

## **The complaint**

Mr J is unhappy Aviva Insurance Limited turned down a claim he made on his legal expenses insurance policy.

## **What happened**

In August 2022 Mr J contacted Aviva and said he wanted to make a professional negligence claim against solicitors he'd approached for assistance. He said they'd given him incorrect information about when limitation for his claim would expire. Aviva considered the claim under the consumer disputes section of his policy but didn't think it fell within that as Mr J hadn't purchased or hired goods or services from the solicitors.

Our investigator agreed the claim wasn't covered. She wasn't satisfied Mr J had entered into an agreement with the solicitors and he would need to have done so for the policy to engage. She also explained that any issues Mr J had about what happened when the policy was sold to him would need to be considered separately against the business responsible for that.

Mr J didn't agree. He provided detailed submissions which I've summarised as follows:

He'd had extensive interactions with the solicitors who had carried out a review of his claim and believed these constituted an implied or informal agreement which was a recognised concept under English law. And he'd relied on the advice they gave him to his detriment.

- The term 'agreement' wasn't defined in the policy and any ambiguity in relation to that should be resolved in favour of the policy holder. That was particularly true in the context of the provision of legal services where it wasn't unusual for initial consultations to be offered without upfront payment which would subsequently lead to more formalised engagement.
- It wasn't appropriate to use dictionary definitions to determine the meaning of a term which should have been defined in the policy and in any case the definitions that had been used were vague. He thought the appropriate legal definition of agreement was "a meeting of the minds in a common intention made through offer and acceptance".
- He highlighted other decisions from our service in which the broader legal context had been taken into account when interpreting policy wording.
- He believed the solicitors' conduct was consistent with a solicitor-client relationship and the level of involvement would only have occurred if an agreement for services was in place which he thought would constitute 'hire'. While monetary payment was absent, consideration for a contract didn't have to be in financial terms. And counsel had confirmed the solicitors had a duty of care to him which they'd breached.
- He thought the legal advice provided by the solicitors could also be seen as a service for which remuneration was expected in the future meaning it could be regarded as a

purchase in a non-traditional sense despite the absence of a monetary transaction. And he said there were many other examples of services it was possible to obtain without making payment.

- The contact he'd had prior to taking out this policy didn't say the legal expenses cover was limited to written agreements and so he had an expectation that the policy would cover legal expenses more broadly prior to taking it out.

I issued a provisional decision on the complaint earlier this month. In summary I said:

*The relevant rules and industry guidelines say Aviva has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably. And it's for the insured (Mr J in this case) to show an insured event under the policy has taken place. If they can, it's then for the insurer to show, on balance, that an exclusion or condition applies which means it can turn down an otherwise valid claim.*

*I've looked first at the terms and conditions of Mr J's policy. I don't think it's in dispute that the only section of the legal expenses cover his claim might fall within is that relating to 'Consumer Disputes'. And under 'What is covered?' that says "A dispute regarding an agreement for the sale, purchase or hire of goods or services that are not for your business use".*

*So the question is whether an insured event under the policy has taken place. I appreciate there was some initial discussion as to whether the underlying claim related to Mr J's business. But I think Aviva has now accepted he was seeking to bring this himself in respect of a claim which related to him personally. The issue is whether Mr J has shown he had an agreement with the solicitors he approached for the purchase or hire of services.*

*I appreciate that 'agreement', 'purchase' and 'hire' aren't defined in the policy. But that's not unusual; no policy will define every term used in its wording. And in interpreting policy terms I think in principle the words of the policy should be given their ordinary meaning and reflect the intention of the parties and the commercial sense of the agreement. A key point is how the words would be understood by a reasonable person – in other words, the ordinary policyholder. So in the absence of a specific definition I think it is reasonable to apply the commonly understood meaning of a term. And in deciding what that should be I think it's reasonable to take into account relevant law and dictionary definitions.*

*Having done so I accept an agreement could be informal in nature and I agree with Mr J that a meeting of minds and offer and acceptance would need to feature in such an agreement. On that basis I think the arrangements he had with his solicitor could constitute such an agreement; there must have been some understanding that the solicitors would review the information relating to his claim to see if it was one they were prepared to take on.*

*But in order to meet the policy terms that agreement would also need to be for the purchase or hire of goods or services. And as those terms aren't defined in the policy I think it's reasonable of Aviva to apply commonly understood dictionary definitions of them. For purchase it's referenced "acquire (something) by paying for it; buy' and for hire "obtain the temporary use of (something) for an agreed payment". I think those do represent commonly understood meanings of those terms and it's appropriate to apply them in this case.*

*Having reviewed the correspondence between Mr J and the solicitors I'm satisfied they don't cover what happened here. As I've said it's clear the solicitors were simply assessing the merits of Mr J's potential claim to decide if it was one they were prepared to take on. And the decision they reached was that it wasn't a case they were able to progress. I appreciate that prior to reaching that decision there were a number of interactions between the solicitors and*

*Mr J but those were in relation to the assessment of the merits of his claim. I don't see any of that shows there was an agreement for the purchase or hire of services.*

*And I don't think it's in dispute Mr J made no payment for the assessment carried out by the solicitors and doesn't appear to have agreed any terms of engagement with that firm. I note in a further email to Mr J (in response to his request for assistance with letters) the firm made clear that he wasn't their client as it said "in order to represent your case we would need to take you on formally as a client".*

*Mr J says he has counsel's opinion which says the solicitors breached their duty of care to him. I haven't seen that advice but even if he's right about that a breach of a duty of care doesn't in itself demonstrate the existence of an agreement for the purchase or hire of services.*

*Mr J also says it isn't unusual for solicitors to carry out an initial assessment of a claim without seeking upfront payment for it. And that would be done in the expectation of compensation being provided at a later stage potentially through a conditional fee arrangement or other mechanism. So he thought the agreement he had was for the hire of services.*

*But those arrangements would only be brought into being at the point the claim was accepted by the solicitors. That didn't happen in this case. There's nothing to show at any point that firm accepted the claim itself, reached an agreement with Mr J over what legal services it was to provide or agreed what consideration (financial or otherwise) Mr J was to provide in return for them doing so. Nor have I seen any agreement between the solicitors and Mr J which shows they were carrying out their assessment of the claim with an agreement in place for future remuneration.*

*I appreciate the more general points Mr J has made about it being possible to acquire services without making payment (or providing other consideration) for those services. But Aviva is entitled to set out in the policy the extent of the cover it provides and therefore the risk it's prepared to take on; no insurance policy can be expected to cover every eventuality. Mr J's policy makes clear that for cover to be provided there needs to be an agreement for the purchase or hire of services.*

*I don't think it's unreasonable in itself that some arrangements between a business and a consumer will therefore fall outside of the scope of policy coverage. For the reasons I've explained I think Mr J's claim is one of those; I don't think he's shown it falls within the definition of consumer disputes set out in the policy.*

*Mr J has also made reference what he was told in a phone call prior to taking out the policy. However, that appears to relate to the sale of the policy. As our investigator explained any issue he has with that would need to be considered as a separate complaint against the seller of the policy (a different business). It isn't something I can consider in this decision which relates to the claims he made on the policy and the outcome Aviva reached on those.*

## **Responses to my provisional decision**

Aviva didn't respond to my provisional decision. Mr J did provide further comments. In summary he said:

- He believed his interactions with the solicitors did constitute an agreement under the terms of his insurance policy. He provided a copy of the counsel's opinion he'd obtained in support of his contention the solicitors provided specific legal advice and had assumed a duty of care. And that was something he'd relied on in his decision making.

- He said the solicitors had acknowledged a mistake in relation to the advice he was given and this supported his view that there was an agreement in place with them. And he highlighted other issues where he felt those solicitors had acted incorrectly.
- He said in legal and insurance contexts the terms 'purchase' and 'hire' could have broader interpretation than a dictionary definition. Purchase could include acquiring services in exchange for non-monetary consideration which he thought was the case here. He thought any ambiguity in the policy terms should be read in favour of the insured in line with the *contra proferentem* rule.
- And he said the legal sector frequently operated in a way to create de facto contractual relationships. It also carried out pro bono work where the traditional understanding of purchase and hire might not apply. He provided further examples of circumstances where he thought hiring could be said to have taken place outside of the traditional framework of monetary exchange.
- He thought, based on his understanding of the policy at the time of purchase, he had a reasonable expectation the policy would cover the arrangements he had with his solicitors. And the meaning of the terms should have been made clear to him when he asked for information about this; he said the agent didn't provide him with any information about the need for an agreement to be in place for cover to be provided.

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.

I accepted in my provisional decision the arrangements Mr J had with his solicitors could constitute an agreement that would fall within the terms of his policy. But the issue is whether that agreement is for the purchase or hire of goods or services which it needs to be for it to constitute an insured event under his policy.

I appreciate the counsel's opinion he's now provided does suggest the solicitors were in breach of a duty of care (and I note the other points he's made about what he thinks they got wrong). But I don't think any of that shows his agreement was for the hire or purchase of services. Nor does the fact Mr J may have relied on the information he was given by the solicitors in the decisions he subsequently took.

I don't think *contra proferentem* applies here either. That could be the case if the policy terms were ambiguous (in the sense that they were capable of bearing more than one ordinary and natural meaning). But, as I set out in my provisional decision, a key test is how the words would be understood by a reasonable person. In considering that I think it's appropriate to consider the dictionary definitions of those words. In my view doing that does provide a clear meaning to the relevant words which Aviva has applied in this case.

Mr J has identified examples where he considers that a broader definition of hire or purchase should apply. But the issue isn't how the policy terms might apply to a different situation. The question is whether the agreement he had with his solicitors can reasonably be said to constitute an agreement for the hire or purchase of goods and services.

I accept that goods or services purchased by non-monetary means could in principle fall within the scope of the policy. But the difficulty for Mr J is that there's no evidence to show that happened in his case. As I've already said at no point did the firm accept his claim, reach an agreement with him over what legal services they were to provide or agree what consideration (financial or otherwise) Mr J was to provide in return for them doing so. And there's no evidence of any agreement between the solicitors and Mr J which shows they were carrying out their assessment of the claim with an agreement in place for future remuneration.

Mr J has also referenced concerns about what he was told when taking out the policy and his understanding of cover at that time. But, as I've already explained, any issues that relate to what he was told when taking out the policy would need to be considered as a separate complaint to the seller of the policy. In respect of this complaint, which is about Aviva's decision to turn down his claim, it remains my view that it fairly concluded it isn't covered by his policy. I don't think the question of whether that was made clear to Mr J at an earlier stage makes a difference to this issue.

### **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 J to accept or reject my decision before 21 February 2024.

James Park  
**Ombudsman**