

The complaint

Mr K and Mr L are unhappy with what Aviva Insurance Limited did after Mr L made a claim on their legal expenses insurance policy.

What happened

Mr L had a dispute with a jeweller. In November 2022 he made a claim on his legal expenses insurance policy. Aviva referred the claim to one of its panel solicitors for an assessment of whether it had reasonable prospects of success (a requirement of the policy). After obtaining additional information from Mr L, a paralegal at the panel firm advised in January 2023 the claim didn't have reasonable prospects of success. Mr L queried next steps with Aviva which provided advice about this.

Mr L made a complaint to the panel firm and the claim was reassessed by a solicitor. Her conclusion was also that it didn't have reasonable prospects of success. Subsequently Mr L received a settlement offer from his bank with whom he'd also lodged a claim. Aviva suggested he direct any queries about this to the legal helpline provided by his policy.

Our investigator thought Aviva acted correctly in referring Mr L's claim for an assessment of its prospects of success. And he thought it was entitled to rely on the opinions that were then provided; the initial assessment was from a paralegal but they were appropriately supervised and the reassessment was carried out by a senior solicitor at the firm. He didn't think there had been significant delay in how the claim had been handled and overall Mr L's emails had been responded to within a reasonable period. He didn't uphold the complaint.

Mr L didn't agree. In summary he said:

- His initial claim to Aviva had included his dispute with his bank (and whether they were right to treat this as a chargeback rather than a s75 claim). If the panel firm weren't asked for their advice about this that was a failing Aviva was responsible for.
- He thought it was clear the advice the panel firm provided was poor, incorrect and incomplete in relation to the claim against the jeweller (for example it got wrong the price of his ring) and so it wasn't reasonable of Aviva to rely on this. He didn't think the firm would have offered compensation in relation to the complaint he made unless it accepted their advice was wrong.
- The panel firm had said pre-action correspondence was proportionate to pursue so he questioned why Aviva hadn't agreed to fund this.
- He didn't think it was appropriate to refer him to the legal helpline for advice as the information he needed wasn't something the general helpline could provide.
- He'd told Aviva he was a neurodivergent client and didn't think it had complied with requests he made for reasonable adjustments. And there had been delays in responding to him (for example it took a claims handler 10 days to tell him what his role was).

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

Mr L has raised a significant number of points in correspondence with Aviva and our service about this claim. I don't think it's practical or in line with the informal nature of our service to respond in detail to every one of those. Instead, I've sought to focus on what appear to be Mr L's key areas of concern based on the comments he made in response to our investigator's view.

I've looked first at the initial claim submission Mr L made to Aviva. I can see he completed its claim form and in response to the question "*Who is your claim against*" he gave the name of the jeweller he was in dispute with. He did confirm in that form he'd lodged a s75 claim with his bank but didn't indicate he wanted to make a claim in relation to this. And the supporting correspondence he included related to his dispute with the jeweller. In a follow up email he did include correspondence with his bank but didn't say he wanted this considered as a claim in its own right.

Mr L has disputed that a claim against his bank would be a separate claim and says rather than bringing a separate claim at court a single claim would be made against all potentially liable parties. But the question here is how matters should be treated for the purposes of the insurance claim he made. Given the claim he'd made to Aviva related to the breach of contract claim he had with the jeweller I don't think it was unreasonable of Aviva to conclude it was that dispute he wanted legal support with.

And his policy does cover "*a dispute regarding an agreement for the sale, purchase, or hire of goods or services that are not for your business use*". So his dispute with the jeweller is potentially something it could cover. But that's subject to the other terms and conditions of the policy. And the policy says it doesn't provide cover if the "*prospects of success are no longer in your favour*". The definition of prospects of success includes that it's more likely than not the insured will "*recover damages or obtain any other legal remedy which we have agreed to*".

As an insurer isn't a legal expert we don't think it's in a position to carry out the prospects assessment and it should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not. So I think it was right Aviva referred the claim Mr L made to one of its panel firms for an assessment of its prospects of success.

I appreciate Mr L disagrees with the conclusions that firm reached and I note the comments he's made about this. But I've read the opinion from the paralegal (who I'm satisfied was appropriately supervised) and the senior solicitor. Having done so I think they are properly written and reasoned and I don't think there are obvious errors in the reasoning that would impact the conclusions reached. I think in particular it was reasonable of the solicitors to conclude Mr L would need to provide further evidence to show his rings weren't of satisfactory quality. I don't think that would necessarily need to be in the form of an expert report but I think it would need to go beyond what Mr L had provided.

And the reports include other reasons why his claim didn't have reasonable prospects of success and in addition wasn't proportionate to pursue. Mr L has suggested the advice miscalculated the price he paid for the rings but I think the amount he's referenced is to the sum he could recover for an expert report; it isn't the cost of the rings. For 'Order 2' both reports say Mr L paid around £2,386.

I appreciate the panel firm appears to have concluded there were some failings in the service it provided that led it to offer compensation to Mr L. But I haven't seen evidence that impacted the assessments it carried out or that Aviva was aware of any issue with these. So I think it was reasonable of Aviva to rely on those assessments when declining to provide funding for Mr L's claim. I can also see it gave Mr L correct advice on what he'd need to do if he wanted to challenge those assessments. And, as Mr L is aware, if he's unhappy with the actions of the panel solicitors when acting in their legal capacity that's something he can raise as a complaint to that firm (which I understand he's already done).

Mr L feels Aviva should have funded pre action correspondence based on a reporting form from the panel firm which said "*the claim would also not be proportionate to pursue beyond pre-action correspondence*". However, that sentence needs to be read in the context of the broader advice being provided by the panel firm – which is the claim doesn't enjoy reasonable prospects of success. That means it doesn't meet the requirements set out in Mr L's policy for funding to be provided at all.

Mr L is also unhappy Aviva referred him to the legal helpline for advice as he doesn't feel it was in a position to provide the detailed guidance he required. I can see Aviva offered that advice in response to queries raised by Mr L as to whether his bank was right to have treated the claim he made to it as a chargeback issue rather than a s75 claim. The legal helpline is able to provide general legal advice so I don't think it was unreasonable of Aviva to suggest they might be able to assist here.

But I agree if the queries Mr L wanted answering went beyond general advice and he needed more detailed assistance the helpline wouldn't be able to assist him with that. However, that's something which would only have been available to him under his legal expenses insurance if the claim he was making met the terms and conditions of his policy. And for the reasons I've explained I think Aviva was right to conclude the claim it considered (in relation to the jeweller) didn't and so it couldn't assist with this further.

I've also considered the overall handling of Mr L's claim. In doing so I've taken into account that he's a neurodivergent client. And I appreciate he doesn't feel Aviva made the reasonable adjustments he needed. In particular he says it didn't meet his needs in relation to communication with him being prompt. In considering this I've taken the Equality Act 2010 into account – given it's relevant law – but I've ultimately decided this complaint based on what's fair and reasonable. If Mr L wants a decision that Aviva has breached the Equality Act, then he'd need to go to court.

I think there are some instances where Aviva could have responded to Mr L more quickly. For example I agree with him it could have provided confirmation sooner of who the case handler dealing with his claim was. I also agree it could have provided a clearer response to the specific questions he asked in an email of 1 April 2023. So I've thought about whether there's anything Aviva needs to do to put things right here.

I recognise those issues are likely to have had a greater impact on Mr L as a neurodivergent person. But when looking at the handling of his claim in the round I don't think there were significant delays in moving matters forward. Any delays in responding to Mr L when set in that context are limited. And in general I think he did receive a reasonable response to the questions he asked. I'm also mindful of the fact that dealing with any claim is of itself likely to cause some inconvenience to the individual involved. Taking everything into account I don't think any impact on Mr L as a result of what Aviva got wrong is something that warrants compensation.

Finally, I can see in correspondence with Aviva Mr L raised issues about how it handled his complaint. As I can see our investigator has explained complaint handling isn't one of the activities our rules allow us to consider. So I can't look at it in isolation. I could look at it when thinking about the overall customer service Aviva provided but I could only make an award for complaint handling if I was also doing so for something related to customer service more generally. That isn't the case here. So I won't be considering this issue further.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mr L to accept or reject my decision before 28 December 2023.

James Park
Ombudsman