

The complaint

Mr F and Miss G are unhappy with what Aviva Insurance Limited did after they made a claim on their legal expenses insurance policy.

Although the policy is in joint names as submissions have been largely been made by Mr F, I'll mainly refer to him in this decision. All references to Aviva include its agents and claims handlers.

What happened

In August 2023 Mr F contacted Aviva seeking assistance with a claim against the developer of his new build property. After considering further information from him Aviva turned the claim down. It thought he'd been aware of issues at the property prior to taking out his policy on 31 March 2023. It accepted further problems had then become apparent but thought the series of events began before the policy start date and it didn't provide cover where that was the case.

Our investigator agreed Mr F had noticed issues at the property prior to taking out the policy. But she didn't think it was unusual for a new build property to have snagging issues and that's what the reported problems at that time appeared to be. It was only after he'd moved in (and taken out the policy) he became aware of more significant structural issues. She didn't think Mr F would have known he had a dispute that might lead to legal action prior to taking out the policy. And she didn't think it was fair of Aviva to turn down the claim.

She said Aviva should reconsider it against the remaining policy terms. She also said it should pay Mr F £200 to recognise the distress and inconvenience he'd been caused as a result of his claim being wrongly turned down.

Aviva agreed to do so. It also said if the claim did have reasonable prospects of success (as required by the policy) it would consider the costs Mr F had incurred in using his own solicitor since the claim was turned down. But it referenced the hourly rate the policy provided for a non-panel solicitor of £100 an hour.

Mr F was pleased Aviva had agreed to reassess the claim. But he didn't accept the position on compensation and solicitor costs. In summary he said:

- The incorrect decline of cover had caused substantial distress over a 14 month period which had impacted his mental health. He provided medical advice in support of his position and described the impact on his family life. He thought much of that could have been avoided if cover had been in place.
- He said there had also been direct financial loss as he'd had to pay his own solicitors a significant amount of money to progress the claim as legal expenses cover wasn't provided. He thought those sums should be reimbursed in full by Aviva as they were only incurred as a result of what it got wrong.

- Overall, he didn't feel the £200 our investigator had recommended was enough to recognise the distress, inconvenience, financial loss, and mental health impact caused by what Aviva got wrong.

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 don't think it's in dispute the claim Mr F was seeking to bring would fall within one of the insured events his policy contains. So in principle it's one the policy could cover. However, the policy doesn't cover *"Any claim we reasonably believe you knew was likely to happen when you took out this insurance, e.g. where you were already in a disciplinary process at work before taking out this policy, which then led to you making a claim"*. In addition it doesn't cover *"Claims where the initial dispute or series of incidents leading to a claim on this policy happen before this cover starts..."*

I don't think it was unreasonable of Aviva to initially think those exclusions would apply to the claim Mr F made. After submitting his claim it asked him when he first became aware of the issues at his property. In response Mr F said *"16 March 2023 during our home preview, note, this was only some of the issues, more have been discovered whilst living in the property"*. But I think it was clear from the further evidence Mr F then provided it was only snagging issues which had been apparent at the home preview visit. And the more significant issues with masonry (and potential structural problems resulting from that) only became apparent after he'd moved in and obtained a detailed report on the condition of the property.

So I agree with our investigator Aviva should have reviewed its position and accepted as a result the issues giving rise to the claim weren't ones Mr F would have been aware of prior to taking out the policy. In fact that issue is no longer contested as Aviva has accepted what our investigator said and agreed to reconsider the claim. The outstanding issue relates to the costs Mr F incurred following the decline of his claim and what the appropriate payment for distress and inconvenience should be.

But while Aviva has agreed to reconsider the claim that doesn't mean funding will be provided for it. The claim would still (for example) need to meet the policy requirements in relation to having reasonable prospects of success. However, if that is the case (and the claim is accepted) I don't think it would be reasonable for Aviva to only reimburse the costs Mr F has already incurred on the basis of the £100 an hour rate set out in the policy.

In that event those costs are ones he would only have incurred because his claim was incorrectly turned down. So that loss would be one that had come about because of what Aviva got wrong. If that's the case Aviva will need to reimburse the reasonable and necessary costs charged by his solicitor without restricting those to the hourly rate set out in the policy.

Turning to the payment for distress and inconvenience I don't know if this claim is one for which funding will ultimately be provided (as Aviva will need to reconsider it against the remaining policy terms). But even if that is the case I'm not satisfied there would be a clear enough link between the issues Mr F has experienced and what Aviva got wrong to recommend further compensation here.

I've reviewed the information he provided and I don't doubt this has been an extremely difficult time for him during which he's had significant concerns about how the issues at his property will be addressed. It's also clear that's impacted his mental health. But from the information I've seen that seems to be mainly caused by his understandable concerns about the condition of his property, the failure of the developer to take appropriate action to remedy that and anxiety about the underlying legal claim. That's also what the evidence from a medical professional primarily references in their identification of an adverse event affecting Mr F. And those issues would have been present regardless of the decisions Aviva made in relation to his legal expenses claim.

So while I don't doubt Mr F has been caused significant distress and inconvenience and there has also been an impact on his mental health I'm not satisfied that results from the decline of his legal expenses claim. I appreciate those matters were potentially exacerbated because legal expenses funding wasn't in place but I'm also mindful of the fact that Mr F did have access to legal support in this period because he was (I recognise with difficulty) able to pay for assistance from his own solicitor.

Taking all of that into account and on balance I'm not persuaded that, even if this is a claim for which funding should have been provided at an earlier stage, the impact on Mr F of what Aviva got wrong warrants a higher compensation payment than the £200 our investigator recommended (and which Aviva has agreed to pay).

Mr F has also raised concerns about whether, if funding is provided for his claim, Aviva will pay his current solicitors to progress it. However, that's not something which forms part of the complaint I'm considering. If Mr F and Aviva are unable to reach agreement on this that's something which we could consider as a part of a fresh complaint once Aviva has had an opportunity to consider it.

Putting things right

Aviva will need to reconsider the claim against the remaining policy terms (without relying on the exclusion for events taking place prior to the policy start date it previously cited).

If the claim meets the terms of the policy (including the requirement to have reasonable prospects of success) Aviva will need to reimburse the reasonable and necessary costs that Mr F incurred in paying his own solicitors from the point the claim should have been accepted. I think it's reasonable to say that would be 17 September 2023 as that's when Mr F provided further information in support of his position on the claim.

Aviva will also need to pay Mr F £200.

My final decision

I've decided to uphold this complaint. Aviva Insurance Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Miss G to accept or reject my decision before 8 January 2025.

James Park
Ombudsman