

The complaint

Mr and Mrs J complain about the way Evolution Insurance Company Limited (“Evolution”) has handled a claim they made under their building warranty.

What happened

Mr and Mrs J made a claim in respect of structural problems with their property. This included issues such as movement of the front aspect, movement of an internal beam and an internal wall.

Evolution accepted the claim in relation to the front aspect movement and the internal beam, but as the wall was considered cosmetic, it said this couldn’t be claimed for.

It later transpired, after further work was carried out to repair the beam, that the floor joists were incorrectly fitted and that this was also a structural issue. So Mr and Mrs J raised this with Evolution. It asked them to provide building control documents – from which Mr and Mrs J say it was found that the original builder had failed to fit the internal wall as a load-bearing structure. Mr and Mrs J asked Evolution to accept that the original builder had been negligent in not fitting the wall correctly and to accept that this was a structural defect and claimable under the warranty.

Evolution didn’t agree. It said the original wall was a load-bearing structure and that advice should’ve been sought from a structural engineer before alterations were made.

Mr and Mrs J complained. They said the original wall wasn’t load-bearing, and therefore their contractor replaced it with a like for like structure without the need for building control to get involved. In its response to the complaint, Evolution said that if expert advice had been sought, they could’ve ensured that an appropriate wall was designed and built as a load-bearing element. So it maintained its decision to decline that part of the claim. And as Mr and Mrs J remained unhappy with the decision – they referred their complaint to this service for an independent review.

Our Investigator considered everything and didn’t think the complaint should be upheld. She said that there wasn’t enough evidence to show that the internal wall was defective. Because Mr and Mrs J didn’t accept our Investigator’s opinion, the complaint has now come to me to decide.

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’ve decided not to uphold this complaint. I’ll explain why.

Mr and Mrs J’s building warranty provides cover for Major Damage to the Housing Unit, and further details are set out at section 4 in the terms and conditions of the policy. This says Evolution will:

“...indemnify the Policyholder against all claims discovered and notified to the Underwriter during the Period of Insurance in respect of:

- 1. The cost of complete or partial rebuilding or rectifying work to the Housing Unit which has been affected by Major Damage provided always that the liability of the Underwriter does not exceed the reasonable cost of rebuilding each Housing Unit to its original specification...*
- 3. The necessary and reasonable costs incurred in repairing, replacing or rectifying any part of the Waterproof Envelope within the Housing Unit as a result of ingress of water caused by a defect in the design, workmanship, materials or components or the waterproofing elements of the Housing Unit.”*

I've considered the various relevant definitions in the policy, which include Major Damage, which is defined as a defect in the design, workmanship, materials or components of the Structure causing imminent instability of the Housing Unit.

Structure is defined and includes load-bearing retaining walls necessary for stability. And the Waterproof Envelope is defined as ground floors, external walls, roofs, skylights, windows or doors of the Housing Unit, excluding those beneath ground floor slab level.

So in order for a claim to succeed under the warranty, there would've had to have been Major Damage causing imminent instability, which was caused by a defect that is either part of the Structure of the property or part of the Waterproof Envelope.

Having looked at the evidence provided, I don't consider there to have been a defect in relation to the internal wall which would be covered by the warranty. Although the term “defect” isn't specifically defined in the policy, it usually means a breach of technical requirements. So in order to determine whether the internal wall was defective, I've considered whether a technical requirement was breached.

Mr and Mrs J have provided evidence to show that there was a gap between the top of the internal partition wall and the ceiling and have also said the plasterboard ceiling was continuous above the top of the timber frame and therefore the wall was not structural. They've also provided evidence including paperwork from 2016 which demonstrates that at the time of building, the wall was intended to be a load-bearing structure.

But I don't consider the evidence to show that a technical requirement was breached, which would indicate that the wall was defective – and I've reached this conclusion by weighing up the two key pieces of expert evidence provided. Mr and Mrs J have sent us information from their contractor about the gap above the frame and plasterboard running through it. And Evolution has sent us comments from its engineers indicating that plasterboard does have some compressive strength and therefore might have been checked by the original designer if the supporting wall had been installed after the ceiling. And that from their conversations with Building Control, the wall had provided structural support to the first floor. The comments also mention the possibility that although there was a slight gap, there was a prop nearby so the gap could've been caused by the ceiling being jacked up at the time.

Mr and Mrs J have said that Evolution accepted the workmanship was defective by accepting the claim for the front of the building and the internal beam. But this doesn't demonstrate that the internal wall was defective too. And from everything I've been provided with, I haven't seen enough evidence of a breach of technical requirements. I appreciate Mr and Mrs J's comments that the wall showed similar signs of defects in the form of the same distorting issues as the other parts of the property included in the claim. But there is still insufficient evidence that this was a defect in a structural part of the property that was

causing imminent instability.

And Evolution says it didn't have an opportunity to properly inspect the wall before the work was carried out. If it had, there may well have been more evidence on the matter. I appreciate Mr and Mrs J say that there was a visit in which the wall was discussed but I don't consider this to be the same as a proper inspection which may have assisted the parties in understanding the true specification of the original wall and whether it was indeed defective.

I'm sorry to disappoint Mr and Mrs J. It's unfortunate that they've paid for the replacement wall themselves, which they're satisfied is now a load-bearing structure. But I'm afraid that in the circumstances, there isn't enough evidence for me to conclude that the original wall was defective and that its replacement should've been covered under the warranty.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 11 November 2024.

Ifrah Malik
Ombudsman