

The complaint

Mrs T is unhappy that Aviva Insurance Limited wouldn't deal with her subsidence claim under her home insurance policy.

Mrs T is represented by her daughter Mrs W but for the purposes of this decision I'll refer to Mrs T throughout.

What happened

Mrs T discovered cracking at her property and contacted her current insurers to make a claim. Her current insurers noted that Mrs T had claimed for subsidence before under a previous policy with Aviva. It said the damage was clearly linked to the original claim and that Aviva hadn't dealt with the original claim repairs correctly. The existing insurer referred to The Association of British Insurers (ABI) domestic subsidence agreement. Within the agreement it says:

"Question 27 - Inadequate repairs - Previous Insurer

What action should be taken where the present insurer is notified of a claim where it is evident that continued damage is due to inadequate repairs undertaken by a previous insurer?

Answer

Where it can be clearly established that inadequate repairs and/or design were undertaken and the previous insurer can be identified then the claim should be referred back to them. In circumstances where the previous insurer cannot be identified then the claim should be handled under the terms of the Agreement."

So, Mrs T made a claim to Aviva saying this claim was all linked to the previous claim. Aviva didn't accept this. It referred to another part of the ABI agreement that says:

"If you discover subsidence damage after changing your insurance provider:

If you change insurer and then discover subsidence damage, the ABI's subsidence claim handling agreement will help determine whether your previous or current insurer should handle your claim. The decision will be based on the amount of time that has passed between you switching insurer, discovering subsidence damage, and notifying your insurer:

- if the date of notification is within eight weeks of changing insurance provider your previous insurer will handle your claim*
- if the date of notification is between eight weeks and one year of switching provider then your previous and current insurers will share the cost of your claim*
- if the date of notification is more than a year after you switched insurers your current insurance provider will deal with your claim."*

As Aviva wasn't the current insurer it said it didn't have to deal with the claim. It said the current insurer needed to in line with the above section of the ABI agreement. Unhappy with this Mrs T brought her complaint to this service.

Our investigator upheld the complaint against Aviva. He said despite his requests for details there was a lack of evidence to support Aviva's stance that the claim needed to be dealt with by the current insurers. He pointed out that Aviva hadn't accepted the current insurers invitation to jointly inspect the damage. He said the evidence provided by the current insurer to show that the damage was all linked to the previous claim was persuasive. He said damage wouldn't have reappeared in the same place after such a short time if Aviva had carried out effective and lasting repairs. Based on this he felt that question 27 of the ABI agreement should apply in this case and Aviva should deal with the claim. He said Aviva should also pay £250 compensation for the distress and inconvenience caused to Mrs T by the way Aviva had poorly handled the claim.

Aviva didn't accept this and asked for the complaint to be passed to an ombudsman for 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.

I can understand Mrs T's frustration and disappointment at not having her claim dealt with. She's had continuous cover throughout and the ABI agreement is in place to avoid customers not getting valid claims dealt with and resolved. The agreement is there to protect customers and insurers. Both the insurers in this case are ABI members so the agreement applies to them.

I accept this is a rare and therefore slightly more complex situation. This is a further/follow up claim for the same issue – subsidence.

It's clear that both insurers feel strongly that the other ought to be stepping in and dealing with it but that should have been dealt with between the two insurers rather than leaving Mrs T to complain to this service.

It's accepted that while the policy was with Aviva Mrs T did make a previous subsidence claim that Aviva accepted and dealt with. That claim settlement was concluded in 2018.

Aviva's expert's "S" has been back to the property and inspected the recent claim damage. It said:

"The damage includes diagonal and tapered cracking mainly to the rear wall. This is the largest crack, and is a new crack in this wall, no previous repairs have been undertaken in this wall.

Review of the settled claim confirms all the mitigation has been completed and the utility [room] was stable prior to repair.

Therefore, the damage reported is 'new damage'. The 'new damage' should be referred to the 'current insurers' rather than the now 'previous insurers' who no longer insure the building."

It reiterated its position that the ABI agreement section it referred to is the one that applies. It said the current insurer needs to deal with the claim.

The current insurers expert "W" also inspected and said:

“Our position is that the previous insurers (and their adjusters) did not properly diagnose/resolve the original subsidence problem and this is therefore a matter for them to reconsider.

They [Aviva] originally thought there was a clay shrinkage problem due to vegetation, attempted to pursue vegetation control measures which proved unsuccessful and although originally not believing there was a drain leakage issue, they then concluded that drain repairs had solved the problem.

The monitoring readings that have been supplied are also incomplete as no visits were carried out between June 2017 and December 2017 and there were still signs of movement occurring.

For example, one of the monitoring locations showed 2mm opening from March to April 2017 and 2mm of closure from April to May and others show around 0.5mm opening June 2017 to December 2017. Our adjuster has asked Aviva’s adjuster repeatedly for an explanation for this, but none has been provided.

Importantly, it is also the case that although the cracks were repaired at the conclusion of the original claim, the cracking now present is in the same locations.

It is inconceivable therefore that we are now dealing with a new cause of subsidence.

It is usual practice in such circumstances for the previous insurers just to reopen their files and resolve matters as required by the ABI Subsidence Agreement, but Aviva are refusing to do so.

We should also add, the very purpose of Question 27 in the agreement is to avoid exactly this situation and so not to provide an incentive to all insurers just to repair cracks, leave the problem unresolved in anticipation that a later insurer will have to resolve the problem instead.”

In its inspection report W said:

“We are concerned with the rear projecting part of the garage/utility where there is clear evidence of previous repairs carried out. On the right hand side of the garage/utility there are only 1mm wide cracks, but in places where previous repairs were clearly undertaken. These are visible both internally and externally.”

In terms of the cause W said “neighbours were persuaded to reduce their vegetation...It seems surprising therefore that S went to the trouble of persuading neighbours to reduce their vegetation if it was not implicated. The present damage has occurred during a very dry spring/summer and we wonder if the ongoing movement is due to shrinkage of the sub-soils due to the remaining vegetation.”

W also said Aviva originally decided “The ultimate conclusion was that the problem was due to leaking drains, although the initial drainage investigation did not reveal any leakage.”

The current insurer provided a complaint summary and said it held the “strong opinion” the claim was “consequential of inadequate repairs by Aviva.” Instead the current insurer said the cause is “in fact related to clay soil shrinkage caused by vegetation as they [Aviva] believed originally.”

W questioned the original monitoring and pointed out that local vegetation is still in place. This evidence is more persuasive than the limited details provided by Aviva.

There was a debate between the two insurers experts S and W around the ABI agreement question 27. In correspondence S acting for Aviva said:

“If they (the other insurer) show the repairs were defective and this is the reason for a further claim then, their right, under the ABI it would come back to Aviva.”

In discussion with the current insurer W said *“Initially, S failed to recognise that the ABI Subsidence Agreement could apply, but he had now eventually done so.”*

The current insurers did show that it had tried to work with Aviva to agree a way forward, but it does appear Aviva attempted to shut down the discussion.

Aviva is aware of this services approach to making sure following a claim that repairs are lasting and effective. The claim it dealt with previously wasn't completely concluded until 2018 and the damage returned in 2020. I think it's hard for Aviva to argue that there isn't a direct link and I think if it had evidence to show there was no direct link it would have provided this to support its position. Instead it has maintained the same line about the time limits around the ABI agreement and not done the joint inspection the current insurer offered. I don't think Aviva has acted reasonably.

So, I think the ABI agreement here dictates that Aviva needs to step in and deal with the claim. I think the evidence from the current insurer, the lack of details from Aviva and the timeline shows that the previous repairs were inadequate.

It is clear the claim being declined, and the time delays involved have had an impact on Mrs T and her health. Aviva hasn't handled the claim well and so £250 compensation for the distress and inconvenience caused is a fair and reasonable outcome.

Putting things right

- Deal with the claim
- Pay £250 for the distress and inconvenience caused

My final decision

I require Aviva Insurance Limited to:

- Deal with the claim
- Pay £250 for the distress and inconvenience caused.

Aviva Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mrs T accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 2 June 2022.

John Quinlan
Ombudsman