

## **The complaint**

Mr and Mrs S' complaint is about a claim they made on their Aviva Insurance Limited ('Aviva') legal expenses insurance policy.

Mr and Mrs S say Aviva treated them unfairly.

All references to Aviva in this decision include their claims handlers.

## **What happened**

Mr and Mrs S made a claim on their Aviva legal expenses insurance policy for cover to bring claims against their former employer. Aviva took the initial view that the claims might not be covered because they didn't fall within the scope of the employment cover provided by the policy. They asked for further information to determine this and the merits of the claims, which Mr and Mrs S' own Solicitor's supplied.

Aviva instructed a panel firm to consider the position. The panel firm took the view that the claims didn't have reasonable prospects of success, as required by the policy. Aviva said they were prepared to reconsider the position if Mr and Mrs S were able to supply any new information or evidence that might change things, or a positive legal opinion of their own from their own Solicitor.

Mr and Mrs S are unhappy about the panel firms' assessment- they say it was flawed. They're also unhappy with the claims process, which they say was slow, unfair and unclear. As such, they want Aviva to pay their legal fees from the time they made their claim for cover.

Our investigator considered their complaint and concluded it shouldn't be upheld. She thought that Aviva were entitled to rely on the advice of their panel firm and that the approach they followed was in line with the process followed by legal expenses insurance providers generally. In addition, she didn't think Aviva had caused any undue delays in their handling of the claim.

In reply to the investigator's assessment, Mr and Mrs S made a number of submissions, including that they did submit a legal challenge to Aviva, but this was never considered. Our investigator put these points to Aviva who provided a response on those submissions. The investigator then considered things again and delivered a second assessment of Mr and Mrs S's complaint. She said the legal challenge Mr and Mrs S say they submitted was Mr S' own opinion and not that of another comparable Solicitor. She also said that Aviva provided Mr and Mrs S with clear information about what they'd need to do if they wanted to challenge the panel firm's view and they're still entitled to take Aviva up on this if they wish to do so.

Mr and Mrs S disagreed with the investigator's view. They've made a number of further submissions in response to it, so the matter has been passed to me to decide.

## **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 Mr and Mrs S' complaint. I'll explain why.

Mr and Mrs S have made considerable submissions in this complaint. I won't be addressing each one of those in this decision. Rather, I'll deal with the main points they're unhappy with. That's not to say that I haven't taken everything they've said into account. My approach simply reflects the informal nature of the Financial Ombudsman Service.

The starting point is the policy terms. It's a requirement of virtually all legal expenses insurance policies that any intended claim has a reasonable prospect of succeeding. Mr and Mrs S' policy is no exception. That means their claims needed to have over 51% prospects of succeeding in order for Aviva to cover them.

We don't think this is unfair. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. Aviva did this.

I'm satisfied that the Solicitor was experienced in the area of law Mr and Mrs S were asking for help with. I understand he was also qualified to advise on Scottish law, which should alleviate Mr and Mrs S's concerns about this specific issue. In addition, I've seen nothing that suggests the advice was based on factual mistakes. I appreciate Mr and Mrs S don't agree with the advice they've received but that's not something I can consider. If, as Aviva said, they were to provide an alternative reasoned opinion from a Solicitor (and not something summarising any advice they might have been given themselves), then I would expect Aviva to consider that. Equally, if they provided Aviva with any new evidence or information that has now come to light that might change the outcome of their assessment, I would expect Aviva to refer that back to their panel firm. But as matters stand, I can't say Aviva did something wrong by relying on the legal opinion they received.

I appreciate that Mr and Mrs S don't agree with the way in which their claim was handled. They don't feel it was clear or fair. But I don't agree. The policy terms make clear the prospects requirement and that a lawyer will assess their case to determine their chances of winning. So, whilst Mr and Mrs S might have expected their own lawyer to be appointed to do this, I don't think that Aviva misled them or did something wrong by appointing their own panel firm to undertake this task. If their claim was found to have reasonable prospects of succeeding, Aviva would ultimately be responsible for Mr and Mrs S' legal fees, so they're entitled to take advice from their own choice of Solicitors in this regard. Equally Mr and Mrs S are entitled to challenge this with reference to their own legal opinion if they think this is wrong. I appreciate Mr and Mrs S haven't wanted to be put to the cost of doing this until now, but that doesn't mean that Aviva need to fund their claim or that the position they've taken is unfair.

In response to the investigator's second view of their complaint, Mr and Mrs S have now supplied an email from their Solicitor which states that the negotiations that are taking place between the parties currently and that the opposing party acknowledges the strength of their

claims, and that Mr and Mrs S might expect to receive more than is owed to that party. This email hasn't yet been referred to Aviva but I'm not sure it makes much difference to the merits of Mr and Mrs S's claim for cover. The email doesn't provide a reasoned legal opinion with an assessment of the merits of their claim, so I anticipate it will be unlikely to result in cover being granted. If Aviva reach this view, we're unlikely to say it's unreasonable.

Mr and Mrs S have complained about the information they were given about the policy and the suitability of it when taking it out. I won't be addressing that issue in this decision because that concerns the sale of the policy which is a separate complaint to the one I'm dealing with here. This complaint concerns the claim that was made on it by the insurer rather than the seller of the policy.

Finally and for the sake of completeness, I haven't seen any considerable delays in Aviva's handling of Mr and Mrs S' claim, such that I consider they prejudiced them in any way or that they need to do anything more to put things right.

### **My final decision**

For the reasons set out above, I don't uphold Mr and Mrs S' complaint against Aviva Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 13 November 2023.

Lale Hussein-Venn  
**Ombudsman**