Our meeting with Aviva Investors and Aviva Insurance

We met with executives from Aviva Investors and Aviva Insurance on 6th July, to discuss in more depth the questions that we raised with Aviva's board of directors at their recent Annual General Meeting.

Our agenda was as follows:

1. Remediation at buildings owned by Aviva Investors

a) Aviva position in respect of buildings with no developer

b) Aviva position in respect of "non-qualifying" leaseholders in buildings over 11 metres (i.e. leaseholders with over 3 properties)

c) Aviva position in respect of buildings under 11 metres

d) [Redacted – a specific building in Manchester where homes have been uninhabitable for over a year]

2. Terms of building insurance cover provided by Aviva to existing and new customers

a) Buildings Insurance process discussion including proposed ABI Reinsurance Scheme and FCA Consultation CP23/8

b) Aviva insurance of under 11 metre buildings

Case studies were also provided in advance of the meeting, where Aviva had required remediation work beyond the recommendations of an expert fire risk assessment, as a condition of insurance cover.

Buildings owned by Aviva Investors

Aviva Investors is the ultimate owner of a significant number of residential buildings across the country that are affected by fire and building safety defects. It manages a Ground Rent Fund on behalf of 350,000 pension investors, which owns around 1,000 residential apartment buildings in England and Wales, with around 40,000 apartments.

Aviva told us that most of its portfolio is under 11 metres in height (more on that later), with around 250 buildings in scope of the Building Safety Act. Of these, approximately 165 have known building safety defects, meaning at least two-thirds of its mid- and high-rise buildings, and thousands of leaseholders, are affected.

Mark Versey, CEO of Aviva Investors, wanted to point out that Aviva's asset management arm is "not really a landlord" in their view, but only "an agent" for the pension schemes – with a legal and fiduciary duty to manage investments in their customers' best interests.

The company promotes itself as having a commitment to "do what is right," not just for clients but also for society and the world around us. Yet on a couple of occasions during our meeting – when we highlighted how long people had waited for their homes to be made safe or the personal impact on non-qualifying leaseholders if life-changing remediation costs are passed onto them – Mr Versey reminded us that ultimately their investors' interests must come first, ahead of the interests of those living in the buildings they own.

Just a couple of hours after our meeting, the Secretary of State, Michael Gove, reminded such freeholders during a House of Commons debate on building safety that they should not forget they also have a duty to residents in their buildings. He said: "It is vital that all of us recognise that, when it comes to the responsibilities of pension fund trustees, which are the freehold owners… they have a responsibility not just to the beneficiaries of the pension fund, but to those who are living in the homes whose freeholds they own."

Aviva executives also mentioned at various points that 90% of buildings they own have a Resident Management Company (RMC), with the clear implication that it minimises their responsibility for those buildings. But the ultimate point is that any building owner which meets the 'contribution condition,' which Aviva does, has an obligation to pay for the remediation of non-cladding defects and interim measures without passing costs to qualifying leaseholders, for all buildings that it owns including those with an RMC.

Aviva's team highlighted that they share a common interest in lobbying the Government to increase funding for building safety remediation, and their view is that freeholders are equally as blameless as leaseholders when it comes to building safety defects. Their position is that "developers caused this issue," although they also agreed with us that government and regulatory failure has been critical to causing the crisis. They said their company could not have known the safety issues when they purchased the freeholds, and that they believe their interests are essentially "aligned" with those of leaseholders.

Our campaign group will always engage constructively with relevant stakeholders where we have a common interest, to ensure that all homes are made safe at pace and at no cost to leaseholders – but it is a stretch to imagine that we are in the same boat.

Our experience says that, in general, institutional freeholders have sought to profit from owning the buildings we live in, have not acted quickly enough to accept responsibility for making their buildings safe, and were willing to pass costs to leaseholders until the loopholes in the building safety legislation which defined associated persons were closed. As one leaseholder told Inside Housing, "Aviva are as hands off as it gets. They collect the ground rent and that's it… We would not be deprived of anything by not having them as our landlord."

At least in the case of the buildings they own, Aviva believes that the Building Safety Act and the developer self-remediation contracts will largely help to ensure that those who are responsible for safety defects will be the ones to pay – something they said they fought hard for. Carl Williams, Assistant Fund Manager, noted that over 80% of their affected buildings are covered by developer self-remediation contracts; however, that leaves around 35 mid- and high-rise buildings which are not covered.

We highlighted our concerns about the gap between the definition of 'life-critical defects' that developers will be obliged to pay for, versus the full range of 'relevant defects' in a building. We asked Aviva what they would do to ensure buildings were not made only half-safe or require further work at leaseholders' expense in order to be sellable and insurable. They told us in some cases they had already had success in this regard, by working with developers directly to ensure the scope of work would cover all relevant defects. They did not express much concern over this risk; whereas we are aware of so many cases where developers are pushing back on the scope of work, that we did not leave the meeting particularly reassured on this point.

Where developers are not remediating at their own expense or there is no developer, Aviva is pursuing funding from government schemes, including the mid-rise scheme which is not yet in full operation. They insisted they would also continue to pursue responsible parties to make them pay and were prepared to use all available tools at their disposal, including contractual remedies against developers.

This sounded positive but we are aware of an increasing number of buildings where Aviva, and its usual managing agent, FirstPort Mainstay, are continuing to delay signing grant funding agreements leaving residents, who have already been waiting for years for work to start, still trapped in limbo.

It was positive to hear that Aviva has started action on at least one remediation contribution order (RCO) against associated persons. However, it is already six years since Grenfell and a year since the Building Safety Act was in force and it's clear that firm action is needed at much greater scale and pace.

Where all courses of action against other parties fail, Aviva confirmed that they accept their responsibility as a building owner, and will not pass any costs to qualifying leaseholders. They noted that the Fund might need to sell buildings to meet the costs if necessary.

Non-Qualifying Leaseholders

Aviva told us the process of obtaining information on the percentage of non-qualifying leaseholders in the buildings they own is difficult, so they still don't know how many people may be affected.

However, we were cautiously encouraged to hear executives outline their position by saying, "Our view is that the people who caused the damage should be the ones who pay, in all cases… it doesn't matter if leaseholders are qualifying or non-qualifying." What we urgently need, however, is not just supportive words but action to influence decision-makers in that direction.

They acknowledged our point that because non-qualifying leaseholders are not means-tested like developers and freeholders, and because they face potentially unlimited costs, there could be difficulty further down the line if non-qualifying leaseholders could not pay. They also agreed that in principle "it would simplify the process," if the 'non-qualifying' category were removed. But our concern is that Aviva did not seem to be thinking that far ahead and seemed to be waiting for that problem to emerge in the future, rather than tackling it upfront in their engagement with DLUHC.

Larger freeholders, including Aviva Investors, are invited to bi-monthly meetings with DLUHC – these only began recently, despite it already being six years since the building safety crisis emerged post-Grenfell. These meetings give Aviva an opportunity to highlight blockages to making buildings safe and to make proposals for improving the process. **Aviva could show their aligned interests with leaseholders by highlighting the need to remove the non-qualifying status when they engage with DLUHC**.

We also asked if they would be lobbying the Government to ensure payment plans are available for non-qualifying leaseholders. Our position is that no leaseholder should have to pay a penny, but the fact that enormous remediation bills could be payable within 28 days is an additional cause of distress and uncertainty. Leaseholder protections in the Building Safety Act ensure that only 1/10th of the cap can be charged to a qualifying leaseholder in any one year, but there is no similar protection to spread the costs for non-qualifying leaseholders. Aviva assured us that, as a responsible landlord, they would offer payment plans to non-qualifying leaseholders even if the Government did not make them mandatory.

The legal costs of pursuing alternative routes for remediation funding can be passed on to non-qualifying leaseholders, but Joanna Finney, Senior Counsel, confirmed that Aviva would cover their own legal costs for RCOs at the First-tier Tribunal, and these would not be passed to non-qualifying leaseholders.

Buildings under 11 metres

The vast majority of buildings owned by Aviva are under 11 metres in height (around 750 or 75%) and they said a small number of these (14 or 2%) are known to have safety defects and will undergo remediation. These are part of mixed-height developments that are set to be self-remediated by developers (at their expense), which is why they are already known about.

But Aviva admitted that because they are prioritising their focus on taller buildings first, many of their buildings under 11 metres will not have been assessed yet – which is something we have repeatedly highlighted to DLUHC when they say there is no systemic issue in low-rise buildings (despite mounting evidence to the contrary).

Aviva's 14 buildings may be few in number, but their existence is an acknowledgement that remediation will sometimes be required in buildings of this height. Our Aviva Insurance case studies (where Aviva is not the freeholder) also show that remediation is sometimes required for buildings under 11 metres (more on this later). This matters, because we understand that DLUHC's "independent" assessor has not yet identified a single under 11 metre building where they agree with a FRAEW that recommends remediation; the narrative from DLUHC is that remediation is unlikely to be needed for buildings below this threshold. But this is clearly not always the case, as the Aviva portfolio shows.

We are concerned that Aviva has not yet considered what will happen if they find remediation is needed in any of their numerous other buildings under 11 metres, where a developer has not agreed to remediate at their own expense as part of a mixed-height scheme.

In addition, where under 11 metre buildings are deemed to be 'safe,' leaseholders can still remain trapped because banks and insurers are taking a cautious view due to the potential for uncapped costs. **Aviva could take a lead on this, and prove it is a responsible landlord, by guaranteeing that no remediation costs would be passed to leaseholders in such buildings**, but it did not seem as if the company had even considered taking a proactive role in ensuring buildings under 11 metres do not remain trapped in the crisis.

Aviva Insurance: "I don't recognise the lunacy of our pricing"

While the discussion in the first half of the meeting was broadly constructive, the same could not be said once we turned to the topic of insurance for residential blocks caught in the building safety scandal.

Mark Dunham, Head of Technical Underwriting for Aviva, told us they had led the way in the industry in the last two years by never declining insurance cover for an affected building. An EOCS campaigner cited an example of Aviva's astronomical price increase at the time of policy renewal, and suggested this was a tactic to effectively refuse to offer insurance in all but name. Mr Dunham denied this was a practice. "I don't recognise the lunacy of our pricing," he added.

Mr Dunham also told us that Aviva Insurers were focused on the number of people they had helped with their new insurance product and that 7,000 leaseholders had benefited. These new products were trumpeted with great fanfare by then Secretary of State, Robert Jenrick, in April 2021, but given that hundreds of thousands of innocent leaseholders have faced insurance extortion for years, the number who benefited from this policy is clearly very small. We requested information on the average premium value for this product, but this information was not forthcoming.

In advance of the meeting, we had shared a handful of case studies where Aviva has required remediation work beyond that recommended by an expert fire risk assessment, as a condition of providing insurance cover. If the work is not done, the buildings face the threat of having insurance cover removed. In all cases, this will cost tens of thousands of pounds per leaseholder. Three of those case studies are buildings under 11 metres. Mr Dunham decided to flatly deny that this practice ever occurs; he suggested that leaseholders might inform Aviva that they want to do extra remediation work – but that it is never the other way around with Aviva telling them they must do the work or lose insurance cover.

We were astounded by these comments and the attempt to deny the reality of what we had sent to Aviva ahead of the meeting. We intend to pursue this topic further, because we have evidence that contradicts this.

Aviva also told us that they "treat all buildings the same, whether they are under or over 11 metres." We will be reiterating this point to DLUHC, because the Department does not yet seem to have accepted that other stakeholders including insurers do not share their view that buildings under 11 metres should be treated differently from taller buildings. There must be alignment in the approach taken by DLUHC and other stakeholders, otherwise leaseholders will remain trapped with high costs.

How will the remediation of safety defects affect future insurance premiums?

Another EOCS campaigner highlighted skyrocketing premiums at their development, where prices had increased +1200%. We asked why building insurance premiums – across the industry – were not coming down even when remediation of building safety defects was underway or complete. We could hardly

believe our ears when Mr Dunham explained that prices are not expected to decrease by much after remediation is complete, because "the cladding element of our pricing is a relatively small amount."

He told us the main reason for the insurance price hike since Grenfell was, in fact, due to escape of water risk in multioccupancy buildings (even if there has been no claims history in your specific building, the calculation will be based on an increase in claims or risk in a wider cohort of similar buildings). Leaseholders should therefore not expect a significant fall in premiums when building safety remediation is complete.

To quote George Orwell, we might as well have been told that black is white. There is simply no credibility to the narrative Mr Dunham was trying to spin on behalf of Aviva Insurers. Are we to believe that the timing of the price hike, in the Grenfell aftermath, was pure coincidence?

Why had we ever thought soaring insurance premiums were related to building safety? Let us explain.

In February 2021, the former Director of General Insurance Policy at the Association of British Insurers (ABI) told a very different narrative. He explained that price increases were occurring because, "Historically, insurers of high-rise buildings would have only had to prepare for a loss caused by damage to just a few flats within a building. That is because the design and construction of that building… should have limited the spread of fire and allowed the damage to be contained – or at least make this an extremely low risk... The reality is that today… the maximum loss could well be the whole building. Insurers therefore have to work on the basis that the costs of fire in these buildings are significantly higher than originally thought."

In February 2022, in evidence to the Select Committee, he said: "What we are doing as an industry is pricing risk, and the risk of these buildings has increased. Some of them are very dangerous buildings indeed… Anything that can be done—and we are huge supporters of what is set out in the Building Safety Bill—to improve the safety of buildings in the future, we are big supporters of. Safer buildings will be cheaper buildings to insure."

Then in August 2022, the ABI trumpeted a new initiative whereby seven insurers, including Aviva, committed to review the premium for high-rise residential buildings as soon as all building safety remediation works were complete, rather than waiting until the annual policy ended. They said, "Where remediation has reduced the fire risk of the building, and no other factors have changed since the policy was taken out, we would expect the change in the risk posed by the building to be reflected in the premium charged." Why would insurers have bothered to create such a scheme if only a relatively small amount of the premium was related to building safety risk, as Aviva are now claiming is the case?

In a blogpost published in December 2022, the ABI clearly stated that building safety – not escape of water – was the main factor. "The central underlying reason that premiums are high for these buildings is the systemic failure of the building regulatory regime which insurers previously had confidence in and relied on in making pricing decisions. So it is the remediation of affected buildings to a standard that ensures life safety and property protection which remains the ultimate solution to addressing the high cost of insurance."

More recently, the ABI's current Director of General Insurance Policy said: "The only way to substantially reduce the insurance costs for affected buildings is to repair them to a standard that saves both lives and the property." He didn't speak of costs going down slightly; but of *substantially reduced* costs.

To now be told by Aviva that soaring insurance premiums since Grenfell have had little to do with cladding and building safety issues is frankly insulting, and our collective rejection of Aviva's argument was very clear. Innocent leaseholders deserve more honesty after the unfair costs we have borne for years. We will be raising this issue in our meeting with the Financial Conduct Authority on 12th July, when we will be discussing their recent consultation on multi-occupancy building insurance.

Mr Dunham also highlighted that Aviva had led the industry in capping broker commissions to "only" 10%; however, as we told him, this is misleading because the absolute level of commission has still rocketed.

Besides this, the focus on broker commissions, while important, is distracting attention from the more significant underlying issues with soaring premiums set by the insurers.

Thank you to the team from Aviva Investors and Aviva Insurance for meeting with us. Unfortunately, Aviva declined to discuss individual cases during the meeting, however we will continue to engage directly or jointly with the relevant leaseholders, to highlight specific concerns.

CALL TO ACTION

If Aviva is the freeholder or insurer of your building and you are facing ongoing problems, please contact us to let us know about your circumstances. Please include specific facts and documentation where you have it, so that we can make a robust case about the issues that Aviva needs to address.

Thank you to our friends at ShareAction, who supported our attendance at the Aviva AGM earlier this year.