

## **The complaint**

Mr and Mrs S' complaint arises out of a claim they made under their Aviva Insurance Limited ('Aviva') legal expenses insurance policy, which was declined.

Mr and Mrs S are unhappy with the policy they were sold. They say that Aviva are responsible for this.

## **What happened**

In 2017 Mr and Mrs S took out a legal expenses insurance policy through a broker based in Scotland, where they live. They went on to renew the cover annually. The policy was underwritten by Aviva.

In 2022, Mr and Mrs S made a claim on the policy, which was declined by Aviva. They said that at that point it became clear to them that the policy terms had not been explained to them when they took it out, and that if they had been they wouldn't have taken it out at all. In addition, they said the policy wasn't suitable for their needs and was inappropriate for legal actions subject to Scottish law.

Aviva considered Mr and Mrs S' complaint and explained that they weren't the seller of the policy, so they weren't responsible for its suitability for their needs or the information they were given at the point of sale. Unhappy, Mr and Mrs S referred the matter to the Financial Ombudsman Service.

Our investigator concluded that their complaint shouldn't be upheld because Aviva wasn't involved in the sale of the policy at all; the broker that sold the policy was. As such she said that Aviva had done nothing wrong.

Mr and Mrs S don'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 and Mrs S' complaint. This is why.

I appreciate that Mr and Mrs S aren't satisfied with the response they received from Aviva to their complaint, but the matters they're unhappy about relate to the obligations of a seller when selling their legal expenses insurance policy, rather than the insurer who underwrites it. Sometimes the seller and broker of those policies are one and the same. But that's not the case here. Mr and Mrs S took out the policy from a local broker. So, the obligation was on that person or entity to provide them with clear, fair and not misleading information about the type of cover they were taking out- and not Aviva.

I know that Mr and Mrs S feel that Aviva hold some responsibility to them as the insurer of the product being sold. And that might be right if their complaint was about the claim they made, but it's not. Their complaint is about the clarity of the information they were given and

the fact that it wasn't suitable for them or complainants bringing claims subject to Scottish law more generally. That's not something we can consider against Aviva because they aren't responsible for selling the policy as well as the obligations that come with doing so.

Mr and Mrs S feel that the claims process wasn't set out in detail in the policy itself so they didn't understand the journey they would have to follow. Again, that information would've been supplied to them by their broker- so if they remain unhappy, they are entitled to raise a complaint with them.

I appreciate Mr and Mrs S are concerned about the content of the policy Aviva sells more generally but that's not something I can consider. My remit is to decide complaints specific to Mr and Mrs S' circumstances where the party they are bringing their complaint against is responsible. I can't step into the shoes of the regulator to deal with what Mr and Mrs S consider to be breaches of FCA principles in the design and marketing of the policy. That's simply not my role. Equally it's not my role to provide them with data about how often the Financial Ombudsman Service upholds legal expenses insurance complaints more generally. Doing so, wouldn't in my view provide them with any helpful information nor would it add anything to determining the specific complaint they've brought.

For the avoidance of doubt, Mr and Mrs S should note that complaints about the suitability of an insurance product do amount to an allegation of mis-selling. So, I don't accept their complaint has been wrongly considered as this either by the investigator or by me in this decision, given the nature of the complaints they have made.

Finally, I won't be determining the suitability of this particular insurance product for litigants bringing claims subject to Scottish law because I can only consider Mr and Mrs S' specific complaint and not potential complaints by other potential complainants. Mr and Mrs S are entitled to raise the matter with the Financial Conduct Authority, should they remain concerned.

### **My final decision**

For the reasons set out above, I don't uphold Mr and Mrs S'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 6 November 2023.

Lale Hussein-Venn  
**Ombudsman**