

The complaint

Mr I's complaint is about a claim he made on his Aviva Insurance Limited legal expenses insurance policy.

Mr I is unhappy about how Aviva handled this claim.

All references to Aviva include their claims handlers.

What happened

Mr I made a claim on his legal expenses insurance policy for cover to bring a claim in respect of his property. After seeking further information, Aviva appointed a firm of Solicitors to consider the claim in accordance with the policy terms.

The Solicitor expressed doubts about Mr I's claim being proportionate to pursue so Aviva funded the appointment of a Barrister to advise on the likely sums he'd recover if the claim was pursued. The Barrister advised the claim wasn't proportionate to pursue and suggested Aviva might want to consider offering him the likely amount he would recover if he litigated the matter, which amounted to £1,000 on the higher end of the scale. Aviva agreed and made the offer to Mr I accordingly. Mr I wasn't happy with this. He thought that Aviva had spent more on lawyers' fees than was being offered to him and that it was possible he could recover more if the claim was pursued.

Mr I was also unhappy with the level of service he received from Aviva. He referred to delays and poor claims handling generally. Aviva accepted that there were some delays in dealing with his claim, so offered Mr I £100 for the distress and inconvenience this would have caused him.

Our investigator considered Mr I's complaint and concluded that it shouldn't be upheld. Mr I doesn't agree so the matter has been passed to me to determine.

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 I's complaint. I'll explain why below.

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 and is proportionate to pursue. Mr I's policy is no exception. That means his claims needed to have over 51% prospects of succeeding in order for Aviva to cover them and be proportionate to pursue.

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 or that the amount, they might recover would be less than the cost of the action itself. 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. The Solicitor's advice was that although the claim appeared to have reasonable prospects of success, it was unlikely to be proportionate to pursue.

Because the Solicitor didn't quantify the likely value Mr I could recover if the claim was funded to conclusion, Aviva authorised the Solicitor to instruct a Barrister to do this. The Barrister advised that it was less likely than not that Mr I would recover more than £1,000. Given the costs of the claim were likely to run to considerably more than that, Aviva offered Mr I £1,000 in settlement of his claim. But Mr I didn't accept this. He thought Aviva had spent this amount on instructing the Barrister alone, so their offer felt too low. He also felt the offer didn't take into account the time it took Aviva to reach this conclusion.

I'm satisfied that the Solicitor and the Barrister were experienced in the area of law Mr I was asking for help with and there's nothing that suggests their advice was based on factual mistakes. I appreciate Mr I feels the Tribunal he wanted to bring his claim in has a wide remit and can make larger settlements than the amount the Barrister advised he could expect to achieve at trial- but that doesn't mean that Aviva wasn't entitled to rely on the advice they received. In the absence of a contrary legal opinion from a legal professional of equal standing and experience to the Barrister instructed by Aviva, I can't say Aviva did something wrong by declining to cover his claim. Aviva wasn't obliged to offer a payment to Mr I in this case but did so with a view to bringing matters to a proportionate end. It is of course Mr I's prerogative to decline that offer but that doesn't mean Aviva need to pursue the matter further on his behalf.

I've taken on board Mr I's comments about the level of legal costs Aviva has spent on both the Solicitor and the Barrister and the fact that these likely outweigh the offer he was made, which he says is unfair. As the investigator explained, the level of legal costs Aviva might have spent on establishing the merits and proportionality of a claim aren't connected to an offer to settle it. And as I said above, Aviva weren't obliged to offer to settle Mr I's claim at all. They could have simply declined to cover it without doing so.

Finally, and for the sake of completeness, I've reviewed the delays and poor service Mr I has referred to in Aviva's handling of his claim. They are not significant, such that they would've impacted negatively on his claim or him, other than causing some distress and inconvenience. For that reason, I agree that the sum of £100 offered by Aviva is reasonable in the circumstances.

If Mr I wishes to now accept Aviva's offer to settle his claim of £1000 as well as the compensation payment of £100, he should contact Aviva directly.

My final decision

For the reasons set out above, I don't uphold Mr I's complaint against Aviva Insurance Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 6 November 2023.

Lale Hussein-Venn
Ombudsman