

The complaint

Ms B is unhappy with what Aviva Insurance Limited did after she made a claim on her legal expenses insurance policy (in relation to a personal injury claim).

What happened

In November 2019 Ms B contacted Aviva. She'd suffered a head injury following a fall on tiles in her kitchen and wanted assistance to pursue a personal injury claim. Aviva referred the matter to panel solicitors for an assessment of whether the claim had reasonable prospects of success (a requirement for funding to be provided under her policy).

In January 2020 the panel firm advised the claim didn't have good prospects of success. Ms B subsequently asked if a different panel firm handling a separate claim for her could progress the personal injury claim. Aviva contacted that firm and asked it to provide a prospects assessment. It chased progress on that over the following months but an assessment wasn't provided.

However, in October Aviva was contacted by a different firm (not on its panel) who said they'd now been instructed by Ms B to progress her claim. Aviva sent terms of business to that firm and asked whether the claim had prospects of success. That firm said a liability decision was awaited from the defendant and it would provide further updates after that. It told Aviva in March 2021 liability had been denied and it was seeking medical evidence after which it would be in a position to give an opinion on prospects.

Following contact from Ms B, Aviva asked that firm for an update in May 2022. It said they were no longer progressing the case; it appears that's because they were no longer satisfied the claim did have reasonable prospects of success. Aviva advised Ms B of the position and asked if she wanted to use one of its panel firms.

After discussion Aviva referred the matter to a new panel firm in June for a further assessment. That also concluded the claim didn't have good prospects. Information about that was provided to Ms B along with details of what she needed to do if she wanted to challenge the assessment. Ms B sent some further evidence in September which Aviva asked the panel firm to review. It confirmed its assessment remained unchanged.

Our investigator explained we couldn't consider the actions of the solicitors involved in the case. And the policy did require a positive opinion on prospects for funding to be provided. None of the opinions provided on Ms B's claim had been positive so she thought Aviva had acted fairly in turning down the claim. And she didn't think there had been any delay by Aviva in progressing matters.

Ms B didn't agree. She explained more about the impact of her head injury and other difficulties in her personal life. So I need to reach a final 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.

The relevant rules and industry guidelines say Aviva has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

First, I was sorry to learn of the impact of her head injury on Ms B and the other very sad personal issues she's experienced in recent years. I don't doubt this must have been an extremely difficult time for her.

Turning to the issues she's raised as part of her complaint she's provided information which relates to the actions of the solicitors involved with her claim. But what a solicitor's firm does when carrying out their legal role (for example assessing whether a claim has reasonable prospects of success) isn't something I can consider; the Legal Ombudsman might be able to consider a complaint about this.

What I can look at is how the claim itself was handled (as that's something Aviva is responsible for). However, while I appreciate Ms B has other claims she's seeking to progress I'm only considering in this decision her complaint about the personal injury claim she made.

I've looked first at the terms and conditions of Ms B's policy. This does include personal injury as one of the insured events for which the policy could pay costs and expenses to pursue a claim for damages.

But cover is only provided where a claim has prospects of success. The policy says "*Our lawyer will assess the evidence and if it is more likely than not that you will...recover damages or obtain any other legal remedy which we have agreed to (e.g. being paid compensation or stopping a neighbour from making noise) then we will fund the case for you*".

So after Ms B made her claim to Aviva in November 2019 I think it correctly referred the matter to one of its panel solicitors for an assessment of its prospects of success. The opinion from the panel solicitor was that it didn't have good prospects. I've read that opinion which I think is properly written and reasoned and from someone qualified to provide it. I don't think Aviva did anything wrong in then declining to provide funding for Ms B's claim.

I can also see that, as I'd expect, Aviva explained to Ms B what she'd need to do if she wanted to challenge that opinion. And it sought a further prospects assessment from the panel firm she wanted to then progress the case. It doesn't appear that was provided but I don't think that was because of anything Aviva got wrong.

Once Aviva was contacted by the firm Ms B had by then instructed it acted appropriately in sending terms of business to that firm and asking it to provide its own opinion on prospects. That firm seems to have taken time to provide further information but Aviva followed matters up with it (following contact from Ms B) and was told it was no longer acting for her. I think it was reasonable of Aviva to then offer another panel firm to carry out a prospects assessment.

And I think it was reasonable of it to rely on the further assessment from that firm and confirm it wouldn't be providing cover for Ms B's claim. I also think it was right Aviva referred the information Ms B then provided back to that firm (though it appears this was information that firm had already seen and taken into account when carrying out their original assessment).

In summary I think Aviva has correctly and fairly turned down the claim Ms B made because at no point has there been a positive assessment of its prospects of success. And I don't think there has been any significant delay by Aviva in progressing matters.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 13 October 2023.

James Park
Ombudsman