

The complaint

Mr E is unhappy with Aviva Insurance Limited's handling of a subsidence claim made under his home insurance policy.

All references to Aviva include its appointed agents

What happened

Aviva has been dealing with a subsidence claim raised by Mr E under his home insurance policy since August 2020.

Aviva's approach to the claim involved tree mitigation works, site investigations and level monitoring. Aviva concluded the site was stable and proposed a scope of works. The scope included crack repairs to the external and internal wall of the affected area of Mr E's property, along with internal redecoration.

Mr E is unhappy as he believes the drains are also affecting and contributing to the subsidence. He says Aviva's proposed repairs won't be effective and lasting. Mr E adds that the movement hasn't stopped and provided photos to show the cracks in his property are getting wider.

Mr E also says the repair needs to include foundation work to ensure its effectiveness, Aviva disagrees. It says it has cause to believe the foundations are defective, taking into account the surrounding vegetation. And in any event, it's not been shown the foundations have been damaged. So, its liability is limited to restoring the crack damage and decorating.

Aviva didn't uphold Mr E's complaint, so he referred the matter to our service. Our investigator looked at everything and initially recommended the complaint not be upheld. They concluded Aviva's position to cover the proposed repairs was reasonable in the circumstances.

Mr E disagreed and provided further evidence for our service to consider. He said this showed the movement was ongoing and that there was most likely a linked issue with the drains.

Our investigator then issued a second opinion where they recommended the complaint be upheld. They concluded that on balance there was still movement at Mr E's property. So, they recommended Aviva reconsider the claim and investigate the reported drainage issues further, before monitoring the property to confirm stability.

Aviva disagreed with our investigator's findings and asked for an ombudsman's decision. It said that the new information provided by Mr E didn't factor into its original decision, which centred on Mr E wanting a more substantial repair (including deeper foundations). Aviva also questioned whether the cause of the drainage issues would be covered under the policy.

The complaint was passed to me and on 2 November 2022 I issued my provisional findings. I've repeated an extract below:

“Usually, our service will consider events up to the date a business issues a final response letter to a consumer, telling them they can refer their complaint to our service. But occasionally, its impractical to do so because events have moved on. Due to the circumstances of this case, I reached out to both parties for further information in order to provide an up to date, relevant, and fair answer.

I'll first set out the present position as I see it. I'll then review both party's responses to the information I requested. I'll next consider our service's approach to claims of this nature, and what we would expect to see from each party to move the claim forward. Finally, I'll set out what I see as the fair and reasonable outcome to this complaint.

Present position

As things stand, Aviva isn't willing to conduct further investigations towards the subsidence claim. It says it advised Mr E to register a separate drainage claim for consideration in January 2021, and at the same time recommended he repaired some defects in the drains. Aviva said it didn't consider these defects to be linked to the cause of subsidence.

Mr E says he wants his own builders to do the repairs now, as he wants a more permanent solution than Aviva is offering due to the ongoing movement. He says the repair works are likely to cost around £30,000. So, he wants Aviva to cash settle the claim for £20,000, whilst fronting £10,000 of the costs himself. Mr E adds that he's never been reimbursed for any of his own surveys or reports during the claim.

Based on the present position, I asked Aviva:

- If it would consider reimbursing Mr E for any reports prior to the claim being accepted in August 2020. But not for any reports which hadn't been shared, nor contributed to the claims progress.*
- If it can be shown the drain was accidentally damaged, does its offer to consider a separate claim for the drains still stand?*
- If it could comment on the ongoing movement suggested by Mr E.*
- For its comments on a potential cash settlement amount in the circumstances.*

Aviva responded and said:

- It would cover the cost of reports prior to August 2020, upon a copy of the invoices.*
- Its offer to investigate the drainage issues under a separate claim still stands.*
- It would recommend a further three months monitoring in response to the alleged ongoing movement. Aviva asked if Mr E had repaired the drain issues since January 2021 as if he hadn't, then the property would most likely be affected by this.*
- It's likely a cash settlement for the damage would amount to approximately £5,000 less the policy excess of £1,000 (calculated around May 2021). But it says it's unable to provide an up-to-date settlement offer, as Mr E won't allow any further site visits until our service decides the matter.*

I asked Mr E:

- If he could provide me of a breakdown of the £20,000 he wanted Aviva to settle and what work this would relate to, so I could consider what Aviva was fairly and reasonably required to pay under the terms of the policy.*
- Whether any further repairs to the drains had been carried out since January 2021.*

Mr E responded and said:

- He'd obtained an up-to-date quote of the repairs and provided the breakdown of costs.*
- He said he'd raised the issue of the drain with Aviva's loss adjuster, but they weren't keen on attending the matter. So, he now needs to locate where the leak is happening, and he suspects there is another leak contributing to subsidence.*

Our approach

Our service considers it fair and reasonable for an insurer to undertake investigations in order to determine the scope of its liability – as they have access to the relevant resources and experts to do so. So, if Mr E has prevented any further site visits, this will ultimately limit the scope of his settlement to the evidence Aviva already holds.

Mr E requested a cash settlement after Aviva offered to indemnify him with repairs. So, our service's approach is that Aviva can't force the repair on Mr E and must pay cash to settle the claim. But Aviva is only required to pay what it would've cost for it to do the repair, which might be less than the amount it costs Mr E.

If the amount isn't enough for Mr E to do the repairs, then as long as Aviva's offer of repairs was fair to begin with, it would be reasonable to conclude that it has indemnified Mr E and no further payment is due. It would then fall to Mr E to prove that any additional costs were insurable interests under the policy.

Drains

I've considered the evidence I have linking the ongoing movement to leaking drains. And I accept Mr E strongly feels this is the case. But from what he's told me, it's reasonable to infer that no further drain investigations or works have been carried out since Aviva wrote to Mr E in January 2021, recommending him to repair the drain defects. The more recent reports I've seen also mention drain defects, but they don't conclude what most likely caused them, nor do they cover what Mr E now says are ongoing issues.

On balance, if there are further issues with the drains then Mr E will need to reengage with Aviva to enable the necessary investigations. If he doesn't or is unable to evidence an insured event happened to the drains, then I don't find it reasonable for Aviva to be held liable for any linked damage.

Cash Settlement

I've next considered whether Aviva's initial offer of repairs is reasonable in the circumstances.

Aviva has stated that its repair cost will not include a new foundation to the front wall as the existing foundation is inadequate.

Mr E's scope of repairs includes a demolish and rebuild of the affected area and underpinning of the foundations. This is significantly more work than was set out in Aviva's scope of repairs.

Underpinning is often considered a permanent and effective way of stabilising a property. But it's also used as a preventative measure against future ground movement, in place of other remedies such as drain repairs or providing strengthening to an existing structure. Preventative work isn't covered by Mr E's policy.

Mr E's policy also states under the section covering subsidence, "We will not cover...damage caused by faulty or unsuitable materials, design or poor workmanship".

As Aviva is relying on this to exclude some of the damage, the onus is on it as the insurer to show the exclusion fairly applies. And having considered everything, I'm persuaded Aviva has done enough to show it fairly applies in the circumstances of this case.

I say this because Aviva's report and site investigations show the front wall has been built directly off a concrete floor slab with a foundation depth of 110mm. Aviva says this foundation depth isn't sufficient in line with guidelines used by a new home's provider. I'm not fully persuaded those guidelines apply to Mr E's property. But in any event, I think a reasonable builder would've (in line with good industry practice) considered the area surrounding Mr E's property, including any vegetation, and taken steps to ensure the foundations were deep enough. And I'm not persuaded that they did so in this case.

Therefore, I find it reasonable that Aviva is liable for any resultant damage to Mr E's property, but not any work involving the strengthening of the foundations.

If Mr E wishes for the claim to be accurately cash settled, I find it reasonable that he should arrange for Aviva to attend the site to scope and cost the works it would be liable for under the policy. I find no proper basis to simply award a lump sum based on the quote he's provided, as there's no comparison to what it would cost Aviva to do the insured works. And from what I can see, the majority of the work is linked to strengthening the foundations which is predominantly preventative.

It appears Mr E has disengaged from Aviva's loss adjuster and no further site visits have been agreed. Ultimately, if Aviva is unable to accurately scope the repairs it's liable for, this will likely mean Mr E receives a lower settlement than he may be entitled to.

Therefore, in order to move things forward Mr E can either:

- Accept Aviva's cash settlement, which on current evidence will be around £5,000 less the policy excess. Or;*
- Allow Aviva to attend the site in order to update the scope of insurable repairs and cash settlement amount.*

And;

- Raise a separate claim for the drains to see if Aviva can fund the repairs under a separate section of the policy.*

Aviva should:

- Reimburse Mr E's expert reports prior to August 2020, upon receipt of evidence of invoices.*
- Pay 8% simple interest on this sum, from the date the invoices were paid, to the date of settlement*

Developments

Aviva accepted my findings in principle. It said that whilst it didn't usually pay customer reports unless they altered its decision on a claim, it would accept reimbursing the reports referred to upon receipt of copies of the invoices.

Mr E disagreed with my findings and said in summary:

- He didn't consider the issues with the drains was a separate matter, instead he said it was directly connected to subsidence. And therefore, raising the drain issue as a separate claim is misleading the course of the investigation.
- The front wall didn't have a foundation so he would rebuild it himself, but the side wall which has foundations also suffered from subsidence and required underpinning.
- Aviva's cash settlement offer isn't legitimate.
- That I had disregarded the repair quote he provided.
- That Aviva had allowed the neighbouring trees to remain.

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 seems to me that the heart of the issue with the drains is Mr E's reluctance to raise a separate claim for them. He strongly feels Aviva should include any investigations as part of the subsidence claim.

However, I find that Aviva's communication around January 2021 was clear and based on the evidence it held at the time. The email sent to Mr E stated, "*The drains near and under the garage have been surveyed and several defects were noted on Run D...These drain issues are not considered to be the cause of subsidence although we do recommend that the defects are repaired. The cost of the repairs cannot be accepted under the subsidence claim however, you should contact your insurers to see whether there is cover under a different peril. The failure to carry out these drain repairs as recommended may prejudice any future claims on your property.*"

As I determined in my provisional decision, I've seen no firm evidence to either conclusively link the current drain issues to subsidence, or to show any work's been done to the drains since Aviva set out its position on the claim above.

I've seen reports from both Mr E and Aviva which conclude the drains have defects, but it doesn't follow that this shows they are causing the subsidence beyond reasonable doubt.

So, as I see it, there's nothing preventing Mr E from raising a drain claim for Aviva to consider. But as things stand, I've reached the same conclusion I did in my provisional decision, and for the same reasons.

Regarding the different foundation depths to the walls, I refer back to the conclusions reached in my provisional decision about "underpinning" and see no reason to depart from them here either.

In addition, it seems that the repairs in Mr E's property are linked to the presence of a nearby neighbouring tree (which Mr E says Aviva has allowed to remain).

Our services approach is that if an insurer is unsuccessful in removing third party vegetation, then the scope of repairs (and any cash settlement linked to this) should take this into account in order to provide an effective and lasting repair. However, in line with my provisional findings, I still find it reasonable that Aviva's cash settlement can fairly exclude any costs to strengthen defective foundations and any work it deems as preventative.

I've considered Mr E's comments about the cash settlement, and as I've set out previously this was based on a calculation made around May 2021, so it's unlikely to reflect the present position. But I can't see that Aviva has been given a fair and reasonable opportunity to update the settlement since (and taking the above considerations into account).

So, I want to reassure Mr E that I haven't disregarded his repair quote but, ultimately, it is for Aviva's experts to determine what falls under insured works and what doesn't. There are clearly some defective and preventative works here which Aviva isn't reasonably going to cover in any event.

Should Mr E arrange a further site visit with Aviva to update the scope of a potential cash settlement, any issues arising from this will need to be considered as a separate matter. But as things stand, I've not seen anything to change my mind about what I provisionally decided.

Therefore, in order to move things forward Mr E can either:

- Accept Aviva's cash settlement, which on current evidence will be around £5,000 less the policy excess.

Or;

- Allow Aviva to attend the site to update the scope of insurable repairs and cash settlement amount.

And;

- Raise a separate claim for the drains to see if Aviva can fund the repairs under a separate section of the policy.

Putting things right

To put things right for Mr E, Aviva must:

- Reimburse Mr E's expert reports prior to August 2020, upon receipt of evidence of invoices.
- Pay 8% simple interest on this sum, from the date the invoices were paid to the date of settlement.

My final decision

My final decision is that I uphold this complaint in part. I require Aviva Insurance Limited to put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 12 December 2022.

Dan Prevett
Ombudsman