

The complaint

Mr H is unhappy with what Aviva Insurance Limited did after he made a claim on his legal expenses insurance policy.

What happened

In November 2022 Mr H sought assistance from his policy with a claim against the owner of a neighbouring property. That related to a leak which was causing damage. After obtaining further information Aviva referred the matter to panel solicitors for an assessment of whether the claim had reasonable prospects of success (a requirement of the policy).

The panel firm found at the end of January there was damage caused by water ingress. But it didn't consider there was sufficient evidence to show the neighbouring owner was responsible for this. It suggested Mr H obtain a surveyor's report as to the likely cause of the damage. Mr H didn't agree he needed to do that and raised his concerns with Aviva. It thought it was entitled to rely on the advice provided by the panel firm and said he could either obtain a surveyor's report or a contrary legal opinion of his own.

Mr H provided a surveyor's report in October 2023 which Aviva asked the panel firm to review. The following month it said this identified multiple causes for the water ingress and didn't change its previous outcome. Mr H provided a clarification from the surveyor but that didn't change things. Aviva didn't agree to provide funding for the legal expenses claim.

Our investigator wasn't satisfied Aviva was entitled to rely on the November 2023 prospects assessment from the panel firm. He thought it was based on an obvious misunderstanding of what the surveyor had said. It was clear from his report (and a subsequent email) that he thought the damage to Mr H's property was caused by the water leak from the neighbouring property. That didn't mean the claim would have reasonable prospects of success but the assessment Aviva had relied on to turn it down was incorrect. He said Aviva should arrange for prospects to be reconsidered taking into account the correct findings of the surveyor's report. He also said Aviva should pay Mr H £350 in recognition of the distress he'd been caused by his claim being turned down for the wrong reasons.

In its most recent response Aviva suggested that prior to the claim being reconsidered it should obtain further clarification from the surveyor on the cause of the damage. Our investigator explained why he didn't think that was necessary given the previous comments made by the surveyor. Aviva didn't provide any further comments.

Mr H did provide detailed submissions. In summary he said:

- Aviva's reliance on the incorrect advice had caused substantial and prolonged harm which wasn't addressed by a reconsideration of the claim. It had prevented legal action proceeding against the neighbouring owner (including pre action correspondence) which could otherwise have taken place.
- He set out what he believed were the flaws in Aviva's handling of his claim since the surveyor's report was provided. As a result of those errors he argued his separate buildings insurance claim had been delayed because repairs to his property couldn't be

carried out until the leak at his neighbour's had been resolved. He said correspondence relating to the buildings claim supported his position that reasonable prospects of success existed for this claim from the outset.

- He didn't think the compensation offered reflected the distress caused by those errors or the expenses he'd incurred because of them. In relation to that he highlighted costs he'd needed to pay (such as those for dehumidifiers and air purifiers). Taking that and the period of delay caused by what Aviva got wrong into account he thought compensation in the region of £5,000 to £7,500 should be paid. He also highlighted he was the primary carer for a vulnerable child (which he said Aviva was aware of) and that had increased the distress caused by this prolonged dispute. And he highlighted our guidance which he thought meant a much higher compensation award was justified.

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.

It's clear from the information he's provided what a challenging experience this has been for Mr H and his family over a sustained period of time. I recognise it will have been difficult for him to deal with the ongoing issues at his property while trying to deal with claims on both his legal expenses and buildings insurance policies. And I was very sorry to learn about the impact on his son who I understand has an underlying respiratory condition.

However, the question I need to consider is whether Aviva did anything wrong in dealing with the legal expenses claim he made. And, if so, what the impact on him of that has been and whether Aviva needs to do anything to put things right. I recognise Mr H also has concerns about the handling of his building insurance claim but that's been separately considered by our service and another Ombudsman has issued a decision dealing with those issues.

Turning to this claim 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 the terms of Mr H's policy say it does cover property disputes which include "*a dispute relating to damage to your home*". I think it's clear the claim he made would fall within that section and is therefore an insured event under the policy.

However, it's also a condition of the policy that a claim has reasonable prospects of success. The policy says "*this means how likely you are to win your case*". And as an insurer isn't a legal expert we don't think it's in a position to carry out that assessment and it should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not. So I think Aviva acted correctly in asking for this to be assessed by a panel solicitor after Mr H made his claim in November 2022.

Aviva was then advised by the panel firm it wasn't able to confirm prospects as Mr H hadn't produced sufficient evidence on the cause and liability of the nuisance (the water ingress and damage). And it said he'd been asked to obtain further evidence on this. I think it's clear from the letter the panel firm sent to Mr H that was the surveyor's report. Mr H suggests information relevant to his building insurance claim shows this claim had prospects of success. However, while I understand that claim couldn't progress until the leak was fixed Aviva (as his buildings insurer) told him in June 2023 it hadn't been provided with evidence to show his neighbour was responsible for it. I think it was reasonable of Aviva to conclude

that, as prospects of success hadn't been confirmed, this wasn't a claim for which funding could be provided under the legal expenses policy.

Mr H did then obtain a surveyor's report and I think it was right Aviva provided that to the panel firm so it could be assessed. The panel firm said in November 2023 *"the report identifies a number of possible causes of damp to your Property...as the leak is now repaired, but your Property is still suffering from dry rot fungi, we cannot rule out the fact that some of the damage that has occurred to your Property may have been caused by one or more of the other possibilities"*.

As I've said we'd normally say an insurer was entitled to rely on a properly written and reasoned prospects assessment. But that isn't the case where it should have been obvious to the insurer the assessment was wrong. To be clear (and to address an issue raised by Aviva in response to our investigator's view) that doesn't mean it should be questioning the legal opinion; the issue is whether to a lay person that opinion is obviously wrong.

In this case the panel firm said the surveyor's report identified multiple potential causes of water ingress to Mr H's property. However, the report simply doesn't say that. It does identify that the external render at the property has been built down to ground level and that air vents need to be kept clear. But it doesn't draw any link between those issues and the damage at the property. On a number of occasions it explicitly identifies that the cause of the dry rot fungi at Mr H's property is the water leak at the neighbouring property, for example saying *"the cause of the Dry Rot Fungi is due to a previous water main leak from the neighbouring property. The leak has now been fixed"*.

Mr H in any case provided a further email from the surveyor which said *"the render, damp proof course and vents have not caused the dry rot outbreak. The previous leak has caused the dry rot outbreak"*. He said the reason dry rot was still present was because treatments hadn't yet been carried out. Given the evidence from the report and the subsequent emails I think Aviva should reasonably have identified the panel firm's opinion was based on a factual misreading of the evidence. And rather than relying on that to turn down the claim it should have asked the panel firm to reassess matters based on a correct understanding of the evidential position.

As I've established that should have happened (and so Aviva has been at fault here) I don't need to consider the further points Mr H has made about the reasons why he thinks it should have acted differently. I've therefore gone on to think about the impact on Mr H of that error and what Aviva need to do to put things right.

Mr H says that the failing prevented legal action being taken against his neighbour. I don't agree with him on that. While the prospects assessment isn't based on the correct evidence that doesn't mean if it had been correctly carried out cover would have been confirmed for his claim. Even if it had been found to have prospects of success, to meet the policy terms it would also need to have been proportionate to pursue (meaning the estimated cost of doing so was reasonable when considered against the amount in dispute). That hasn't yet been established.

Nor does it appear that any issue with this claim delayed Mr H's building insurance claim. I've found it was reasonable of Aviva to initially decline cover for the legal expenses claim on the basis the panel firm wasn't satisfied (in January 2023) that the water leak was the cause of the problem at his property. That position didn't change until Mr H obtained the surveyor's report. And it's clear by the time he did that the water leak had been resolved.

I appreciate the buildings claim couldn't move forward until that had happened. But the failing by Aviva in relation to the legal expenses claim can't have impacted that as by the time that took place the water leak had already been fixed. I accept there were other issues which then meant the buildings claim didn't then progress but those have been considered as part of Mr H's separate complaint (and compensation has been awarded for the impact on him of what Aviva got wrong there).

And I don't think Aviva is responsible for any additional costs Mr H incurred, for example in relation to dehumidifiers, because his need to use those didn't result from what it got wrong in this case. As I've already said it's not clear cover would have been provided for his claim even if a proper assessment of prospects had been carried out. But even if it was the claim at that point couldn't have been to prevent the leak as that had already stopped; it could only have been for damages. It's possible the costs Mr H incurred could be included in that claim. Or if he thinks they result from delays in progressing the building insurance claim then (as the Ombudsman in that case advised) that's something he can raise with it separately. But I don't think those costs are ones he incurred as a result of what Aviva got wrong when handling his legal expenses claim.

Turning to the compensation for distress and inconvenience I do agree it will have been upsetting for Mr H to have this claim incorrectly turned down and frustrating that Aviva didn't recognise that it shouldn't have relied on the November 2023 assessment from the panel firm. I accept that as the carer for a vulnerable child and living in a property which was affected by damp and dry rot he was already in a difficult position. That will have exacerbated the impact on him of what Aviva got wrong.

Having said that for the reasons I've already explained I don't think it's clear legal action against the neighbouring owner would have progressed even if Aviva had acted as it should. And given by that stage the water leak had been fixed it does seem to me that the difficulties Mr H then had at his property primarily result from the progress of his buildings insurance claim. Taking all of that into account I think the £350 our investigator recommended is the right amount to recognise the impact on Mr H of what Aviva got wrong in relation to his legal expenses claim.

Finally, I appreciate that in response to our investigator's view Aviva suggested obtaining further information from the surveyor to clarify his report. I don't think that's necessary. As I've already said the report and subsequent email make clear the surveyor's view on the cause of the dry rot and fungi. So to put things right Aviva needs to obtain a prospects assessment that is based on a correct understanding of the surveyor's report. That will put Mr H back in the position he would have been if that had been obtained (as it should have been) in November 2023.

Putting things right

Aviva will need to obtain a further assessment of the prospects of this claim from a suitably qualified and experienced lawyer which considers all of the available evidence (in particular the report from October 2023 and subsequent email from the surveyor). If the assessment is positive on the claim's prospects of success Aviva will need to progress that in line with the terms and conditions of the policy. It will also need to pay Mr H £350 to recognise the distress and inconvenience caused by what it got wrong in relation to this claim.

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 H to accept or reject my decision before 29 August 2025.

James Park
Ombudsman