

## **The complaint**

Ms M is unhappy with what Aviva Insurance Limited did after she made a claim on her legal expenses insurance policy.

## **What happened**

At the end of November 2023 Ms M made a claim on her policy. She said the managing agent of her property was seeking an injunction against her requiring access to her property for window replacement work. She wanted her policy to assist in defending that claim. Aviva asked for further information about the claim which Ms M provided. However, as the court hearing was scheduled for 1 December Ms M instructed her own solicitors to defend that. I understand she was successful and a costs order for £450 was made in her favour. She asked Aviva to pay the outstanding solicitors costs she'd incurred.

Between January and April 2024 Aviva made a number of requests for information including a breakdown of the solicitor's costs. At the end of April it said cover wasn't available for Ms M's claim at all because the policy didn't cover defending an injunction; it only covered seeking an injunction. Aviva maintained that position in response to the complaint Ms M made but accepted it should have realised when Ms M made her claim that cover wasn't available. It offered to pay £500 in recognition of the inconvenience that caused her.

Our investigator agreed the policy didn't provide cover for Ms M's claim. And she didn't think it would be fair to ask Aviva to reimburse the costs Ms M incurred in instructing her own solicitors. She agreed Aviva should have identified much earlier the claim wasn't covered and not doing so had caused Ms M avoidable distress and inconvenience. But she thought the £500 it had offered was a reasonable way of addressing that.

Ms M didn't agree. She thought the policy terms were ambiguous and the claim she made would fall under either 'pursuing or defending a claim for damages' or 'seeking any other legal remedy'. She said the managing agent was intending to damage her property by removing the kitchen window. And she thought the injunction served on her represented harassment and she didn't have time to lodge a counterclaim.

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.

I've looked first at the terms and conditions of Ms M's policy. The insured events it contains include 'Property Disputes' which could in principle cover the problems Ms M was having with the work at her home. But the cover offered by the policy where an insured event has taken place is for costs and expenses to:

- a) *Pursue or defend a claim for damages;*
- b) *Pursue the enforcement of an agreement*
- c) *Seek an injunction e.g to stop a neighbour being noisy*
- d) *Seek any other legal remedy*

Ms M says her claim could fall within pursuing or defending a claim for damages or seeking any other legal remedy. But I don't think that's right. I've reviewed the papers she submitted and it's clear to me Ms M wasn't pursuing a claim for damages. Nor was she seeking any other legal remedy. Ms M hadn't initiated legal action; she contacted Aviva as a result of the claim that had been made against her. That claim wasn't for damages but for an injunction to gain access to her property for the purpose of window replacement work.

It's possible that if the managing agents had caused damage to Ms M's property the policy would have funded a claim against them. Alternatively, it might have covered injunctive proceedings against them. But those aren't the claims Ms M made. She made clear to Aviva that "*my claim is for the court costs (£3,784) incurred for December 1st 2023, and nothing else*". And while Ms M says she didn't have a chance to bring her own proceedings I haven't seen clear evidence that, prior to the claim being made against her, Ms M was intending to bring her own proceedings and the claim from the managing agent simply pre-empted that. Taking all of that into account I think it was correct and fair of Aviva to say this claim wasn't one her policy covered.

However, I agree that's something Aviva should have established much earlier and probably from the initial claim Ms M made. I've thought about what the impact on Ms M of that failing has been. I don't think Ms M would have acted any differently in relation to incurring solicitors costs even if the position on cover had been made clear to her earlier; she would always have needed to defend the proceedings against her. And given the court hearing was less than a week after she contacted Aviva I think it likely she'd have needed to obtain legal representation to assist with that.

But Aviva did then make separate information requests to her over a number of months which were unnecessary given her claim wasn't covered at all. I think doing so will have made Ms M think the costs she'd incurred were likely to be reimbursed to her. So in addition to the inconvenience she was put to in providing that information she'll then have been caused avoidable distress when told her claim wasn't covered. However, I think the £500 Aviva has already offered is a fair way of recognising the impact of all that on Ms M.

### **My final decision**

Aviva Insurance Limited has already made an offer to pay £500 to settle this complaint and I think that offer is fair in all of the circumstances. So my decision is that Aviva Insurance Limited should pay Ms M £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 1 April 2025.

James Park  
**Ombudsman**