

The complaint

Mr and Mrs C's complaint is about a legal expenses insurance policy they purchased from Avantia Insurance Limited ('Avantia').

Mrs C says that the policy was mis-sold.

What happened

Mr and Mrs C took out a legal expenses insurance policy with Avantia online in 2022. In doing so they bought what was described as 'full' cover.

Mrs C later made a claim on the policy for clinical negligence. The insurer of that policy declined to cover it on the basis that the cover she'd purchased didn't extend to clinical negligence claims and in the case of her particular policy, such claims were excluded.

Mrs C says Avantia assured her that her policy would extend to covering such claims. She said she had several phone calls with them about this and so relied on this when making her claim.

Avantia accepted that during a call with them in 2023, the person she spoke to misadvised her that her claim should extend to the one she'd made. To apologise for this error, Avantia sent Mrs C £100 in compensation.

Unhappy that her policy didn't cover her for the claim she'd made, Mrs C complained to the Financial Ombudsman Service.

Our investigator considered Mr and Mrs C's complaint but didn't uphold it. She thought that Avantia had given Mrs C enough information about the policy when she took it out to allow her to decide whether she wanted it. She said that the information Mrs C was provided with didn't set out that clinical negligence claims were covered, and the policy terms specifically excluded them. The investigator also acknowledged the misinformation Mrs C was given some time after the sale of the policy, but said that Avantia had adequately compensated her for the mistake they'd made by paying her £100 for this.

Mrs C doesn't agree 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 won't be upholding Mr and Mrs C's complaint. This is why.

The policy itself was sold to Mr and Mrs C online and on a non-advised basis. That means it was up to Mr and Mrs C to satisfy themselves that the insurance was suitable for their own needs and circumstances, but Avantia had to provide them with enough information to allow them to decide this for themselves.

Avantia have supplied screenshots of the information Mrs C would have been presented with when she took out the policy. From what I can see Mrs C selected “full” legal expenses cover which described itself as extending to:

*“Contract disputes
Property damage/trespass
Defence for criminal prosecutions as an employee
Employment disputes
Personal injury
Tax Advice helpline”*

There was nothing in that description or the quotation itself that makes me think Mrs C was misled into thinking she also had cover for clinical negligence claims. Mrs C was also provided with a copy of the policy terms when she took out the policy. Under the personal injury section, clinical negligence claims are specifically excluded.

But even if I take the view that the information given to Mrs C by Avantia wasn't clear enough on the question of cover, I haven't seen anything that makes me think she and Mr C would have done something differently and not taken out cover at all or sought cover on a standalone basis elsewhere. I say so because the claim Mrs C wanted to make in clinical negligence didn't appear to be known to her at the time, she took out the policy so there's nothing to suggest that she was specifically looking to take out this type of cover. And if it had been known to her at the time, the claim wouldn't have been covered by this policy or any other comparable before the event insurance policies, because the purpose of those policies is to cover things that you don't know about when you take them out. There are other policies that extend to covering claims a policyholder does know about, but the type of cover Mr and Mrs C took isn't one of them.

So overall I don't think that Avantia mis-sold the policy to Mr and Mrs C.

Mrs C says she was told on multiple occasions by Avantia that she was covered for clinical negligence claims. I accept, as Avantia, have, that information was given to Mrs C some considerable time after she took out the policy that made her think she should have been covered for clinical negligence claims. But that was after she made her claim to the legal expenses insurer and followed the claim being declined. It was also a year or so after she took out the insurance. So, I can't say this had any influence at all on her taking out the policy she claimed on. That said I appreciate Avantia's actions might have raised Mrs C's expectations that her claim could be covered, but I don't think that means they need to do anything more than they have. Avantia have paid Mrs C £100 in compensation for this. I think that's adequate in the circumstances. I know Mrs C is unhappy that she didn't accept this amount before Avantia paid it to her, but I don't think there's anything wrong with Avantia making this payment. After all, they didn't tell her it was in full and final settlement of her complaint, so she was still able to pursue her complaint through this Service to conclusion, irrespective of it.

Mrs C has referred to Avantia telling her on various occasions that she was covered for clinical negligence claims. I haven't seen anything beyond the call recording Avantia provided in which she was given the wrong information a year after she took out the policy that she claimed on. And in the absence of anything confirming this was what Mrs C was told before she took out the insurance, I can't say that Avantia need to do anything further.

I know my decision will be disappointing for Mr and Mrs C but I hope I've provided them with a thorough explanation of why I won't be upholding their complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 2 February 2024.

Lale Hussein-Venn
Ombudsman