

## **The complaint**

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

Mr L says Aviva treated him unfairly.

In this decision all references to Aviva include their claims handlers.

## **What happened**

Mr L made a claim on his Aviva Insurance Limited legal expenses insurance policy for cover to help with two claims relating to his property- one was in relation to noise nuisance and blocking of the entrance and exit to his property and the other was against the previous owners of his property for misrepresentation.

Aviva considered the claims and determined that they fell within cover in principle. As such they instructed their panel firm to consider whether the claims fell within the remaining terms of the policy. The panel firm advised that as things stood, Mr L's claims didn't have reasonable prospects of success as required by the policy. They said that in order for them to revise their advice, they'd need further evidence and information from Mr L.

Mr L complained to Aviva. He was unhappy with the assessment and the fact that it had been carried out by a Paralegal. Aviva considered Mr L's complaint but didn't agree that they'd done anything wrong. Unhappy Mr L referred his complaint to the Financial Ombudsman Service.

Our investigator considered Mr L's complaint and concluded it shouldn't be upheld. He said that Aviva was entitled to rely on the opinion of the panel firm in declining cover and that if Mr L wanted to challenge this, he could obtain his own legal opinion at his own cost. He also thought that the instruction of a Paralegal was acceptable in circumstances where the legal advice provided was under the supervision of a qualified lawyer with suitable experience and the panel firm had confirmed this was the case in respect of the advice provided to Mr L. In addition, the investigator said that the delays Mr L complained of had no impact on the outcome of his claim as he wasn't able to establish he was entitled to cover in any event.

Mr L 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 L's complaint. This is why.

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. Mr L's policy is no exception. That means his claims needed to have over 51% prospects of

succeeding in order for Aviva to cover them.

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. 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.

I'm satisfied that the Paralegal that provided the advice to Mr L did so under the supervision of a suitably qualified lawyer who was experienced in the area of law Mr L was asking for help with and I've seen nothing that suggests their advice was based on factual mistakes, such that it would alter the advice given. I appreciate Mr L doesn't agree with the advice he received and disputes that it was supervised at all, but I can't consider the quality of the legal advice given as that issue falls outside of my remit. And I can't agree that the advice Mr L received wasn't ultimately overseen by a suitably qualified lawyer when the panel firm have said it was. If Mr L remains concerned about this, then he can raise this with the panel firm directly or complain to the Legal Ombudsman.

If, as Aviva said, Mr L was to supply an alternative reasoned opinion from a comparable lawyer, then I would expect Aviva to consider that. Aviva's policy terms set out further detail on how he can do that. Equally, if he provided Aviva with any new evidence or information that has now come to light that might change the outcome of his assessment (like a summary report from an acoustic consultant commenting on the issues raised by the panel firm in their assessment of the claim for noise nuisance) I would expect Aviva to refer that back to their panel firm. But as matters stand, I can't say Aviva did something wrong by relying on the legal opinion they received.

I appreciate that Mr L doesn't agree with the way in which his claim was handled. He doesn't feel it was fair that he wasn't entitled to choose his own Solicitor from the outset. But I don't agree. The policy terms make clear the prospects requirement and that a lawyer will assess his case to determine his chances of winning. So, whilst Mr L might have expected his own lawyer to be appointed to do this, I don't think that Aviva misled him or did something wrong by appointing their own panel firm to undertake this task. If his claim was found to have reasonable prospects of succeeding, Aviva would ultimately be responsible for Mr L's legal fees, so they're entitled to take advice from their own choice of Solicitors in this regard. Equally Mr L is entitled to challenge this with reference to their own legal opinion if he thinks this is wrong. I appreciate Mr L might not want to be put to the cost of doing this until now, but that doesn't mean that Aviva need to fund his claim or that the position they've taken is unfair.

On the question of delays and Aviva failing to respond to some emails Mr L sent to them, I accept this would have caused Mr L some frustration but like the investigator, I haven't seen anything to support this had any impact on the claim itself. As things stand there is no cover in place for Mr L to pursue his claims so I can't see that Aviva's actions prejudiced him or his claim in any way or that they need to do anything more to put things right.

In response to the investigator's view of his complaint Mr L has said he thinks that the appointment of the panel firm in the first instance amounts to a conflict of interest because the panel firm are paid by Aviva and so will act in Aviva's best interests. I don't however agree with this. The panel firm are independent professionals with their own codes of conduct and a separate regulator. The fact that they're instructed by Aviva and paid by them

to consider the merits of a claim, doesn't to my mind mean they aren't impartial. And I would expect a firm of Solicitors to provide the same advice to Mr L if he were instructing them directly. If Mr L remains concerned about the conduct of the panel firm, he can complain to them or about them in the way I've set out above.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 1 January 2024.

Lale Hussein-Venn  
**Ombudsman**