

## **The complaint**

Mrs B complains about how Aviva Insurance Limited handled her claim on her home insurance.

## **What happened**

The events surrounding this complaint are well known to both sides, so I will provide only a brief summary here.

- Mrs B first raised a claim for suspected subsidence in around 1991 with her previous insurer. Since then she has raised various claims to try and resolve matters.
- In 2000 she moved her insurance to a company that is now Aviva. In 2001 she raised a new claim with them about cracks at the property that were worsening. This was eventually confirmed as subsidence and some repairs were carried out.
- In 2009 another claim was made as the cracks were worsening again. Aviva identified that the problem was being caused by defective drainage and accepted the claim. Some repairs and underpinning took place.
- In 2014 Aviva confirmed that it was satisfied it had met its liability and all outstanding problems were repudiated under the policy. Mrs B didn't agree and brought a complaint to this service about issues she considered to be outstanding.
- In 2016 this service made a decision on a complaint about the claim and didn't uphold it.
- In 2018 Aviva re-opened Mrs B's claim and reassessed it. Its expert's report concluded that there was subsidence and identified the location of the soakaway as a possible cause.
- Between 2018 and when Mrs B brought her complaint to this service in August 2021, there have been further problems with repairs. Including problems with the lack of damp proofing of the kitchen floor and a further defective pipe that was found close to the area. Mrs B was unhappy with how the whole claim had been handled and made a complaint to this service.
- Our investigator recommended the complaint be upheld. She thought Aviva should pay £750 compensation and disturbance allowance for the time Mrs B was without a working kitchen. Mrs B didn't think this was enough and asked for the complaint to be reviewed by an ombudsman.

## **My provisional decision**

In August 2022 I wrote to both sides to explain my provisional findings. In which I said I agreed with our investigator's compensation award and that Aviva should pay disturbance allowance for the time Mrs B was without a kitchen. I asked Aviva to confirm the dates that

this applied to, and confirmed the amount at £3,300 based on the dates provided by Mrs B.

Aviva hasn't responded to my provisional decision.

Mrs B responded to say she doesn't agree with my findings. In summary she has said she thinks the compensation award should be much closer to £5,000 as the claim has caused her significant distress and has impacted her health and wellbeing.

I've considered all the comments Mrs B has provided in response to my provisional findings.

### **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 scope of this complaint**

As already explained, this service can only look at issues that have arisen in this complaint since 2015, as this is six years before the complaint was brought to the service. I understand this claim, and complaint, has been ongoing for many years. But as part of this decision I will only consider issues that have arisen after this date.

Further, our service has already considered a complaint about this claim, and another ombudsman issued a final decision on this in 2016. So I won't consider any issues that were decided upon as part of that complaint.

### **Our approach**

Mrs B has provided a very large amount of information in relation to this case. As this is an informal service, I've not responded to every point she's raised individually. Instead I've focussed on the things I consider to be most relevant to my outcome. However I wish to reassure Mrs B that I've read and considered everything that has been provided.

From doing so, it's clear that this claim has caused Mrs B significant distress and inconvenience, especially considering the length of time the issues have been ongoing for. Subsidence claims, by their nature, often take a long time to resolve. There will usually be periods of monitoring where it may feel like no progress is being made. And it may take some time to identify and mitigate the cause of damage, as this isn't always clear from the start and requires various different types of investigation to identify. There are also often a number of different contractors involved. And this can cause added disruption and extra time.

When looking at this complaint I am focussing solely on the impact the actions of Aviva had on Mrs B. And I can only make an award for this impact, rather than the impact of having a subsidence claim. Claims themselves can be stressful and cause distress and disruption, but I can only ask Aviva to pay compensation for things it got wrong. I've therefore looked at the timeline since 2015 and identified where I think Aviva has caused unnecessary delays and caused avoidable additional distress and inconvenience, in order to decide what it should do to put things right.

It is of note that throughout this complaint Aviva has provided no information to this service, even though it has been given ample opportunity to do so. Due to this, and in order to not delay matters further, I've decided the matter based on the information Mrs B has provided.

I've addressed the issues I considered to be key to my decision in turn below.

## **Damp proof membrane**

Mrs B has said that Aviva's contractor didn't fit suitable damp proofing when it first laid the kitchen floor in 2018. And this led to discolouring of the grouting and further water ingress.

I've looked at the initial report from the contractor, and it directs a resin primer to be applied under the flooring. Aviva has confirmed that this was carried out by the contractor. The contractor has also clarified that as there were no significant damp issues at the time, this is why a further damp proof membrane wasn't deemed necessary.

I appreciate Mrs B has said that she thinks that due to the high moisture levels in the area of her property, a damp proof membrane would have been necessary. It isn't the role of this service to decide what the most appropriate repairs are, as we aren't experts in building repairs. Instead we rely on the evidence available and the opinions of those who are experts. Aviva's expert concluded that the resin primer was suitable based on the information at the time. And while Mrs B has said she doesn't think this was suitable, she's provided no expert evidence to contradict this. So I'm persuaded that Aviva acted fairly by not installing a damp proof membrane at this time, based on the information it had.

Further, the problems with the grouting were later identified as being due to an open joint in the drainage system. So this further supports this position. As the damage that developed wasn't due to usual use but instead a further issue causing more extensive water ingress.

I note that in 2021 a damp proof membrane was installed, and I'm pleased to hear that this has resolved matters for Mrs B. However I'm satisfied that Aviva followed its expert opinion based on the evidence available at the time in 2019. And while I agree that a damp proof membrane being installed would have stopped the water from penetrating and causing the damage to the grouting, I still wouldn't have expected Aviva to install one when its expert didn't think it necessary at the time. I'd expect it to put in place only what is required for the usual functioning of a property and I'm satisfied this is what it did. So I don't think it caused an unreasonable delay here.

## **Soakaway**

In a report instructed by Aviva in 2015, the soakaway was noted as an issue as it wasn't built in line with buildings guidance. But it concluded that the property wasn't suffering from subsidence at that time so moving it wouldn't be covered under the policy. The report advised that Mrs B take action to rectify the problem.

In 2018 however, the soakaway was identified as causing subsidence to the property due to the impact the damp ground was having on the building. And moving it formed part of the mitigation and repairs directed at this time. I therefore agree that Aviva failed to identify an issue that could have been addressed earlier, so I agree this delayed the claim.

## **Overall service and delays**

From considering the action taken on the claim since 2015, I agree Aviva has provided a poor service and has caused some avoidable delays. I have summarised the key issues I have identified:

- Aviva could have identified the problem with the defective pipe causing damp issues in the kitchen at an earlier date. It originally concluded that damp on the floor was caused by water being spilt from the sink. I don't think this was a reasonable conclusion based on the level of moisture identified at the time. Had it identified the real problem sooner, it could have resolved problems more quickly.

- No schedule of works was provided to Mrs B throughout the claim so she was unclear about the work that would take place and the time scales for this. This caused Mrs B undue distress and left her unclear on when works would finish and she would get her home back to normal. So I think Aviva should have done more here to help alleviate the distress.
- While I am only considering a small period of the claim, I can see Aviva has incorrectly repudiated the claim on a number of occasions. The cause of subsidence can be difficult to identify, and I can see significant investigations were carried out during this time, so I don't agree that Aviva delayed the claim unavoidably for all of this time. However I think more could have been done at an earlier stage to ensure the problem was identified and addressed earlier.
- Mrs B has been living in difficult conditions while work has been undertaken. While subsidence claims will usually cause some considerable disruption to a home while repairs are carried out, I agree Aviva has caused this to go on for longer than it should have done. This has caused Mrs B additional and prolonged distress that has had an impact on her day to day life. She's also explained that she intended to carry out work on her driveway that she has now had to delay and is concerned about cost increases of this.
- I've seen no evidence that Aviva offered the option of alternative accommodation during this time, which meant Mrs B had to construct a basic temporary kitchen in her garage while she was without kitchen facilities.

Based on this, and on considering all the information provided again, I maintain my position in my provisional findings that Aviva should pay Mrs B £750 compensation.

I understand Mrs B is extremely unhappy with the compensation awarded and she's explained the distress and inconvenience the claim has caused her and the impact this has had on many areas of her life. By making this award, I in no way wish to diminish this impact and I don't doubt that it's been a very difficult time for Mrs B. However my award is limited to the impact of Aviva's actions and the actions of its agents, rather than the impact of having a subsidence claim. And, on considering everything, I think £750 is a fair amount for the period I've considered in this complaint, and in line with this service's approach to other similar complaints.

### **Alternative accommodation**

I have considered the information Mrs B has provided, including the video that shows the conditions she has been living in while her kitchen was out of use. I agree she has been living in very difficult conditions during these periods.

From the information provided I've seen no evidence that Aviva offered to provide alternative accommodation for this period. And in this situation this service would expect it to have either provided alternative accommodation or paid a disturbance allowance to make up for the additional costs that would be incurred from not having access to kitchen facilities. This is to cover buying readymade food, takeaways or eating out. I therefore agree with our investigator that Aviva should pay a disturbance allowance of £10 per day for the periods Mrs B was without these facilities.

Mrs B has said that she was without facilities for a total of 11 months – four and a half months in 2019 and a further six and a half months in 2021. Aviva has provided no information to dispute these periods so I have no reason to doubt that this is correct. I therefore conclude that Aviva should pay disturbance allowance at £10 per day for this

period, and will direct it to pay a total of £3,300 as outlined in my provisional decision, less any payments already made for this period of time.

### **My final decision**

For the reasons I've given, I uphold this complaint and require Aviva Insurance Limited to:

- Pay Mrs B £750 compensation
- Pay Mrs B £3,300 disturbance allowance, less any amounts already paid for this for the period of 11 months across 2019 and 2021.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 28 October 2022.

Sophie Goodyear  
**Ombudsman**