

The complaint

Mr S complains that Aviva Insurance Limited declined a claim he made on his legal expenses insurance policy.

Where I refer to Aviva Insurance Limited, this includes its agents and claims handlers acting on its behalf.

What happened

In August 2024 Mr S contacted the legal helpline, which is provided with the policy, about a dispute with the owner of land next to his property. He submitted a claim form on 29 August. Mr S says he had wanted to lodge the claim earlier but had to wait for the claim form to be provided.

Aviva confirmed the claim was one that would potentially be covered by the policy but requested further information from Mr S. After reviewing this, it referred the matter to panel solicitors for assessment on 8 October 2024.

The other party then filed an application seeking a court order to stop Mr S using a strip of land next to his property and a court hearing was fixed for the 31 October 2024.

On 30 October the panel solicitors said they had a conflict of interest and couldn't deal with the matter.

The court hearing went ahead and an interim order was made against Mr S, preventing him from using the piece of land except for access.

Aviva appointed another firm of solicitors on 2 November 2024. They instructed an advocate to advise. His advice was that the land in question belonged to the other party, the only right Mr S had was a right of access, and he would not have reasonable prospects of overturning the interim court order. Aviva didn't agree to cover the claim.

Mr S wrote to the court saying he would not be able to defend the case and would give an undertaking to comply with the interim order.

Mr S said Aviva's delays had led to the court order being granted and complained about the way the claim had been dealt with. Aviva said it had not caused any unreasonable delay and there was no cover for a claim if the legal advice was that he didn't have reasonable prospects of success.

Our investigator said it was reasonable not to cover the claim in light of the legal advice, and Aviva had offered to cover some limited costs for Mr S to file a notice of intention to defend. She didn't think there had been unreasonable delay. She also said although Mr S was unhappy with how Aviva had dealt with a subject access request he had made, any complaint about breaching rules relating to that could be referred to the Information Commissioner's Office.

Mr S disagrees and has requested an ombudsman's 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.

This matter has been ongoing for some time, and we have received extensive comments. Mr S in particular has provided very detailed submission and documents. I have only summarised the key events above, and I won't comment in detail on every single point that has been raised but will focus on the key points that are relevant to the outcome I've reached. This is in line with our role, which is to provide an impartial review, quickly and with minimal formality. I use my judgement to decide what's fair, based on the main crux of a case.

There are two key issues to consider – whether it was fair to decline the claim, following the legal advice Aviva received, and whether there were delays by Aviva in obtaining that advice. The situation has been very difficult for Mr S, and these issues are very important to him but, having considered everything very carefully I'm not upholding the complaint, for the following reasons:

- The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; support a policyholder to make a claim and consider if someone is in a vulnerable situation when dealing with them; and not unreasonably reject a claim.
- The starting point when deciding whether the claim was declined fairly is the policy terms; these set out the terms of the insurance contract between Mr S and Aviva. The policy provides cover for the type of dispute Mr S wished to claim for, but this is subject to the policy terms and conditions.
- The policy terms say cover will be provided if the claim has reasonable prospects of success. It's a requirement of almost all legal expenses insurance that cover will only be provided if a claim is likely to be successful. I think that's reasonable – it wouldn't be fair to expect an insurer to cover a claim if it's unlikely to succeed. Insurers will obtain legal advice about the prospects of success and they're entitled to rely on that advice unless it's obviously wrong. They are entitled to keep this under review as a case progresses.
- The Advocate's advice was clear and explained why they did not think Mr S' case had reasonable prospects of success. It's a properly reasoned opinion from someone suitable qualified, so it was reasonable for Aviva to rely on it.
- Mr S says there was a delay of 49 days before the panel solicitors were appointed and, if that had not happened, his claim would have been covered, he would have been represented at the hearing, and would have been successful. In particular, he says he would have had prospects before the hearing but it was harder afterwards to set aside the interim order.
- A key point for Mr S is his claim that he acquired rights over the land in question through occupation. The advocate advised that occupation does not, on its own, give him rights of ownership – the possession must follow on from the recording of a deed (“a non domino disposition”) – but Mr S has not registered any such deed and without this, the prescriptive clock on ownership had not started to run. For this reason, the advocate said Mr S did not have prospects of success in seeking to claim ownership.
- Mr S himself acknowledges the evidence was the same whether pursuing or defending a claim. So it's not clear to me that it would have made a difference whether he was pursuing or defending – the same points would have been relevant. Underlying the advice was the evidence about ownership and the legal advice was that he hadn't shown reasonable prospects of proving ownership.

- The claim was submitted on 29 August 2024. Aviva asked Mr S to provide some further information. I think that was reasonable, so it had the full picture about the nature of the dispute before referring it to solicitors. This didn't cause any unnecessary delay before it was referred to the panel solicitors on 8 October.
- There was a short delay before the firm appointed one of their solicitors to look into it on 17 October, but that wasn't in Aviva's control. The solicitor then advised they had a conflict of interest and couldn't deal with it. This was the day before the court hearing. I appreciate Mr S was in a very difficult position, as there was a court hearing and he didn't have anyone to act for him. But it wasn't Aviva's fault the solicitor couldn't act. It's for the solicitor to check whether they can take work on and advise if they have a conflict; that's not something Aviva can control.
- Aviva acted very quickly to find another firm of solicitors, who then instructed the advocate to advise. Their advice was given on 16 November 2024. So that was all dealt with promptly.
- Mr S was unhappy as he said the solicitors told him they would represent him but changed their minds at the last minute. The solicitors confirmed to Aviva they had not said this – at that stage they were only to review the papers and advise whether the claim had prospects of success. They had not been instructed to act for Mr S.
- Mr S has recently provided detailed comments about why he thinks the legal advice was wrong, and why – if it had been dealt with more quickly – the interim court order would not have been granted. He doesn't think the advocate had suitable experience in planning and environmental law.
- Aviva was entitled to rely on the legal advice provided. Mr S has only provided these further comments recently; Aviva didn't have them at the time. In any event, while Mr S has carried out detailed research, I don't place more weight on his comments than the opinion from the advocate.
- Aviva explained to Mr S that if he wanted to challenge the advocate's opinion, the way to do that was to provide a contrary opinion from another lawyer of similar standing. He's referred to advice he has received more recently from a lawyer, but he didn't provide a reasoned opinion for Aviva to consider.
- Mr S made a second claim on the policy to cover a nuisance claim. He's provided submissions relating to that. While there may be some overlap in the circumstances relating to the two, that was a separate claim and would need to be considered separately. I'm only considering the way Aviva dealt with this claim in the period between August and November 2024.
- Mr S has referred to other ombudsman decisions. He says the principles from those decisions apply and we should follow the precedents set by them. Our decisions do not set precedents. And the circumstances in those cases, where it was accepted there had been delays, were quite different. I don't consider there were unreasonable delays in this case.
- Although Mr S considers his claim had been validated on 29 August 2024, it had only been accepted as potentially covered; that was subject to legal advice confirming his case had reasonable prospects of success and cover would not be provided without that.
- I appreciate Mr S first contacted the legal helpline earlier in August 2024 but the claim form wasn't provided straightaway. I've considered what would have happened if he'd been able to submit the claim earlier. It's likely the legal advice would have been obtained a little earlier, but if it wasn't favourable, his claim would not have been covered anyway.

- Mr S says the evidence he's provided shows a proper assessment would have prevented his loss – because the solicitor would have reviewed the planning position and identified the other party couldn't proceed with the development they were proposing, so there was no urgency and the interim order would not have been granted. These are new points, which weren't presented to Aviva at the time. And he hasn't provided a reasoned legal opinion showing the outcome would have been different if they had been considered.
- In addition, when Mr S made his claim, he wanted cover to pursue a case against the other party, seeking ownership of the land in question. The legal advice was that he did not have prospects of success in seeking to claim ownership. So if the advice had been given earlier, cover would not have been provided in any event.
- He also says solicitors should have been appointed on 28 October 2024 and represented him at the hearing (even if they had not had time to do an assessment) in order to protect his position. I wouldn't expect an insurer to appoint solicitors to act before the claim had been assessed and cover confirmed.
- Mr S has mentioned his right to choose his solicitors where there is a conflict of interest. If cover is provided for a claim and there's a conflict, the policyholder can choose another firm, as set out in the Insurance Companies (Legal Expenses Insurance) Regulations 1990. This applies where a lawyer is to represent the insured's interests any inquiry or proceedings. So if cover had been provided and a lawyer was appointed to represent Mr S in the proceedings, that would have been relevant. But he hadn't got to that point – the claim wasn't covered and no solicitors were appointed to represent his interests.
- Finally, Mr S has referred to the fact he has disabilities and says Aviva breached the Equality Act 2010. I've taken the Act into account when deciding this complaint – given that it's relevant law – but I've ultimately decided this complaint based on what's fair and reasonable. If Mr S wants a decision that Aviva has breached the Equality Act 2010, he'd need to go to Court.
- He was also unhappy with the way Aviva dealt with a subject access request he made to obtain documents on the file. That wasn't part of his original complaint and in any event it's not for me to determine whether that request was handled correctly; that's a matter for the Information Commissioner's Office.

For these reasons, I don't consider it was unfair to decline the claim. While there was some delay assessing the claim, any delays were short and I don't think Mr S would have been in a different position if the claim had been dealt with sooner. While it was very frustrating for Mr S that he didn't have cover to defend the court action I don't think that was due to failings in the way the claim was handled.

My final decision

My decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 January 2026.

Peter Whiteley
Ombudsman