

## **The complaint**

X and Mr H complain about the amount of time Aviva Insurance Limited took to progress a claim under their legal expenses insurance policy.

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

For ease of reading, I'll refer only to Mr H.

## **What happened**

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

- On 21 November 2024, Mr H made a claim under his legal expenses insurance policy to pursue a dispute with his neighbours regarding repair costs to a shared access way and the incorrect position of a fence.
- A few days later, Mr H informed Aviva of the urgency of the claim, as an offer had been accepted to purchase the neighbour's property and completion was likely to take place within four weeks.
- Aviva declined the claim on the basis the dispute with the neighbour started prior to the policy.
- Mr H contacted Aviva the same day. He said they'd only become aware of the boundary dispute recently.
- Aviva agreed to cover the boundary dispute only. And, on 28 November 2024, it instructed its panel firm of solicitors. It informed Mr H that a legal assessment would take approximately 5-10 days.
- On 9 December 2024, Mr H contacted Aviva as he hadn't heard anything from the panel solicitors. Aviva sent a chaser email requesting an update.
- The following day, Mr H was contacted by his neighbour's solicitors to discuss negotiations. He informed Aviva again of the urgent need for legal representation and said that if he hadn't heard from the panel solicitors by 11 December 2024, he'd instruct his own solicitors and require Aviva to pay the costs.
- Aviva said it wouldn't cover any legal fees incurred without its prior approval. And as it didn't have a legal assessment of the claim yet, it couldn't confirm the claim was covered by the policy.
- On 11 December 2024, the panel solicitor responded to Aviva to say it hadn't received instructions on 28 November 2024. Aviva resent the file, but the panel solicitors didn't receive it. They advised Aviva they wouldn't be able to comply with

Mr H's request to expedite the matter as boundary disputes are inherently complex.

- A few days later, the panel solicitors advised Aviva they still hadn't received part of the file. Aviva sent this on 16 December 2024, and the panel solicitors confirmed they would now start their assessment.
- By this time, Mr H felt he couldn't wait any longer for the panel solicitors. He instructed a solicitor of his own choice who negotiated with the neighbour's solicitors and brought the matter to a conclusion.
- Mr H raised a complaint and asked Aviva to reimburse the legal costs incurred of £1,060. When Aviva refused, he escalated his complaint to our Service.
- Our Investigator didn't uphold the complaint. Whilst she appreciated Mr H was keen to resolve the dispute over the boundary, she wasn't persuaded this had to be done prior to the sale of the neighbour's property. And as the policy doesn't cover legal costs incurred before a claim is accepted and the costs approved, she didn't think Aviva had acted unfairly in declining to cover the legal fees.
- Mr H didn't agree. He said the neighbour's solicitors had indicated the boundary discrepancy needed to be resolved as part of the conveyancing. Aviva had made no attempt to instruct another panel solicitor, nor had it provided Mr H with the contact details so he could contact the solicitor directly. He felt he was left with little choice but to instruct his own solicitor to protect his position.

As Mr H didn't agree with our Investigator, the complaint was passed to me to decide. And I issued the following provisional decision.

### **My provisional decision**

I've reached a different outcome to our Investigator. 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 Financial Conduct Authority's (FCA) Insurance Conduct of Business Sourcebook (ICOBS) requires businesses to handle claims promptly and fairly, provide information on the claim's progress, and to not unreasonably reject a claim. I've kept this in mind when considering Mr H's complaint.

Looking at the timeline of events, I accept that Aviva instructed its panel solicitors promptly once the claim was accepted and it informed them of the urgency of the situation. I also accept that Aviva aren't responsible for the actions or conduct of a firm of solicitors.

That said, Aviva are responsible for Mr H's claim and ensuring that it progresses promptly and fairly. So when it instructed its panel solicitors and received no acknowledgement of those instructions, I would've expected it to follow up to ensure the claim had been received and was progressing. It was only after Mr H chased Aviva after the 10 days had expired that Aviva became aware its email hadn't been received by the panel solicitors. It then took a further few days for the solicitors to be sent the full file.

The panel solicitors made Aviva aware that they couldn't complete their assessment in the time limits Mr H had given. And Aviva was aware of the impending sale and urgency to the

claim. So, I would've expected Aviva to discuss alternative options with Mr H given the delay was as a result of Aviva's email not being received, rather than anything Mr H did or could've avoided. To simply leave Mr H without cover when a valid claim had been made isn't fair or reasonable.

I understand Aviva would've paid its panel solicitors a fixed fee for the legal assessment. And, if there were prospects of success, it would've agreed further costs for the panel solicitors to negotiate with the neighbours. As Mr H paid this himself, Aviva has ultimately benefited from the delay whilst Mr H is out of pocket.

It's for this reason I'm persuaded Aviva should make a contribution of £800 towards the legal costs Mr H incurred on his claim. This represents the fixed fee for the legal assessment plus a few hours work under the policy's hourly rate, inclusive of VAT.

### **Responses to my provisional decision**

Both Mr H and Aviva accepted my provisional 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.

As both sides accepted my provisional decision and made no further submissions for my consideration, I see no reason to deviate from the conclusion I've reached.

### **My final decision**

For the reasons I've explained, I uphold this complaint and direct Aviva Insurance Limited to contribute £800 towards X and Mr H's legal costs, plus 8% simple interest from the date X and Mr H paid them until the date they are reimbursed.

Under the rules of the Financial Ombudsman Service, I'm required to ask X and Mr H to accept or reject my decision before 25 March 2026.

Sheryl Sibley  
**Ombudsman**