a supermarket shop, taking extended walks and trimming a hedge from a ladder whilst gardening when he'd previously claimed that he struggled to walk. If my provisional findings stand, I would be asking Aviva to pay a fraudulent claim which is inconsistent with market practice.

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 remain of the view that Mr B's complaint should be upheld in the same way and for the same reasons set out within my provisional decision.

Up until the outcome of my provisional decision, both Aviva and Firm A have maintained that Firm A had delegated authority to deal with Mr B's claim under the terms of his legal expenses insurance policy. Indeed, Aviva has made clear that they have had no dealings whatsoever with this claim since they referred Mr B to Firm A to act for him under the terms of his legal expenses insurance policy underwritten by them. In light of that, I have determined Mr B's complaint based on the actions of Firm A when acting on behalf of Aviva in making insurance decisions. So, although Aviva say they had no knowledge of matters until after the claim concluded, that does not absolve them of funding responsibilities where Firm A are acting under delegated authority for them. And if Firm A didn't act properly and as we would expect them to as an insurer should, that is entirely a matter between them and Aviva to resolve, and not one I can comment on.

Based on Aviva's chronology, it's clear that despite various indications and risks being outlined to Mr B about the outcome of his claim, he was *not* told that the merits of his claim fell below 51% until around December 2022 following which a further Barrister's opinion was sought by Firm A to confirm the position. This was received in January 2023. That opinion set out that there was a serious risk of Mr B being found dishonest if he continued with the claim, following which he made an offer to settle the matter, eventually culminating in the settlement I outlined in my provisional decision. This isn't inconsistent with my provisional findings. Whilst Mr B might have been made aware of serious risks prior to December 2022/January 2023, he was not advised that the merits of his claim fell below those required for funding to continue. And given the policy terms set out that cover continues based on that, there is no good reason why Firm A's costs shouldn't be covered up until this point by Aviva in accordance with their policy terms.

For the same reasons and those set out within my provisional findings, I'm not persuaded that the other party's costs should not be covered by Aviva either. I appreciate that Aviva now wish to rely on the 'Fraud' section of their policy not to pay these costs or Firm A's, but this is long after they or Firm A (acting on their behalf acting under delegated authority) failed to fulfil their obligations under the policy, which was to cover Mr B's costs and the other party's, up to the point where prospects fell below 51%. Indeed, what then transpired was that Mr B ended up having a charge placed on his property, which was then sold to discharge the amount due to the other party. Firm A then sought to pursue him for their own costs. At no point in that process did Aviva, or Firm A on their behalf, set out clearly or from the outset that this was because they felt Mr B had exaggerated or falsified his claim. Equally there is no finding by a Court or otherwise to support that proposition. Because of this, I don't think it's fair for Aviva at this very late stage to now assert that to avoid discharging their obligations to Mr B under the terms of their policy. When reaching this conclusion, it's of note that the video evidence in this claim was served in November 2021. Notwithstanding that Firm A and the Barristers advising Mr B did not say this meant that the claim had less than 51% prospects of success. I don't know why this was but if it was felt that the evidence they'd seen at that time was so fatal that it undermined Mr B's claim so much that it would inevitably lead to a finding of dishonesty or exaggeration at the very least, I struggle to see why it was felt the claim was certified as having 51% prospects of success until December 2022. Given the advice was that the claim still had reasonable prospects of success until that point and the video evidence was available for an entire year before that, I struggle to see how Aviva can suggest now, four years on, that the claim falls under the

'Fraud' section of their policy and that they're entitled to decline it in the way that they now assert.

I turn now to the Legal Ombudsman's decision. That was in response to a complaint about the panel firm. The Legal Ombudsman does not have jurisdiction over the actions of Aviva nor are they able to determine whether Aviva treated Mr B fairly when dealing with his legal expense's insurance claim. Because of this, their findings make no difference to the outcome of my decision. And as the parties are aware I have considered Firm A's actions as Aviva's own when they were acting under delegated authority to make decisions about insurance cover. If Aviva is concerned about those actions, they should address those with the panel firm directly.

Overall and for the reasons I set out within my provisional findings, I think Aviva's handling of Mr B's claim fell well below what we would expect from a legal expense's insurance provider. They did not provide cover in accordance with their policy terms, and this led to serious ramifications for Mr B. As such they should put things right in the way that I've set out below.

Putting things right

Aviva should:

- Cover Firm A's costs incurred in pursuing the claim on Mr B's behalf as well as any fees they might be seeking for chasing Mr B for these sums.
- Provide Mr B with confirmation that those costs have been paid.
- Reimburse Mr B for all of the sums he paid the other party in this case plus interest at 8% per year simple from the time they were paid, until he is reimbursed. Aviva will be entitled to ask Mr B for evidence the payment of the sums he made to assess this.
- Instruct an independent Barrister to assess any additional losses Mr B suffered as a result of being made responsible for the other party's costs. This can include his own Solicitor's costs if the Barrister deems it was reasonable for them to be instructed in the circumstances. Aviva should supply Mr B with three different Barristers to choose from. Mr B will be entitled to provide them with all the evidence and narrative of any losses he is claiming in respect of this as part of that Barrister's instruction.
- Pay Mr B £2,500 for the distress and inconvenience caused to him.

My final decision

For the reasons set out above, I uphold Mr B's complaint against Aviva Insurance Limited trading as Quotemehappy.com and direct them to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 October 2025.

Lale Hussein-Venn
Ombudsman