DRN-3838152

The complaint

Mr and Mrs A complain about Aviva Insurance Limited's handling of a claim they made on their home insurance policy.

I've mainly referred to Mr A below, as he's acted as the lead correspondent throughout the complaint. Aviva delegated certain aspects of its claims handling to an agent. Where I feel it's necessary to refer to the agent specifically, I've referred to it as 'Company S'.

My provisional decision

I recently issued a provisional decision. I've set that out below in italics. I'll then go on to summarise the responses I received under the heading 'responses to my provisional decision' beginning on page 18 and set out my findings beginning on page 22.

What happened

A previous Ombudsman issued a provisional decision setting out the background, and his findings, in detail. Both parties responded and many aspects of this complaint have now been agreed upon. So I'll summarise the key points and then go on to consider what remains in dispute in more detail.

- *In October 2018, Mr A got in touch with Aviva to make a claim for damage to his garage. Aviva agreed for him to obtain a surveyor's report. Mr A understood this to mean Aviva would settle the claim based on the surveyor's report. He said Aviva didn't issue a reservation of rights notice or suggest its own agents would need to inspect the damage before a claim could be accepted.*

- *Mr A's surveyor thought the damage was caused by subsidence. They recommended dismantling and rebuilding the garage on a new foundation and gave an estimate for the cost of the work. Aviva paid Mr A for the surveyor's report.*

- *Aviva asked to visit the property. It intended to carry out its own investigations to decide for itself if the damage was caused by subsidence. And, if so, what it would cost its own contractors to put things right.*

- *Aviva accepted it shouldn't have told Mr A he could get his own report and paid £400 compensation for the delay that had been caused as a result of its mistake.*

- *Mr A thought Aviva should accept the claim and didn't agree to its broad request to visit. But he was prepared for Aviva to visit with the specific and limited purpose of calculating the cost to Aviva of the work the surveyor had recommended.*

- *The surveyor also recommended Mr A instruct an arboriculturalist, which he did. They agreed the damage was caused by subsidence and said it was the result of clay shrinkage due to a nearby tree. They recommended the tree be removed, which Mr A says has been done. Aviva paid Mr A for the arboricultural report.*

- *Mr A complained to Aviva. Amongst other things, he said Aviva had breached rules from the regulator's Insurance Conduct of Business Sourcebook ('ICOBS'), Principles for Business ('PRIN') and Treating Customers Fairly ('TCF') standards. He maintained Aviva should accept the claim.*

- *Aviva and Company S mentioned a number of reasons why they might decline the claim. Mr A explained why he disagreed. By early 2020, the Covid-19 pandemic meant a visit couldn't be carried out. Company S suggested a desktop review, which Mr A accepted. It then withdrew the offer and insisted a physical visit was required.*

- *Mr A provided three quotations for the work recommended by the surveyor and asked Aviva to settle the claim by cash payment. Aviva didn't agree. Mr A referred his complaint to this Service. An Ombudsman issued a provisional decision. I have summarised what I consider to be the key findings below:*

    - *The policy covers damage caused by subsidence. Two suitably qualified and experienced professionals both thought the damage was caused by subsidence. So Mr A had shown the damage was covered by the policy.*

    - *Aviva hadn't shown a policy exclusion applied or a general condition had been breached, so it couldn't decline the claim.*

    - *Aviva can require assistance from Mr A. This extends beyond showing the damage was caused by subsidence and could include site access.*

    - *Aviva can choose to settle claims by replacing, reinstating, repairing or payment. It would be difficult for Aviva to make an informed choice without carrying out a site visit. And a visit is in line with good industry practice.*

    - *Bearing in mind the principles of waiver and estoppel, it wouldn't treat Mr A unfairly for Aviva to carry out a visit before arranging settlement.*

    - *The scope of a site visit would be limited to deciding how to settle the claim. The purpose would be to assess whether the appropriate remedy is to reinstate or repair – and the corresponding cost – in order to indemnify Mr A.*

    - *Aviva should appoint an independent engineer in place of its agent.*

    - *Aviva acted unfairly by refusing to accept that an insured event had taken place until a site visit had been carried out. It caused a loss of expectation by giving the impression the claim would be settled according to the surveyor's report – and then asking to visit. It knew Mr and Mrs A weren't in good health.*

    - *Company S was dismissive and adversarial when it refused to progress the claim without a site visit. And requesting a visit of such broad scope was unreasonable. Company S offered a desktop review, set a very short deadline to provide information, and then withdrew the offer without good reason.*

    - *Even if Aviva had accepted the claim earlier, it's likely Mr A would only ever have been prepared to facilitate a visit to work out the cost of implementing his surveyor's recommendations.*

    - *Aviva should pay £500 compensation, in addition to the £400 paid earlier, to reflect the impact it and Company S had on Mr and Mrs A.*

The previous Ombudsman made the following award and directions in his provisional decision:

- *Aviva must accept Mr and Mrs A's claim.*
- *Aviva must find three suitably qualified independent engineers and give a list to Mr A. All three engineers must have confirmed they're independent.*
- *Mr A should confirm to Aviva which one from this list he would agree to being appointed.*
- *The engineer is to be appointed as a single joint expert to prepare a report on what settlement options are open to Aviva (in order to put Mr A back in the position he was in immediately before the subsidence damage occurred), including by visiting Mr A's property.*
- *In conjunction with the report, a fully scoped and costed schedule of works will be prepared by the engineer, or a contractor overseen by the engineer.*
- *When instructing the engineer, Aviva must send them copies of the policy document from the insured period in which the subsidence damage first occurred, any photographs it has received from Mr A, the two expert reports commissioned by Mr A, the NHBRC certificate, the three quotations obtained by Mr A and a copy of the previous Ombudsman's decision.*
- *A copy of the instructions must be sent to Mr A at the same time. He should be given one opportunity to send the engineer anything else he'd like considered.*
- *The engineer will report to both parties with a draft copy of their report.*
- *The parties will then have one opportunity to put questions to the independent engineer. After this has happened, the engineer will issue their final report to both parties.*
- *Aviva must act on that report when deciding how the claim should be settled and will be bound by it, subject to the principle of indemnity, and any policy excesses or limits that may apply.*
- *If Aviva chooses to settle the claim by repair or reinstatement, then this work should be overseen by the engineer.*
- *The cost of the independent engineer is to be met in full by Aviva.*
- *Aviva must also pay Mr and Mrs A an additional £500 compensation.*
- *All of the above steps must be carried out in accordance with Aviva's duties under ICOBS 8, including to handle claims 'promptly and fairly'.*

Responses to the previous Ombudsman's provisional decision

Mr A's first response

Mr A provided extensive comments about the provisional decision. I've read everything he's said and thought carefully about the points he's made. The following is a brief summary of what I consider to be the key points Mr A raised in his first response. He said:

- *He agreed Aviva should accept the claim without seeking to apply any exclusion.*
- *It would be fair and reasonable for the claim to be settled based on his three quotations – and there's no reasonable requirement for Aviva to visit.*
- *If Aviva has preferential rates with its contractors, it could make an adjustment for that and make a settlement offer based on the quotations.*
- *Aviva didn't specify what information or how much detail should be included within the report or quotations. The policy doesn't specify this either. So it wouldn't be lawful or fair for Aviva to now rely on a supposed lack of information and detail to insist upon a visit to explore the settlement options.*
- *Requiring a fully scoped and costed schedule of works to be produced to settle the claim would exceed the relevant legal standard and isn't necessary.*
- *The quotations are sufficiently detailed for settlement and based on the work recommended by the surveyor. They're all consistent with each other and are sufficiently precise to meet the legal standard.*
- *A highly experienced and appropriately qualified surveyor thought the garage should be dismantled and rebuilt on a new foundation. The surveyor took into account their knowledge of Building Regulations and the damage to the garage. So it's clear that work along these lines is required to provide an effective and lasting solution.*
- *Other information, including photos, has been provided to show the extent of damage. Aviva could have used that to consider the settlement options – but it hasn't done so.*
- *Company S agreed to settle the claim by desktop review. But it then changed its position and said a physical site visit was necessary. Aviva should have settled the claim based on the agreement Company S made.*
- *Aviva should have settled the claim by July 2020 – and not doing so was a breach of FCA rules, including ICOBS.*
- *If the complaint isn't settled based on the quotations, and instead the steps set out in the provisional decision are taken, Mr A had some additional points he wished to make:*
    - *The three engineers must be independent of Aviva and Company S.*
    - *They should also be members of RICS.*
    - *The selected engineer must provide both parties with their report and fully scoped and costed schedule of works.*
    - *If Aviva carries out the work, it must issue a Certificate of Structural Adequacy and a local authority Building Control completion certificate.*
- *An additional £500 wasn't commensurate with the level of distress and inconvenience Mr and Mrs A had been caused by Aviva and Company S. He suggested figures he thought were more proportionate to their circumstances and*

which they should each receive, based on different ways of considering compensation:

- *Aviva had offered £400 for around 4 months of delay, equivalent to £100 per month. Extending that over the subsequent 40 months made £4,000.*
- *Previous Ombudsman decisions in the range £4,500 - £12,000 had been awarded in circumstances Mr A considers comparable to his.*
- *Having spent an estimated 1,280 hours seeking fair recompense, at a minimum wage of £8.91 per hour, equated to over £11,400.*
- *At a rate of £19 per hour, based on the amount allowed under Civil Procedure Rules, this equated to over £24,000.*
- *Overall, £7,702 would be fair and reasonable compensation for loss of expectation, distress, suffering, trouble and inconvenience.*

- *Aviva should be held responsible for the entire delay since the claim began nearly four years ago. It didn't act in line with relevant FCA rules, it unfairly and unlawfully declined the claim, and that caused the delay.*
- *The impact of the delay was made worse by the significant health risk posed by the damaged roofing sheets, which were thought to contain asbestos. Mr A has been undergoing medical investigations for a problem which may be related. And Mrs A suffers from a health condition impacted by stress.*
- *It's not fair to say Mr A would always have refused to facilitate a site visit even if Aviva had accepted the claim sooner. Mr A agreed to such a visit when he understood its purpose was to explore the settlement options. The visit was only cancelled when Company S said it wanted to repeat site investigations.*
- *Aviva and Company S adopted an unreasonably entrenched, dismissive, and adversarial position and neither engaged properly with the specific points of Mr A's complaint. Had the claim been handled in line with the relevant rules, there would have been no need for Mr A to go to the lengths he has to argue his case. Whilst he has quoted numerous sources, including case law, rules, and previous Ombudsman decisions, it wouldn't be reasonable to require him to commence legal proceedings.*
- *Neither Mr nor Mrs A have a background in law or insurance, so they have had to spend a great deal of time researching relevant information and bringing their case to this Service. They estimate nearly 1,300 hours. This has caused extreme inconvenience that an additional £500 compensation – making £900 in total – doesn't go far enough to put right.*
- *Aviva should refund any additional amounts of annual premiums charged since March 2019 as a result of recording a subsidence claim.*

Aviva's response

Aviva agreed with the previous Ombudsman's decision. It said the claim couldn't proceed unless Mr A agreed for the independent engineer to attend. It also said the garage had deteriorated significantly since the start of the claim – and that could have been prevented if Mr A had allowed a visit sooner. It thought the garage would have been repairable initially.

It didn't agree to Mr A's proposed resolution. It said it needed to decide what a fair schedule of works would be to put Mr A back in the position he was prior to the insured event.

Mr A's second response

Mr A provided further comments after seeing Aviva's response. I've read the comments in full and thought about everything Mr A has said. I'll summarise the points I consider are most relevant without repeating any already made above:

- *Aviva hadn't shown the garage was repairable initially – or that it had suffered significant deterioration since. Aviva has waived and/or is estopped from relying on any right it may have had to repair the garage, aside from the recommendations made in the surveyor's report.*

- *At no point has Aviva offered to repair the garage. Nor has it previously argued the garage could be repaired. Its argument has focused on the supposed lack of detail in the surveyor's report and other quotations.*

- *The policy wording limited Aviva to capping the claim value at its own costs only when settling by repair or replacement. It doesn't apply to reinstatement.*

Having considered the arguments raised by both parties, there appear to me to be three main points of dispute which can be grouped under the headings:

1. *Claim acceptance*
2. *Claim settlement*
3. *Compensation*

My provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Within Mr A's list of complaint points, and throughout his submissions, he has referred to legal principles and case law. Whilst the relevant law is one of the things I must think about when considering what's fair and reasonable, it isn't the only thing. DISP 3.6.4R says:

> *'In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:*
>
> *(1) relevant:*
> *(a) law and regulations;*
> *(b) regulator's rules, guidance and standards;*
> *(c) codes of practice; and*
>
> *(2) (where appropriate) what he considers to have been good industry practice at the relevant time.'*

As was set out in R(Williams) v Financial Ombudsman Service Limited by the judge in that case: "A party to a complaint must know why he has won, or perhaps more importantly why he has lost, in clear and comprehensible terms. That is the requirement, but that is the only requirement and it can be met in a reasonably flexible way."

It's important to remember that the Ombudsman is "dealing with complaints, and not legal causes of action…" (Heather Moor & Edgecomb Ltd) v Financial Ombudsman Service Limited). The statutory function of our scheme is to resolve complaints quickly and with minimum formality, as per s.225(1) of the Financial Services and Markets Act 2000.

Further, the courts have agreed that it "is axiomatic, therefore, that any ombudsman's decision letter should be read as a whole and in a common sense, and certainly not in a legalistic, way" (R (Garrison Investment Analysis) v Financial Ombudsman Service Limited).

As such, I don't intend to provide a legalistic commentary on Mr A's arguments. I'll engage with them to the extent required to reach a fair and reasonable conclusion.

In particular, I've kept in mind the provisions of ICOBS 8.1.1R. which says:

> *'An insurer must:*
>
> *(1) handle claims promptly and fairly;*
> *(2) provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;*
> *(3) not unreasonably reject a claim (including by terminating or avoiding a policy); and*
> *(4) settle claims promptly once settlement terms are agreed.'*

I'll set out my findings in line with the three main points of dispute.

<u>Claim acceptance</u>

Aviva has agreed to accept the claim. Mr A has also agreed with this point.

That means both parties agree the claim should now be accepted by Aviva – and it can't seek to rely on a policy exclusion to later decline the claim.

As an agreement has been reached on this point, I'm satisfied it's resolved and I don't need to go into it further detail about it.

The next step is to consider how the claim should be settled.

<u>Claim settlement</u>

Mr A put forward a suggestion for settling the claim based on his three quotations, including an adjustment to reflect Aviva's preferential contractor rates if it wished.

Aviva disagreed and maintained it should have the option to consider the appropriate work, and corresponding cost, to indemnify Mr A. It also indicated it wanted to take into account any deterioration of the garage over time in the settlement.

The first question for me is whether I consider Aviva should settle the claim as Mr A has suggested. If not, I'll go on to consider how it should be settled.

Should the claim be settled as Mr A suggested?

The buildings section of the policy sets out how claims are settled. It says:

> *Settling Claims*

We can choose to settle your claim by

- *Replacing*
- *Reinstating*
- *Repairing*
- *Payment*

Replacement will be on a like for like basis or based on the nearest equivalent available in the current market.

If we can repair or replace property but agree to make a cash or voucher settlement we will only pay you what it would cost us to repair or replace it.

I'm satisfied the policy is clear that Aviva can choose the method of claim settlement. To treat Mr A fairly and reasonably, I consider it should also ensure that whatever method it chooses fairly indemnifies Mr A, bearing in mind any repair or reinstatement must provide a lasting and effective solution to the subsidence damage.

In order for Aviva to consider which options are available to fulfil those requirements, it will need to understand which settlement methods are appropriate in the circumstances of this particular claim – and what the corresponding costs involved are.

I'm satisfied it's reasonable for Aviva to seek this information. Once it knows these things, it will be in a fully informed position to choose an appropriate method of claim settlement. And if, for example, it chooses to repair and Mr A would prefer a cash payment, Aviva will know what it would cost it to repair.

Mr A considers Aviva is already in a position to make an informed choice with sufficient information – and has been for some time.

He's provided information from a surveyor. They recommended taking the garage down and rebuilding it on a new foundation, which amounts to reinstatement. Mr A has also provided quotations in line with that recommendation, photos of the damage, and noted the comments of a local building control officer about the work which may be required.

Whilst the surveyor was clear they thought that recommendation was the most appropriate course of action, they didn't rule out the possibility there may be other options. The surveyor didn't explain why their recommendation was the only appropriate course of action or contemplate the possibility of other options. Whilst I acknowledge Mr A says he shared a copy of the policy wording with the surveyor, the report doesn't mention the policy or the cover it provides. So it's not clear to me that the recommendation was made with the policy and the 'settling claims' term in mind. And even if Aviva agreed the recommendation was the only feasible solution, it may be possible to reinstate the garage at a lower cost than the quotations Mr A has provided. So I'm not satisfied Aviva already has enough information to make an informed choice about how to settle the claim fairly.

In order to do this Aviva would need to visit the property and inspect the garage. Whilst there, it could create a fully scoped and costed schedule of works to reflect the work necessary to fulfil the requirements above.

Mr A has pointed out that the policy doesn't stipulate a visit is required in order to establish what it would cost Aviva to repair damage. I agree that it's not specified. And it might be that in some cases Aviva doesn't consider a visit is necessary to do that. But it thinks that's necessary here.

The 'general conditions' section of the policy, says in sub-section '4. Claims – your duties':

> *You must:*
> *b … provide all the information and help we need to settle your claim*

This condition doesn't set a limit on what additional help may be required by Aviva to settle the claim. So I'm satisfied this condition allows for a site visit.

Mr A has noted an information box at the end of the sub-section which says:

> *It is your responsibility to prove any loss and therefore we may ask you to provide receipts, valuations, photographs, instruction booklets and guarantee cards and any other relevant information, documents and assistance we may require to help with your claim.*

I understand he considers this limits any requests from Aviva for assistance and information to that required to 'prove any loss'. As the claim has been accepted, he considers he's fulfilled that requirement, and it wouldn't be fair for Aviva to request further help or information from him.

In my view, Mr A's contractual duty to provide information and assistance under the policy is set out in general condition 4b and not in the information box. This box is separate from the general conditions and is coloured with an orange background. The policy says orange information boxes 'highlight information we want to particularly draw your attention to'. Rather than forming part of the contract wording in their own right, these boxes merely highlight certain parts of the contract. Because of this, I consider the orange information box is non-contractual padding.

If I'm wrong about that, and the orange box is part of the contract of insurance, I've thought about what it means. I've considered the principles of contractual interpretation, including what meaning the document would have conveyed to a reasonable person. I've also thought about how the wording in the orange box may interact with other terms of the policy, such as general condition 4b and the 'settling claims' term noted above.

4b doesn't limit Aviva's right to request information and help it needs to settle the claim. And the 'settling claims' term gives Aviva the right to choose how to settle the claim. Clearly that would require some assistance and information from the policyholder, which could include a site visit.

Whilst the orange information box initially refers to proving any loss, it also refers to providing any other relevant information, documents and assistance we may require to help with your claim. These are broad terms which I think indicate a wider scope than merely showing the damage has been caused by subsidence.

Bearing in mind the other policy terms, I'm not satisfied the wording in the box would be understood by the reasonable person to mean the insurer only requires help and information to prove the loss – and nothing further. I consider the reasonable person would understand it to mean that a policyholder may be asked to provide information and assistance throughout the claim. That could include facilitating a site visit to help settle the claim.

Taking all of that into account, even if the orange box had contractual force, I'm not satisfied it would prevent Aviva from requesting a site visit.

And even if that interpretation is wrong, I must take account of good industry practice and what's fair and reasonable in the circumstances of this complaint.

It's good industry practice for an insurer to request and carry out a visit at this stage of a subsidence claim. After accepting the claim and being satisfied subsidence movement has ceased, it's very common for an insurer to inspect the damage and consider the most appropriate and cost-effective way of providing a lasting and effective repair. The outcome of an inspection is usually a fully scoped and costed schedule of works which accurately establishes the cost involved and can be used to settle the claim.

This is especially so in cases where the damage is likely to be higher value and/or where estimates are older, as the risk to both parties of relying on those estimates and reaching an inaccurate settlement is generally greater. Both of these points are relevant in Mr A's claim, and in most claims of a similar value and age, an inspection along the lines I've described is commonplace and beneficial to both parties.

For these reasons, I'm satisfied it would reflect good industry practice and be fair and reasonable for Aviva to carry out a site visit to help settle this claim.

Mr A has also made reference to a policy term called 'the sum insured'. It says:

> *If at the time of a loss the sum insured is too low we will not settle your claim on an 'as new' basis and will reduce any payments to reflect wear and tear*

He has suggested the term effectively means that if the sum insured isn't too low, Aviva will settle the claim 'as new' and won't make any reductions. To settle it 'as new' would be to dismantle and rebuild it, which is what the surveyor recommended.

In my view, this term only explains what happens if the sum insured is too low. It makes no comment on what might happen if the sum insured is sufficient. It doesn't reference the 'settling claims' policy term, quoted above, which sets out the four methods of settlement and Aviva's right to choose between them – or say that any of those methods become unavailable if the sum insured is sufficient. So I'm not persuaded the 'sum insured' policy term has the impact Mr A has suggested it does.

I'm satisfied the 'settling claims' policy term is the key one when considering how Aviva is required to settle the claim. I've explained above why I'm satisfied this term gives Aviva the right to choose the method of settlement. And that means it's entitled to explore which options are available and appropriate in the circumstances, together with the corresponding costs. I've already explained above why I'm satisfied it would reflect good industry practice and be fair and reasonable for Aviva to carry out a site visit to help settle this claim.

Mr A says the quotations he's provided are sufficiently precise to show the reasonable cost of the work. He's cited case law which says a 'lack of precision as to the amount of quantum is not a bar to recovery'.

In the context of this claim, I understand that to mean providing imprecise estimates shouldn't prevent Mr A from receiving a settlement for the claim. Now that Aviva has accepted the claim, it's not denying him a settlement. It's effectively asking to gather more precise information to provide an accurate settlement. In principle, that should ensure neither Aviva nor Mr A lose out. I'm satisfied that's a fair and reasonable approach to take and is in line with good industry practice.

Part of the reason why Aviva hasn't offered to settle the claim based on Mr A's quotations is because it says they're not detailed enough. Mr A says he wasn't given instructions about how detailed they should be. And the policy doesn't stipulate any requirement about this.

The quotations range from around £53,000 to £56,000 including VAT. Mr A says he asked the building firms to quote for, as far as possible, restoring the garage, like-for-like, and compliant with statutory requirements. But the quotations don't include a breakdown of the cost or set out how the new structure might compare with the existing one.

I think that's a significant sum of money and it's reasonable for Aviva to seek more detail about what that cost represents before agreeing to settle the claim based on the quotations. It may ultimately conclude a similar figure is a reasonable amount to settle the claim for – but I'm not persuaded it would be fair to deny Aviva the opportunity to consider whether the claim can fairly be settled for a lower amount. And it may find the claim should be settled for a greater amount, bearing in mind the quotations are over two years old and some building costs have risen significantly since then.

Aviva should have been clearer about what it expected to see in the quotations to avoid the situation Mr A is now faced with. If it needed more detail, including a full breakdown costs, it should have told Mr A that when it asked him to get quotations. But I don't think the proportionate remedy to that mistake is to say Aviva must settle the claim based on the quotations Mr A provided. Instead, Aviva's clarity of instruction and the impact that's had on Mr A is something I'll take into account when considering what an appropriate amount of compensation would be.

Mr A says the legal principles of estoppel and waiver are relevant. His expectation was that once he had provided a report from his surveyor, which said the damage was caused by subsidence and recommended how to put it right, Aviva would settle the claim according to the report. Because of that and Aviva's subsequent handling of the claim, including reneging on the offer to settle by desktop review, Mr A says Aviva has waived any right to, or is estopped from, requiring a site visit to settle the claim.

I've noted the legal arguments Mr A has put forward, including that he doesn't necessarily need to show detriment. I've also thought about whether allowing Aviva a site visit to settle the claim would result in Mr A being treated unfairly or unreasonably. I remind myself that my role here is to determine what I consider to be fair and reasonable in all the circumstances. So, the legal position is a relevant consideration but not necessarily the determinative one.

As I've explained above, I'm satisfied a visit to consider the settlement options and corresponding costs is in line with good industry practice. It's a common part of the claim journey for building damage, particularly with higher value claims such as Mr A's. A key purpose of such a visit is to ensure Mr A is appropriately and fairly indemnified – whether that's by Aviva carrying out the work or by paying cash.

The quotations are now over two years old and the cost of carrying out building work has increased significantly since then. A visit will allow for the creation of a schedule of work costed at current rates. That will ensure an accurate and fair valuation if Mr A were to take a cash settlement. So a visit may be beneficial to Mr A.

I'm not satisfied a visit would treat Mr A unfairly or unreasonably as it would ensure the claim is settled fairly – and he's fairly indemnified.

Mr A noted Company S had offered to carry out a desktop review – only to withdraw this offer after Mr A agreed to it. He says Aviva was bound to settle the claim on this basis.

I'll comment more on the non-financial impact this had on Mr and Mrs A in the compensation section later in this decision. But in relation to the claim settlement, I'm not persuaded the offer to carry out a desktop review now prevents Aviva from settling the claim after a site visit. For the reasons given above, a physical site visit is allowed by the policy, is in line with

good industry practice and is, in my view, a fair and reasonable way to settle this claim. I don't think changing from a virtual to a physical assessment to establish how to settle the claim is an unreasonable thing to do – and I don't think it treats Mr A unfairly in relation to the claim settlement as a physical visit is likely to be more accurate.

Overall, taking everything into account, including the principles of waiver and estoppel, I'm not persuaded it would be fair and reasonable for Aviva to settle the claim based on Mr A's quotations alone. I'm satisfied it would be fair and reasonable for Aviva to settle the claim following a visit and after exploring the options on how to indemnify Mr A fairly. That visit would be for the specific and limited purpose of deciding how to settle the claim and how to fairly indemnify Mr A.

How should the claim be settled?

The previous Ombudsman's provisional decision set out several steps Aviva must take in order to settle the claim fairly. Mr A asked for clarification on four points. Whilst I know his preference was for the claim to be settled based on his quotations, I understand that if the claim was to be settled according to the steps outlined, these four points were his only objections. Aviva confirmed it agreed with all the steps, although it also questioned how any deterioration in the condition of the garage since the start of the claim should be dealt with.

As there's broad agreement on the steps outlined, I don't propose to go through them in detail. I'll focus on the points queried by Mr A and Aviva.

Firstly, Mr A asked that all three engineers to be suggested by Aviva should be independent of Aviva and Company S. I agree, I think that's a reasonable way forward as the purpose of appointing an independent engineer is to progress the claim in light of the breakdown in relationship between Mr A and Company S (and by extension, Aviva).

Secondly, Mr A asked that all the engineers be RICS members in addition to being suitably qualified academically. In principle, I think that kind of membership is appropriate. However, I know many engineers aren't members of RICS, so that stipulation may limit the options too far. I think membership of RICS or other relevant professional bodies would be reasonable. For example, the Institution of Civil Engineers or the Institution of Structural Engineers.

Thirdly, Mr A suggested the selected engineer should provide both parties with their report and their fully scoped and costed schedule of works. I agree, I think that would be in keeping with the engineer's appointment as independent joint expert and the aim to ensure Mr A is indemnified fairly.

Lastly, Mr A asked that if Aviva were to carry out the work, it should on completion issue a Certificate of Structural Adequacy and a local authority building control completion certificate. I agree the former would be a standard part of a subsidence claim where the insurer carried out the work. And the latter would be if the work involved required such a certificate from building control. That will likely depend on the nature of the work, which is yet to be determined.

In summary, the claim settlement steps involve an independent engineer visiting and reporting on what options are available to Aviva to return Mr A to the position he was in immediately before the damage occurred – together with the associated costs. Aviva must then decide how to settle the claim.

Aviva would like the engineer to take into account the condition of the garage now compared to how it was at the beginning of the claim. It says the garage was repairable initially but will have deteriorated significantly since then.

Mr A has pointed out that Aviva hasn't provided any evidence to support these statements. I agree. It's unclear what they're based on. Whilst I accept the possibility of a repair remains, and this is something Aviva is entitled to explore, I haven't seen anything to show the garage was repairable initially – but isn't any longer. Nor have I seen anything to show there has been significant deterioration. I note Mr A took relevant expert advice which identified a tree as the cause of subsidence – and had this removed. Usually the effect of that action is to help the subsoil rehydrate, stabilise, and subsidence movement to cease. In which case a significant change to the structure seems unlikely.

But even if it were shown the garage has deteriorated, I'm not satisfied it would be fair, in the circumstances of this case, for Aviva to take that into account when settling the claim. I'll explain why.

For Aviva to take any such deterioration into account, it would have to be able to identify the extent of the deterioration and show that it had increased the cost of putting right the subsidence damage. If the garage had deteriorated but the cost of repair hadn't increased – perhaps because the structure needed replacing in any event – then I don't think it would be fair to take any deterioration into account when settling the claim. And if a cash settlement were taken, Aviva would also have to be able to show how much the cost had increased, if at all, in order to deduct a fair amount from the settlement offer.

Aviva hasn't visited before and doesn't have a comprehensive account of the condition of the garage, including the cost to put the damage right, from around the time the claim began. So I'm not satisfied it would be in a position to accurately identify how much, if any, deterioration had occurred or what the corresponding impact on costs would be. As a result, I don't think it would be practical in the circumstances of this case for Aviva to take into account any deterioration – even if some had occurred.

Returning to the 'settling claims' policy term set out above, Mr A has referred to the last part of it which says:

> *If we can repair or replace property but agree to make a cash or voucher settlement we will only pay you what it would cost us to repair or replace it.*

Mr A has noted it only limits the claim value to Aviva's own costs when repairing or replacing property. That means the policy doesn't limit the claim value to Aviva's own costs when reinstating the property.

I agree that's what the policy says. And I note the case law Mr A has quoted about the importance of clear policy wordings. But I must also take into account what I consider to be fair and reasonable in all the circumstances.

Replacement isn't relevant in the circumstances of this claim, so I won't go into it further.

So putting replacement to one side, the term applies to situations where Aviva can indemnify Mr A by repairing the building and offers to do so, but Mr A asks for a cash payment instead. The term gives Aviva the right to cap the payment at its own costs.

If Aviva can indemnify Mr A by reinstating the building and offers to do so, but Mr A asks for a cash payment instead, the policy doesn't give Aviva the right to cap the payment at its own costs. However, I'm satisfied it would be fair for Aviva to limit the payment to its own costs in this situation. That's because it wouldn't treat Mr A unfairly or unreasonably. I'll explain why.

It would mean, regardless of whether the building can be repaired or reinstated, Aviva would be:

- *offering Mr A the opportunity to be indemnified by having a lasting and effective solution to the subsidence damage carried out by Aviva.*
- *paying the corresponding cost of the work to its contractor.*
- *providing Mr A with a fair offer to settle his claim.*

It doesn't though exclude the option of a cash settlement. Mr A would remain entitled to ask for a cash payment instead of having Aviva carry out the work. But if he did so, and Aviva is willing to carry out the work, I'm not satisfied it would be reasonable to expect Aviva to pay more than the corresponding cost it would incur in having its contractors carry out the work.

Where Aviva isn't prepared to carry out the work for Mr A, I'm not satisfied it would be fair for Aviva to insist on settling according to its own costs – again, regardless of whether the building can be repaired or reinstated. In these circumstances Aviva would need to pay Mr A the costed schedule of works to treat him fairly.

Compensation

Aviva paid Mr A £400 in March 2019 in recognition of failures in its service up until that point. Aviva has now agreed to pay an additional £500 for failures since then, making a total of £900 compensation offered.

Mr A doesn't think this goes far enough to compensate him and Mrs A for the distress and inconvenience they've been caused as a result of the way Aviva has handled the claim. He has suggested amounts he thinks would be fairer in the circumstances.

When considering what I think is a fair amount of compensation, I've noted the following main points made in the previous Ombudsman's provisional decision:

- *Aviva acted unfairly by refusing to accept the claim until it had inspected the damage for itself and contributed to a stalemate and severe delays.*
- *It was fair for Aviva to require a site visit of limited scope before settling the claim. But even if it had accepted the claim sooner, and offered this visit sooner, Mr A would likely have refused it.*
- *Aviva caused Mr A a loss of expectation by giving the impression the surveyor report alone would suffice to settle the claim – and then reneged on this.*
- *Similarly, Aviva offered a desktop review and then changed this after Mr A had agreed and provided requested information to a very short deadline.*
- *Mr A made Aviva aware on several occasions that he and his wife were in poor health – so Aviva ought to have taken more care to handle the claim fairly.*
- *Aviva and its agents were at times dismissive and adversarial.*

Mr A has said Aviva's unfair acts and omissions have contravened FCA rules and have been the root cause of the delay. He's mentioned breaches of ICOBS, PRIN and TCF as well as generally unfair or unhelpful behaviour during the claim.

As Aviva has agreed to pay the additional compensation of £500, I don't think it objects to any of the bullet points listed above.

I understand Mr A agrees with some of these points too – Aviva should have accepted the claim sooner, it caused a loss of expectation, reneged on agreements, didn't communicate as well as it should have done, and it caused delays. As these points are agreed by both parties, I won't go into them further. I'll focus on what remains in dispute.

In his response to the provisional decision, Mr A has said he would have been prepared to accommodate a visit to assess the settlement value. In support of that, he notes he arranged a visit with Company S when he understood the nature of it would be to assess the settlement value. He only cancelled the visit after Company S said it would repeat site investigations carried out by Mr A's surveyor.

Effectively, Mr A is saying that if Aviva had accepted the claim sooner, and asked to visit with the limited purpose of assessing the settlement options, he would likely have agreed to that. The claim would then have progressed much sooner. So Aviva is responsible for the time the claim has taken to reach this stage.

Aviva has agreed it ought to have accepted the claim sooner. Had it done so, I think it's likely that would have led to it proposing a visit to explore the settlement options. Similar to the position reached now, I think it's likely Aviva would have wanted to assess all settlement methods, including repair or other forms of reinstatement. It wouldn't have been limited to only working out what it would have cost Aviva to carry out the surveyor's recommendations.

I take into account that this claim reached a stalemate in part because Aviva hadn't accepted it. But also because Mr A thought the claim should be settled based on the information he had provided – including the surveyor's recommendations.

Mr A has argued throughout, including in response to the provisional decision, why there should be no need for a visit at all. And why the claim should be settled according to his surveyor's recommendations. It's clear he's invested a significant amount of his time and energy into making his case and feels very strongly that the claim should be settled in the manner he would like.

So even if Aviva had accepted the claim sooner and/or been clearer that the purpose of a visit was exclusively to explore the settlement options, I'm not persuaded the claim would likely have progressed significantly sooner.

I agree Aviva contributed to the stalemate and the associated delays for the reasons its already accepted. But I don't agree it was solely responsible for all of the delay reaching this point. I've kept that in mind when thinking about a fair level of compensation.

I've also taken into account that Aviva should have been clearer with Mr A about what the quotations should include – or not asked for them at all. Had it been clearer, it's possible it could have found the quotations sufficiently detailed to settle the claim based on them alone. However, even with quotations that fulfilled the level of detail Aviva expected, that wouldn't prevent it from asking to visit before settling the claim. And given what I've said above about this kind of visit being good industry practice, it may not have been unreasonable for Aviva to visit even with sufficiently detailed quotations. So it may have been more helpful if Aviva hadn't asked for quotations at all. Because of this, I'm satisfied some inconvenience was caused by Aviva's lack of clarity but the impact of it wasn't significant.

Weighing up all the relevant information, I'm satisfied it would be fair for Aviva to pay compensation, in addition to the £400 paid early in the claim, to recognise the avoidable distress and inconvenience it's delays and other mistakes have caused Mr and Mrs A.

During the period of delay that Aviva has contributed to, Mr A has lived with the damage to his garage without clarity about when or how it will be dealt with – and who will pay for it. Based on the quotes he received, I think he was reasonably concerned he may face a significant cost if Aviva refused to cover the claim.

Mr A also notes the garage roof contained asbestos and the damage had likely led to fibres escaping. As a result, he was concerned about the health risk – particularly as he has been undergoing medical investigations for problems which may be related. And Mrs A has also suffered as a result of the stress brought about by the way the claim has been handled.

Overall, it's clear Aviva has caused Mr and Mrs A distress and inconvenience by not accepting the claim sooner. The question for me is what a fair and reasonable amount of compensation is to reflect their experience.

Mr A has suggested amounts he thinks would be reasonable, based on different ways of considering compensation. These range from £4,000 to £24,000 and include reference to the compensation offered by Aviva, if it had been calculated as a monthly rate, awards this Service has made on other complaints he considers comparable, and calculations based on different hourly rates and the time Mr and Mrs A have spent on the claim.

Whilst this Service has a consistent approach to awarding compensation, each case is different and is determined on its own merits. So I bear in mind what Mr A has said about previous awards but they don't set precedent and don't have a direct impact on his case.

Mr A notes our guidance which says we don't make awards based on hourly rates, units of time, or the total time a consumer may have spent on their complaint. We look at the overall impact on the consumer of the business' mistakes. So whilst I bear in mind the time he has spent on the complaint, I won't award him compensation based on an hourly rate.

Similarly, we don't set monthly rates of compensation for delays or expect insurers to do the same. The impact of a delay in one month can be different to the impact of a delay in another. And compensation often takes into account other factors, such as poor service and loss of expectation – not just the time taken – which may not occur throughout a period of delay. So just because Aviva offered £400 after 4 months, doesn't mean it would be fair and reasonable to infer a monthly rate of £100 and extend that over a longer duration. Depending on what had happened, that could under- or over-compensate.

I've kept all of this in mind when considering what an appropriate amount of compensation would be for Mr A in the particular circumstances of his complaint.

Taking everything into account, I'm satisfied £500, in addition to the £400 Aviva has already paid, is fair and reasonable in the circumstances. It would mean a total of £900 compensation. This Service generally considers this level of compensation to reflect substantial distress over a sustained period of time. I'm satisfied that's a fair description of the experience Mr and Mrs A have been through during this claim.

Mr A has asked about being refunded the additional amounts of premium charged as a result of recording a subsidence claim against his property, bearing in mind Aviva hadn't accepted the claim. Now that it's accepted the claim and all parties agree the damage was caused by subsidence, I'm satisfied it's reasonable for Aviva to record a subsidence claim and charge any corresponding premium increase in line with its underwriting guidelines that apply to all consumers. So I'm not persuaded it should refund any premiums.

My provisional decision

I intend to uphold this complaint and require Aviva Insurance Limited to:

- *Pay an additional £500 compensation.*
- *Accept the claim.*

- *Settle the claim by taking the following steps:*
    - *Aviva must find three suitably qualified independent engineers and give a list to Mr A. All three engineers must have confirmed they're independent and members of RICS or other relevant professional bodies.*
    - *Mr A should confirm to Aviva which one from this list he would agree to being appointed.*
    - *The engineer is to be appointed as a single joint expert to prepare a report on what settlement options are open to Aviva (in order to put Mr A back in the position he was in immediately before the subsidence damage occurred) including by visiting Mr A's property.*
    - *In conjunction with the report, a fully scoped and costed schedule of works will be prepared by the engineer, or a contractor overseen by the engineer.*
    - *When instructing the engineer, Aviva must send them copies of the policy document from the insured period in which the subsidence damage first occurred, any photographs it has received from Mr A, the two expert reports commissioned by Mr A, the NHBRC certificate, the three quotations obtained by Mr A and a copy of my decision.*
    - *A copy of the instructions must be sent to Mr A at the same time. He should be given one opportunity to send the engineer anything else he'd like considered.*
    - *The engineer will report to both parties with a draft copy of their report and their fully scoped and costed schedule of works.*
    - *The parties will then have one opportunity to put questions to the independent engineer. After this has happened, the engineer will issue their final report to both parties.*
    - *On receipt of the report, Aviva must use it to decide how to settle the claim:*
        - *If Aviva offers to settle the claim by repair or reinstatement, Mr A can accept that, and Aviva's contractors will carry out the work. It should be overseen by a suitably qualified engineer. A Certificate of Structural Adequacy should be issued on completion.*
        - *If Mr A doesn't accept Aviva's offer to repair or reinstate, Aviva will settle the claim by cash payment, based on the cost it would incur if its contractors carried out the work.*
        - *If Aviva offers to settle the claim by cash payment, without offering to carry out the work, Aviva will settle based on the engineer's costed schedule of work.*
    - *Any settlement is subject to the principle of indemnity, and any policy excesses or limits that may apply.*
    - *The cost of the independent engineer is to be met in full by Aviva.*
    - *All of the above steps must be carried out in accordance with Aviva's duties under ICOBS 8, including to handle claims 'promptly and fairly'.*

Responses to my provisional decision

Email exchange between Mr A and Aviva

Mr A got in touch with Aviva. As my provisional decision said Aviva had accepted the claim, Mr A asked Aviva to confirm that with him directly.

Aviva told Mr A that if he accepted my decision, it would make arrangements to begin carrying out the claim settlement steps.

Mr A thought it was unfair of Aviva not to confirm to him directly that it had accepted the claim. He asked to make a complaint about that. Aviva said, "this is not a new complaint but rather referring to the ombudsman decision".

Aviva's response

Aviva confirmed it accepted my provisional decision.

It also said that it was waiting to hear whether Mr A had accepted my decision before taking any further action with him.

Correspondence between Company S and Mr A

Company S got in touch with Mr A to set out draft instructions to an independent engineer.

Mr A responded to Company S to make a number of points, which I'll summarise:

- He questioned why it was doing this as I was yet to make my final decision.
- He was concerned that the instructions didn't reflect the steps I had set out in my provisional decision for a number of reasons and contradicted some of the other findings I had made.
- He said the relationship between he and Company S had broken down and he didn't think Company S should play any further part in resolving the complaint.
- He also made a number of points about the relevant law and regulations and reiterated that he thought the quotes he had provided were sufficient to base settlement on.

Mr A said he thought the way Company S had acted showed the approach to settlement I had set out in my provisional decision wouldn't provide a quick resolution with minimal formality and nor would it offer him an appropriate degree of consumer protection.

Mr A's responses

Mr A provided substantial responses in which he made many points. I'll set out a summary of what appear to me to be the main points he has raised:

- Mr A agrees Aviva should accept the claim, without seeking to apply any exclusion.

- It was reasonable for Mr A to ask Aviva to confirm it had accepted his claim. And it was reasonable for him to maintain communication directly with Aviva. All communication doesn't have to be between or through the Ombudsman Service. Banning or restricting him from contacting Aviva is against what he's called 'the Padfield obligation'. It's also denied him an opportunity to negotiate with Aviva.

- I should reconsider my decision in relation to the settlement and compensation. I haven't taken into account or rationally weighed up: good industry practice, relevant law, rules, guidance and standards and codes of practice. Including, amongst other things, PRIN and ICOBS.

- I haven't sufficiently taken into account the standards in what Mr A describes as the 'touchstones of fairness and reasonableness'. For example:

    - Aviva's own 'Business Ethics Code' says it should maintain the highest standards of business integrity, including adherence to the law, regulations and principles.
    - PRIN 2.1 sets out a number of principles Aviva should follow – and these are the essence of what is fair and reasonable.
    - ICOBS 2.5 requires Aviva to, amongst other things, act honestly, fairly and professionally in accordance with the best interests of its customer.
    - ICOBS 8 requires Aviva to apply legal principles fairly and reasonably when handling claims – including the principles of contract formation, variation of contract, estoppel and waiver.
    - Even when adhering to good industry practice, Aviva must also comply with all relevant law and regulations, rules, guidance and standards and codes of practice.

- Mr A agrees it would be unfair for Aviva to take into account any deterioration in the garage in the settlement of the claim. However, he doesn't agree with the other proposed terms of settlement.

- Instead, Mr A has suggested the claim should be settled by Aviva paying the average of his three quotes (around £55,000 including VAT) and adjusted to take into account any change in building costs since the quotes were provided, less the excess.

- In support of this, Mr A has reiterated his concerns with the way Aviva handled the claim. These include, but aren't limited to:

    - The policy doesn't highlight that Aviva will delegate authority to Company S or that Company S will determine the claim to its own satisfaction. Nor does it disclose a conflict of interest arising from delegating authority to Company S.

    - Company S' business model amounts to an unfair commercial practice and can cause unfairness to consumers.

    - Delegating authority to Company S didn't amount to *good* industry practice, even if it may be *common* industry practice.

    - Aviva agreed to settle the claim by payment on a reinstatement basis. It issued no reservation of rights notice.

    - When Aviva wouldn't settle the claim based on Mr A's surveyor's cost estimate, it asked him to provide three quotations – but without setting out what information it expected to see in the quotes.

    - After this, Company S told him it was still dealing with his subsidence claim. He understood this meant the quotations had been accepted by Aviva and they would be used to pay the claim. This had the effect of affirming the

contract and waiving any right Aviva had to settle the claim by any method other than payment based on the quotes.

  - Aviva has provided no evidence to suggest the quotations are excessively highly priced. Nor has it said the quotations aren't detailed enough. Settling based on the quotations is fair and reasonable.

  - Settlement wasn't made because Company S insisted on visiting to determine the claim to its own satisfaction, including repeating site investigations and assessing what it would cost Aviva to reinstate the garage. It also said he'd breached the condition requiring him to provide assistance during the claim.

  - Aviva acted in breach of contract, ICOBS and PRIN when it refused to settle the claim.

- I either incorrectly applied, or didn't take into account at all, relevant legal principles, including waiver, estoppel and contract formation or variation.

- The method of settlement I set out would unreasonably and unfairly delay the claim further and cause further distress and inconvenience.

- The policy wording is very poorly drafted, and I haven't put enough weight on that. It includes no express right to inspect, how the claim is to be processed, how indemnity is to be measured and uses vague phrases, such as 'prove any loss'.

- My argument that it's generally good industry practice to carry out a site visit is far outweighed by Aviva's obligations to follow the law, FCA rules of conduct and Aviva's own Business Ethics Code.

- Mr A has shown that reinstatement is the only reasonable and feasible option and has established the reasonable cost of the reasonably necessary restoration work to the required degree of precision.

- It would be unfair and unlawful for Aviva to cap the indemnity value at its own costs. I should require Aviva to apply the wording as set out in the policy.

- Aviva is responsible for all of the delay from February 2019 onwards. It would be unreasonable and irrational to attribute any of the delay to Mr A. He set out a number of reasons for this, including:

  - Aviva insisted on a visit by Company S. This was unlawful, unfair and unreasonable because Company S had a conflict of interest arising from its business model.

  - Company S required a visit of much wider scope than exploring the settlement options. It wanted to repeat the site investigations carried out by Mr A's surveyor and that was unlawful, unfair, unreasonable and contrary to rules and regulations. Company S insisted the claim had to be proven to its own satisfaction and that was the root cause of all the subsequent delay.

  - Mr A was entitled to decline a visit from Company S. Aviva's insistence otherwise caused the delay from February 2019 onwards.

- Aviva could have appointed an independent expert sooner if it didn't accept the information Mr A had provided. It could also have intervened much sooner to prevent further delay, distress and inconvenience to Mr A.

- Aviva should be held responsible for all of the delay since the three quotations were submitted. Not settling the claim promptly, based on the quotations, breaches PRIN 2.1 amongst other things.

- Highlighting online comments about Company S' business model, he said Company S should play no further part in resolving his complaint.

- Because of the way Aviva has acted, it caused unreasonable and substantial delays. As a result, it should be allowed no further involvement, other than to pay the claim settlement and compensation.

- Aviva's unprofessional behaviour when interacting with this Service has also substantially contributed to the overall delay.

- It's speculative, irrational and contrary to the evidence to say Mr A would only ever have agreed to a visit with the sole purpose of costing his surveyor's recommendations. This view relies on hindsight and hypothesis about what might or could have happened. Instead, I should focus on what actually happened when Aviva initially accepted the claim in February 2019. Mr A agreed to a site visit without limiting it to this sole purpose.

- Whilst Mr A's stance later changed, this was because of a 'sense of caution' as a result of the way Aviva and Company S were acting.

- An Ombudsman may decide to base compensation on the Insurance Act 2015. Mr A would like me to clarify whether I have done so or not.

- I haven't given due consideration to the relevant law and regulations – and the points set out above – when deciding on a reasonable amount of compensation.

- My comment that it may have been reasonable for Company S to visit, even with sufficiently detailed quotations, was an irrelevant consideration.

- The proposed compensation award is derisory, bearing in mind the financial costs, distress, inconvenience and harm caused by Aviva.

- Mr A reminded me of the approaches to compensation he suggested in response to the previous Ombudsman's provisional decision. Referring to an insurance dispute which suggested this Service may make awards based on an hourly or daily rate, he also suggested a compensation figure of around £16,000.

- If I maintain that an award of £500 is reasonable compensation, Mr A asks me not to consider the issue or make any award at all, such that he may explore compensation in other ways.

- If I consider that Mr A was responsible for any of the delay, I should identify the specific periods of time with reference to the relevant evidence.

Hearing request

Mr A said that if my view remained largely unchanged, he would like me to hold a hearing prior to making my final decision. I explained why I didn't think that was necessary. In summary, I was satisfied that Mr A was able to present his evidence in writing and the information I'd received from both parties was sufficiently clear and detailed for me to be able to decide the complaint fairly without a hearing.

In summary, Mr A's response said he was no longer free to approach Aviva to source further evidence to support his response to my provisional decision. He said he was in the process of writing to Aviva for further information before he was prevented from doing so by this Service. I understand he was seeking further information in relation to the part of my provisional decision concerned with claim delays and compensation. He questioned when Aviva had accepted it contributed to the delays and agreed it ought to have accepted the claim sooner. He also said he didn't think Aviva and its representatives had provided all relevant information about the cause of the delay.

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.

Mr A's submissions are of substantial length. I've summarised what I understand to be his main arguments above, but I want to assure Mr A that if an argument or point he has raised isn't set out above, it doesn't mean that I haven't read and considered it when reaching my final decision.

I have read and considered everything both parties have presented over the course of the complaint but have focused in my final decision on what I need to decide in order to reach a fair and reasonable outcome. I have therefore only concentrated on directly responding to the points Mr A has made which are relevant for the purposes of determining a fair and reasonable outcome.

Throughout Mr A's submissions, including his response to my provisional decision, he's referred to many legal principles, case law, rules, guidance, standards, codes of practice, and commented on good industry practice. As I set out in my provisional decision, DISP 3.6.4R provides that:

"In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:

(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) (where appropriate) what he considers to have been good industry practice at the relevant time."

My role isn't to provide a legal judgment on the points Mr A's raised. I'll engage with the legal position to the extent required to reach a fair and reasonable conclusion. I'll set out what I consider to be the key points when determining what a fair and reasonable outcome to this complaint is. Whilst I'm required to take into account relevant law, it isn't the only factor I'm required to take into account and it's not the determinative one. The law is just one of the factors I'm required to take into account when considering what is fair and reasonable. I'm required to decide what I consider to be fair and reasonable in all the circumstances of the case, so that's what I'll focus on.

I'll again set out my findings based on the three main areas of dispute, and consider each in turn:

1.) Claim acceptance
2.) Claim settlement
3.) Compensation

Claim acceptance

Aviva still agrees to accept the subsidence claim, without being able to later rely on any exclusions to decline it, as does Mr A. So, I'm satisfied this point is resolved and doesn't require further comment.

I know Mr A had asked Aviva to confirm that it had accepted the claim after my provisional decision and it didn't do so. I understand Aviva was awaiting the outcome of the decision process before taking the next steps. I don't think that was unreasonable.

It's usual practice for the respondent business to wait until this Service has reached a final decision, and we've confirmed whether the complainant has accepted or rejected that decision, before it will get in touch with the complainant to take any further steps (if necessary). That ensures our process has concluded and both parties understand what, if anything, the respondent business is required to do.

As the claim has been accepted, I'll go on to consider how it should be settled.

Claim settlement

The opportunity to negotiate a settlement

Mr A says he's been banned or restricted from contacting Aviva by this Service. He says he's been unable to negotiate a settlement with Aviva as a result.

This Service hasn't prevented Mr A contacting Aviva. But I've considered what impact it had on Mr A's complaint if he thought he was unable to communicate directly with Aviva.

Mr A has based his understanding he couldn't contact Aviva directly on an email this Service sent him on 11 November 2022. Prior to that, Mr A hasn't questioned that he knew he was free to contact Aviva directly. Indeed, he got in direct contact with Aviva to ask it to confirm it had accepted his claim. So, if, at that point or earlier, he had wanted to explore the opportunity to negotiate a settlement directly with Aviva, he was aware he was free to do so. Mr A didn't do that.

Following the previous Ombudsman's provisional decision, Mr A suggested a settlement to this Service. We shared his suggestion with Aviva and invited it to consider settling the complaint that way. Aviva repeatedly confirmed that it had no intention to settle the dispute in the manner Mr A had suggested. So even if Mr A had wanted to negotiate directly with Aviva, but felt unable to after 11 November 2022, I'm not persuaded it's likely Aviva would have agreed to a settlement with him.

Should the claim be settled as Mr A suggested?

Mr A hasn't agreed to settle the claim as I set out in my provisional decision. He's suggested a different method of settlement. In summary, he would like Aviva to base settlement on the three quotations he provided and make an adjustment to reflect any change in building costs since the quotations were given. Aviva hasn't agreed to do so.

I've thought about whether this would be a fair and reasonable way to settle the claim.

I think it's important to start by returning to the policy term which sets out how claims are settled. Buildings Condition 2 says:

> *Settling Claims*
>
> *We can choose to settle your claim by*
> - *Replacing*
> - *Reinstating*
> - *Repairing*
> - *Payment*
>
> *Replacement will be on a like for like basis or based on the nearest equivalent available in the current market.*
>
> *If we can repair or replace property but agree to make a cash or voucher settlement we will only pay you what it would cost us to repair or replace it.*

And the general condition 4b, which says:

> *You must … provide all the information and help we need to settle your claim*

In my provisional decision, I set out some key findings about these terms and their impact on the claim, bearing in mind other relevant factors. I won't repeat them in full as they're set out above, but I will summarise the main points:

- The policy is clear that Aviva can choose the method of settlement.
- But it must also ensure that whatever method it chooses fairly indemnifies Mr A.
- To do that, it will need to understand which methods are appropriate in the circumstances – and the corresponding cost(s).
- The information provided by Mr A isn't sufficient for Aviva to make an informed choice about how to settle the claim fairly.
- To gather the information needed to make an informed choice, it would be fair and reasonable for Aviva to visit the property and inspect the garage and prepare a scoped and costed schedule of works.
- The orange information box is non-contractual padding. But even if I'm wrong about that, it allows for a site visit. The policy doesn't specify that a visit will be required to decide how to settle the claim. But Condition 4b allows for a site visit and, even if I am wrong on that point, a site visit is good industry practice.
- Given the significant value of the quotes (over £50,000) and rising building costs since they were provided, an accurate settlement would treat both parties fairly by ensuring neither loses out and Mr A is fairly indemnified.
- Other policy terms and legal arguments raised by Mr A don't change the conclusions I've reached.

Overall, I wasn't satisfied settlement based on quotes, and denying Aviva the opportunity to visit to explore the settlement options, and their costs, was fair and reasonable.

I'm not satisfied the method of settlement Mr A suggested in response to my findings overcomes the points I made. So my view about this hasn't changed. I'll explain why that is.

Mr A's suggestion still amounts to settling the claim by cash payment, based on the quotations – and without Aviva, Company S, or an independent engineer visiting to inspect the damage.

That means it doesn't include the opportunity for Aviva to explore whether a repair or reinstatement by methods other than that set out by Mr A's surveyor is possible. Nor does it include the opportunity for Aviva to determine what its own costs would be for those options. It effectively requires Aviva to accept the garage must be demolished and rebuilt on a new foundation – and at the cost outlined in the quotes, with adjustments – but without the chance to investigate any of that for itself.

For the same reasons as I found in my provisional decision, I'm not satisfied that method of settlement is in line with the policy terms, good industry practice or what's fair and reasonable. It still leaves both parties at a significant risk of losing out – including the risk of Mr A not being fairly indemnified.

Mr A has said that allowing Aviva to settle the claim after a site visit is out of line with Aviva's obligations to follow the law, "rules of conduct" or its own Business Ethics Code.

In support of his suggestion, Mr A has made a number of points. As I've already said, whilst I've read and thought about all of the points he's made when making my decision, not all of the points are relevant and I'll only respond directly to matters which are relevant for the purposes of determining a fair and reasonable outcome in all the circumstances of this case.

Mr A says Aviva accepted the claim and agreed to settle it by cash payment on a reinstatement basis.

Aviva has conceded it made an error when it initially agreed for Mr A to obtain a surveyor's report. It acknowledges this caused a delay and I think it's common ground that Aviva gave Mr A the impression his claim may be settled on the basis of the report alone. So, when it said it needed to visit him to form its own opinion about the claim, he suffered a loss of expectation. But I'm satisfied it was clear at this stage that it hadn't accepted the claim – or agreed how to settle it – as it wanted to visit before doing either of these things.

Aviva also said it was 'normal procedure' to obtain three quotes for major work – and an insurance claim was no different. Mr A later provided three quotes. Aviva said they weren't detailed enough to base settlement on. Whilst I found in my provisional decision that Aviva should have been clearer about what would need to be included in quotes, I'm not satisfied it said it would settle the claim on the basis of the quotes in any event. I haven't seen any evidence to show it made a firm commitment to settle on this basis. Nor am I satisfied that saying it was 'dealing with the claim' after Mr A had provided the quotations meant it had agreed to settle the claim on the basis of those quotations.

It's agreed that Aviva should have been clearer with Mr A at times – and not doing so was a mistake. In my view, those mistakes caused a loss of expectation, delays, frustration, and distress, all of which should be compensated for. But I'm not persuaded the fair and reasonable response to these mistakes is to require Aviva to settle the claim without being given the opportunity to explore the settlement options – for the reasons given above.

In response to my provisional decision, Mr A has put a lot of focus on Company S. Particularly its business model, relationship to Aviva, and the impact that may have had on the claim, for explaining why settlement should be based on his quotes. He's suggested Company S' business model with Aviva amounts to an unfair commercial practice and Aviva appointing Company S amounts to a conflict of interest.

Aviva has a number of regulatory duties to fulfil when it handles a claim. As Mr A has noted, ICOBS and PRIN are of particular importance. If it appoints an agent, such as Company S, the agent must also fulfil those duties. It's my role to consider whether Aviva, through the use of Company S as its agent, has treated Mr A fairly and reasonably, including but not limited to, fulfilling those duties. Whilst Mr A has made a number of broader points about the relationship between Aviva and Mr A, my focus will be on whether Aviva and Company S have fulfilled these duties and treated Mr A fairly and reasonably.

I acknowledge Mr A's point that Aviva doesn't specify in its policy that it may appoint an agent or agents to handle claims on its behalf. Nor does it specify the names of any such agents or what agreements may exist between Aviva and an agent.

It's common industry practice for household insurers to appoint agents during claims. I agree with Mr A's point that *common* industry practice may not amount to *good* industry practice. There are a variety of situations in which I consider an insurer appointing an agent does amount to good industry practice though. One of which is for an insurer to draw upon specialist expertise from an agent where it doesn't have that available within its organisation.

In Mr A's claim, Aviva has appointed Company S – an agent specialising in subsidence – to handle a subsidence claim on its behalf. That means Aviva has taken steps to ensure the claim is handled by an agent with extensive experience of resolving subsidence problems. I think appointing an agent with relevant experience and expertise reflects good industry practice and treats Mr A fairly and reasonably.

I've considered a number of policy booklets across the household insurance industry, from around the time Mr A made his claim, and I haven't found any that specify the insurer may appoint agents – or set out any details about who the agents might be or what arrangements the insurer may have with them. So, Aviva isn't acting out of step with the industry by not including this information.

For many types of claims, an insurer may not need to draw upon specialist expertise to handle a claim fairly and reasonably. And it may have a large network of agents that it can appoint, depending on factors such as the type and cause of the damage, where the damage happened, or the value of the claim. Insurers may change relationships with different agents at different times. I'm not persuaded it would be practical or helpful to consumers to provide all this information within policies – and keep issuing revised policies as the information changes. The fundamental point is that regardless of which agent the insurer appoints, or the circumstances in which it appoints them, the insurer must ensure the agent fulfils its regulatory duties and treats the consumer fairly and reasonably.

Similarly, I haven't found any policies from the relevant time that set out other things Mr A has referred to, such as an express right to inspect, details about how the claim will be processed or how indemnity is to be measured. So, I'm not persuaded Aviva is acting out of line with the industry by not including them. I think this kind of information can vary between different claim types and circumstances, and it wouldn't be practical to include prescriptive guidance to cover all eventualities for each of these points in a policy. Again, the important thing is that Aviva has regulatory duties to fulfil and must treat the consumer fairly and reasonably – and it can do that in a variety of ways and without needing to specify them all in the policy booklet.

Even if I found that Aviva should include any of this information in its policy or otherwise highlight it at the point of sale, which I don't, I would still have to go on to consider what impact that had on Mr A's claim. It wouldn't automatically mean that Aviva should act differently in relation to his claim or that his claim should be settled as he wishes.

Mr A hasn't argued, for example, that if he had known Aviva may appoint an agent, he would have acted differently, for example by not taking out Aviva's policy and finding another with different terms. Based on what I've seen across the industry, I'm not satisfied it's likely Mr A would have found other household policies which provide the level of detail in the policy that he's suggested Aviva ought to have done. And as I've found it represents good industry practice for an insurer to base settlement on a visit for the reasons set out above, I think it's likely any insurer would want to take a similar approach to Aviva when settling the claim. So, I'm not persuaded the absence from Aviva's policy of more detailed information about appointing agents has had any material impact on Mr A.

I agree with Mr A that policies should be clear and avoid as far as possible the use of language which is vague or open to interpretation. But in the key points relevant to this claim, I haven't found Aviva's policy to be sufficiently unclear, vague or open to interpretation such that it has led to him being treated unfairly or unreasonably.

To summarise my findings on whether the claim should be settled as Mr A suggested:

- The policy is clear that Aviva can choose the method of settlement and it allows for a site visit.
- A site visit is good industry practice and would treat both parties fairly by ensuring neither loses out.
- Aviva hadn't accepted the claim, or agreed how to settle it, when it invited Mr A to obtain a surveyor's report or when it said it would be 'normal procedure' to obtain three quotes for major work.
- Whilst Aviva has made mistakes in the way it handled the claim, the fair and reasonable response isn't to require Aviva to settle the claim as Mr A wishes.
- Appointing Company S amounted to good industry practice.
- Aviva's policy didn't provide the detail Mr A has suggested it should have done. But it didn't need to, that approach wasn't out of line with the industry, and including those details wouldn't have had a material impact on Mr A.

So, taking into account all the relevant information, including Mr A's response to my provisional decision, I'm not persuaded it would be fair for the claim to be settled as he has suggested. That is, on a cash basis without a visit to the garage.

How should the claim be settled?

Aviva agreed to settle the claim as I set out in my provisional decision. That means it agrees not to take into account in the settlement any deterioration the garage may have suffered since the claim began. Mr A also agrees with this point. So, I'm satisfied this point is resolved, and it doesn't require any further discussion.

That also means Aviva agreed to the steps I outlined. In summary, that's for an independent engineer to be appointed to explore the options for indemnifying Mr A.

Mr A questioned whether this method of settlement would unfairly and unreasonably delay the claim further and cause further distress and inconvenience. He also suggested it may be contrary to what he calls the 'Padfield obligation' if it doesn't provide:

- A quick resolution with minimum formality
- An appropriate degree of consumer protection
- Prevention of consumer detriment

Mr A says ‘the Padfield obligation’ means a public authority must exercise statutory power in a way that promotes the policy and objects of the legislation. A decision maker must not use their discretion in a way that thwarts or runs counter to it. I understand this to mean Mr A considers I shouldn’t make a decision that frustrates the empowering legislation of this Service, which is the Financial Services and Markets Act 2000 (FSMA).

The role of this Service is to resolve complaints quickly and with minimum formality based on what is fair and reasonable in all the circumstances of the case, taking into account the factors in DISP 3.6.4R. I’ve kept this role in mind when thinking about what a fair method of settlement would be.

I’ve explained above why I’m not satisfied it would be fair and reasonable to settle the claim without Aviva having the opportunity to visit and explore the settlement options and corresponding costs. Part of the reason is the risk of Mr A not being fairly indemnified if an accurate, fully scoped and costed schedule of works isn’t produced.

I also take into account that the relationship between Mr A and Aviva and Company S has clearly broken down. I know Mr A would prefer Company S to be removed from the claim completely. Aviva is free to do that and handle the remainder of the claim directly if it wishes. But I’m not persuaded it would be fair for me to require Aviva to remove Company S. Aviva appointed Company S to ensure it had the support of a subsidence specialist with relevant expertise and experience. I’m satisfied Aviva is entitled to continue to rely upon that support to handle the claim.

The method of settlement I set out means that the key aspects of the claim – visiting Mr A, determining the settlement options and their costs if Aviva doesn’t offer to carry out the work – will be carried out by an independent engineer, rather than Aviva or Company S. It also means the claim can be settled in line with the policy terms and good industry practice, whilst ensuring Mr A is fairly and fully indemnified.

To make the settlement less formal, I could have included less steps or less detail within the steps about how to resolve the dispute. However, given the deterioration of the relationship between Mr A and Aviva and Company S, I considered it necessary to provide such detailed steps. I’ll explain why.

At its heart, this complaint is about a very simple question – is it fair for Aviva to insist on a visit to the garage as part of handling a claim about its damage? Yet, for a variety of reasons, it’s taken over four years to answer that question. To resolve the claim fairly, more questions, and questions of greater complexity, will need to be answered. For example, can the garage be repaired or must it be reinstated? What methods of repair and/or reinstatement are viable? What are the corresponding costs – to Aviva and at local rates available to Mr A? Bearing all of that in mind, how can Mr A be fairly indemnified?

Given it’s taken over four years and a substantial amount of correspondence to answer the first question, without a framework for both parties to work within, I think answering the remaining questions is also likely to take a long time and generate a lot of correspondence.

So, in the context of the particular circumstances of this complaint, I consider that formally setting out a number of specific steps will provide the quickest resolution with the least formality, whilst also treating both parties fairly and reasonably.

Mr A has queried the draft instructions to an independent engineer that Company S recently shared with him. He’s also raised two points about the steps I outlined in my provisional decision – whether Aviva should be able to cap the indemnity value to its own costs and

whether it should add interest. As Mr A hasn't challenged or queried any of the other steps I set out, I see no reason to change them or comment on them further.

I'll comment on the draft instructions and indemnity value here and return to the point about interest in a sub section below.

Company S shared draft instructions for an independent engineer with Mr A following my provisional decision. Mr A questioned why it had done this as I hadn't made my final decision. And it came after Aviva had said it wouldn't confirm acceptance of the claim whilst it waited to hear whether Mr A had accepted my decision. So, I think sharing the instructions at this stage has caused some confusion. Aviva can help prevent this happening again by waiting for confirmation that the Final Decision has been accepted or rejected by Mr A, before taking any further steps.

I see the draft instructions were shared with Mr A before being issued to any engineers, and that's given him the chance to comment on them. However, I'm disappointed to see the instructions don't accurately reflect the steps I outlined. So, I can understand why they have caused Mr A some concern. I'll comment on the key points Mr A has made.

- Mr A noted that one of the steps I outlined required Aviva to send the engineer a specific list of documents and other information. But what Company S proposed to send the engineer doesn't match that list. I agree. Aviva should ensure everything within the list set out in the steps I've outlined is shared with the engineer to comply with the direction.

- Mr A also said the instructions included false or misleading statements. For example, it says the damage was notified to insurers in February 2019 – but it's common ground that Mr A got in touch with Aviva in October 2018. Aviva should ensure all information included within the instructions is accurate and factual.

- Mr A noted the instructions asked the engineer to give their 'opinion about the cause of damage'. But Aviva has accepted the damage has been caused by subsidence, so that's not in dispute any longer. And that doesn't reflect what I outlined in the steps. Aviva should ensure the instructions accurately reflect the steps.

- The draft instructions say the engineer's report 'obviously needs to reflect policy cover and FOS best practice'. In principle, I'm satisfied that's a reasonable statement. But Mr A has noted that Company S went on to interpret those things without reference to the policy terms or anything to objectively set out the best practice of this Service. Mr A has suggested that it should be left to the engineer to take into account the policy wording and any other directions in this decision. I agree, I think that would be more consistent with the engineer's role as independent expert. I'll comment on two points to help with that.

    - The policy covers loss or damage to the 'building' (as defined in the policy) by subsidence. Strictly that means the policy only covers the cost of putting right the subsidence damage. Taken literally, that could mean simply repairing the damage only. But it's a long held position of this Service that when putting right damage, it would be fair for an insurer to provide a lasting and effective solution. In the context of subsidence, that means ensuring the structure is stable.
    - Similarly, taken literally, the policy only covers damaged parts – not anything undamaged. It's another long held position of this Service that if, in order to carry out a lasting and effective repair to damaged areas, work is needed to

undamaged areas, it would be fair for the insurer to pay for work to the undamaged areas.

- The broad purpose of the steps I've outlined is for Aviva to be able to fairly indemnify Mr A for the subsidence damage – and to do so in accordance with ICOBS and treating him fairly and reasonably. Aviva should always keep this in mind.

Mr A has said it would be unfair and unlawful for Aviva to cap the indemnity value at its own costs if it chose to settle the claim on a reinstatement basis and it should apply the wording of the policy.

I think it's common ground that the replacement option mentioned in the policy isn't relevant here. Putting that aside, the policy gives Aviva the right to cap the amount it pays at its own costs if it chooses to settle the claim by repair. The policy doesn't give Aviva the right to cap the amount it pays if it chooses to settle the claim by reinstatement.

I've thought about what Mr A has said on this point, but it hasn't changed my mind.

The fact remains that regardless of whether the garage can be repaired or reinstated, if Aviva offers to provide a lasting and effective solution to the subsidence damage by carrying out the work, it will be offering Mr A the opportunity to be indemnified – which will amount to a fair offer to settle the claim.

Despite this, Mr A would remain entitled to ask to settle the claim by cash payment. If he did so, and Aviva had offered to indemnify him, I'm not satisfied it would be reasonable to expect Aviva to pay him more than it would have paid its contractors to carry out the work.

However, if Aviva doesn't offer to indemnify Mr A by carrying out lasting and effective work, I'm not satisfied it would be reasonable for Aviva to cap the settlement at its own cost – whether the work is a repair or reinstatement. That's because it's likely the cost to Mr A would be greater than the cost to Aviva as a result of the preferential rates it enjoys. And if Aviva isn't offering to carry out the work, that would leave Mr A in a position where he's likely to lose out – which wouldn't treat him fairly. In these circumstances, it would be fair for Aviva to pay Mr A the costed schedule of works instead, as they will reflect local rates.

Compensation

Mr A asked me not to consider compensation, or make a finding about it, if I didn't change my mind about what I consider a fair amount is in the circumstances. He says this is because he 'may seek appropriate compensation by future recourse to the court'.

Mr A may be able to completely withdraw a complaint point. For example, if he had asked me not to consider compensation at all. But he's only asked me not to make a finding if, having considered his extensive reasons in support of a significantly higher compensation figure, I don't agree a much higher figure is reasonable in the circumstances. Or, to put it another way, he would like me to make a finding about compensation if it's in line with his opinion about a reasonable compensation figure.

In my view, that means Mr A is effectively still asking me to consider compensation and make a finding about it. And as I'm doing that, I think it's appropriate for me to set out my key considerations and findings here for both parties.

If Mr A doesn't agree with my final decision, he's entitled to reject it. That would mean it's not legally binding on any party.

So I've gone on to consider compensation, including the comments Mr A made in response to my provisional decision. I won't repeat my provisional findings about compensation in full here, as they're set out above. I'll summarise the key points:

- Aviva paid Mr A £400 in March 2019 for its failures up to that point.
- It's also agreed to pay an additional £500 for its failures since then, making a total of £900 compensation offered.
- It's common ground that Aviva:
    - Acted unfairly by refusing to accept the claim. This contributed to the stalemate and severe delays.
    - Caused a loss of expectation by giving the impression the surveyor report alone may suffice to settle the claim.
    - Offered a desktop review and then withdrew the offer after Mr A had provided information to a very short deadline.
    - Ought to have taken more care to handle the claim fairly given Mr and Mrs A's poor health.
    - Was at times dismissive and adversarial, as was Company S.
- I also thought Aviva should have been clearer about what information it would need in quotes. Taking into account the responses to my provisional decision, I think this point is common ground now too.
- The key point remaining in dispute is whether, if Aviva had accepted the claim sooner, Mr A would have agreed for it to visit to explore the settlement options in a similar way to that I've outlined above – or whether he would only have agreed to a visit for the sole and specific purpose of establishing how much it would cost Aviva to implement his surveyor's recommendations.
- I wasn't satisfied Mr A would likely have agreed to a visit fully exploring the settlement options. He's argued throughout, in extensive detail, drawing upon a wide variety of information, why the claim should be settled in the manner he would like.
- Bearing in mind the impact on Mr and Mrs A of Aviva's mistakes, and this Service's approach to awarding compensation, I was satisfied an additional £500 was fair and reasonable in the circumstances.

In response to my provisional decision, Aviva remains prepared to pay an additional £500 compensation. Mr A remains unsatisfied with this amount. He's suggested around £16,000. The key point of dispute remains what would have happened had Aviva accepted the claim sooner – and asked to fully explore the settlement options, including a visit, along the lines I've outlined as a resolution to this complaint. So that's what I'll focus on.

I'm satisfied this is a reasonable question to ask. If, for example, I found Mr A *would* likely have agreed to such a visit, then it would follow that Aviva is responsible for most, if not all, of the delay. However, if instead I found Mr A *wouldn't* likely have agreed, then *even if* Aviva had accepted the claim as early as it should have done, it's likely the stalemate and delay would have continued nonetheless. In such circumstances, I'm not satisfied it would be fair to hold Aviva responsible for a significant amount of the delay. Regardless of whatever finding I reach on this point, it's agreed Aviva is responsible for some of the delay as a result of not accepting the claim sooner. I'll now go on to consider whether it should be held responsible for a more significant amount of the delay.

I won't reiterate the points I made in my provisional decision about how this Service considers compensation or the points that are in agreement. I'll focus on the key points Mr A has made in response to my provisional decision.

Mr A says he's been unable to provide further information that he intended to obtain from Aviva and I understand that's in relation to the cause of the delay. I've explained above why I'm satisfied Mr A wasn't prevented from getting in touch with Aviva if he wished. But even if he felt he couldn't, it's not clear what information he would have gathered that isn't already available – and how he thinks it would have made a material difference to my findings about the delays and compensation. I don't think the background to this complaint and the key points in its timeline are in dispute. So I'm satisfied I have all relevant information available with which to reach a decision that's fair and reasonable.

I don't think it's necessary for me to identify an exact period of delay to hold either party responsible for in order to reach and explain a fair and reasonable outcome. Our compensation awards aren't based on units of time. We take into account the broad period of delay, the impact that delay caused, and all other relevant factors (such as poor communication or a loss of expectation), when thinking about compensation. So there's no need to establish an exact period of time to reach a fair decision about compensation.

To recap, Mr A first got in touch about the damage in October 2018. He provided his surveyor's report soon after. Company S was appointed in February 2019 and asked to visit. Mr A initially agreed to that, but cancelled the visit when it became clear the purpose would be broad and may include Company S investigating whether the damage had been caused by subsidence – despite his surveyor already saying it had been.

In April 2019, Mr A said to Aviva that he had no objection to a site meeting for the purpose of calculating what it would have cost Aviva to implement the recommendation of his surveyor. So I think he was quite clear at this stage that, whilst he was prepared to accommodate a visit, it was for the limited and specific purpose of costing his surveyor's recommendations.

Aviva didn't agree to such a visit. It said Company S would repeat the investigations carried out by Mr A's surveyor to confirm the damage had been caused by subsidence. This led to the stalemate, which began around mid 2019.

Aviva has now accepted the damage was caused by subsidence – largely based on the evidence it had available in early 2019. So I think it's fair to say that's the time when it ought to have accepted the claim. It would then likely have asked to explore the settlement options, along similar lines to what it's asking now – in summary, a visit to determine whether the damage can be repaired or if it must be reinstated, the corresponding cost(s) to Aviva, and whether it would settle the claim by cash payment.

But it was around this time when Mr A had been clear about the purpose of the visit he was prepared to agree to. And by August 2019, he proposed to settle the claim based on the cost of carrying out the work his surveyor recommended – as determined by his surveyor. He didn't offer Aviva the opportunity to visit and calculate its own costs of the surveyor's recommendations at that time. So I think by late 2019, Mr A's position was firmly that he didn't agree for Aviva to visit – or for Aviva to settle based on its own costs. Whilst there has been a great deal of discussion and correspondence since that time, Mr A's position has broadly remained the same, up to and including his response to my provisional decision when he suggested Aviva settle based on his quotes for the work recommended by his surveyor.

I know Mr A feels very strongly that he's been treated unfairly by Aviva. And that the way it's acted is the sole cause of the severe delay in settling this claim. He's said his position about a visit changed over time because of a 'sense of caution' in response to the way Aviva and Company S were acting. I've thought about this point, but I'm not persuaded it would be fair to hold Aviva responsible for Mr A's position about the scope of a visit. He was clear from early in the claim that the scope of a visit should be limited to Aviva costing his surveyor's

recommendations. His position was firmly that Aviva had given him the impression his claim would be accepted, and settled, based on his surveyor's report. I haven't seen anything to persuade me he was open to Aviva visiting to consider whether it could indemnify him in any way other than that set out by his surveyor, for example by carrying out a repair.

Whilst I agree Aviva caused delays initially by not accepting the claim, the evidence available doesn't persuade me that *even if* Aviva had accepted the claim promptly, the claim is likely to have progressed significantly quicker. Instead, I'm satisfied the evidence shows the argument would likely have moved on from whether the claim should be accepted to how it should be settled – and a stalemate would have continued because Mr A and Aviva had fundamentally different views on settlement. Given I've found it is, and would have been, reasonable for Aviva to visit to fully explore the settlement options and costs – not limited to the recommendations of Mr A's surveyor – I'm not satisfied it would be fair to hold Aviva responsible for any delays flowing from this difference of opinion about settlement.

I've thought again about the mistakes Aviva has made, including its contribution to the overall delay. I've taken into account the impact of those mistakes, which I set out in my provisional decision above, our approach to compensation awards at this Service, and other relevant material. That includes the section of the Insurance Act 2015 Mr A has pointed to, which in summary, requires an insurer to pay a claim in a reasonable period of time, bearing in mind the relevant circumstances of the claim.

Having done so, I remain satisfied that an additional £500 – making £900 in total – is fair and reasonable. I consider £500 to be proportionate to the distress, inconvenience and upset caused by Aviva's failings during this claim.

Interest

Lastly, Mr A has asked whether interest should be added to my award. Generally, the approach of this Service to awarding interest in buildings insurance is as follows:

- If the claim is settled by the insurer carrying out a repair or reinstatement, interest isn't awarded.
- If the claim is settled by the insurer paying cash, interest may be awarded depending on the particular circumstances of the claim.

This is because the purpose of awarding interest is usually to compensate a consumer for unfairly being without money they should have had at an earlier time.

In this case, I'm not directing Aviva to make a cash payment toward a claim. I'm directing it to take a number of steps, which may result in carrying out a repair, reinstatement, or making a cash payment.

If the claim were settled by a repair or reinstatement, Mr A wouldn't be receiving money – and so he couldn't have been without it unfairly. So I'm not persuaded it would be fair for Aviva to pay interest on the cost of the work. Any delay in receiving the repair or reinstatement caused by Aviva would more appropriately be compensated for based on the distress and inconvenience caused to Mr A as a result of that delay. I've made a finding on that in the 'compensation' section above.

Even if the claim were settled by cash payment, I don't think it would be fair to require Aviva to pay interest over a significant period of time, when it isn't primarily responsible for the length of the claim. It would effectively penalise Aviva for delays outside of its control, which I'm not satisfied would produce a fair and reasonable outcome. So, at most, I would only require it to pay interest for the period of delay it was responsible for.

In this case, that period of delay is a number of months from late 2018 to mid 2019 as I've set out above. At that time, even if Aviva had accepted the claim when it should have done, due to the disagreement about how to settle the claim, Aviva would have been unable to fairly settle the claim by cash. It wouldn't have been able to explore the range of settlement options, so it wouldn't have known what amount of money would fairly indemnify Mr A. I'm not satisfied it would be fair in these circumstances to say that Aviva was responsible for the delay in making a cash payment, as it couldn't have made one in any event.

I also take into account that if the claim is settled by cash payment, the amount is likely to be significantly greater than whatever amount would have fairly indemnified Mr A around mid 2019. That's because of the significant increase of the cost of building work in the intervening years. I'm not satisfied it would be fair to require Aviva to pay interest on a significantly greater settlement value than the one it would have settled the claim for, if it had been able to do so in mid 2019. Again, it would effectively penalise Aviva for delays outside of its control.

Taking all of this into account, I'm not satisfied it would be fair to award interest to Mr A.

My final decision

I uphold this complaint. I require Aviva Insurance Limited to:

- Pay an additional £500 compensation.
- Accept the claim.
- Settle the claim by taking the following steps:
    - Aviva must find three suitably qualified independent engineers and give a list to Mr A. All three engineers must have confirmed they're independent and members of RICS or other relevant professional bodies.
    - Mr A should confirm to Aviva which one from this list he would agree to being appointed.
    - The engineer is to be appointed as a single joint expert to prepare a report on what settlement options are open to Aviva (in order to put Mr A back in the position he was in immediately before the subsidence damage occurred) including by visiting Mr A's property.
    - In conjunction with the report, a fully scoped and costed schedule of works will be prepared by the engineer, or a contractor overseen by the engineer.
    - When instructing the engineer, Aviva must send them copies of the policy document from the insured period in which the subsidence damage first occurred, any photographs it has received from Mr A, the two expert reports commissioned by Mr A, the NHBRC certificate, the three quotations obtained by Mr A and a copy of my decision.
    - A copy of the instructions must be sent to Mr A at the same time. He should be given one opportunity to send the engineer anything else he'd like considered.

- The engineer will report to both parties with a draft copy of their report and their fully scoped and costed schedule of works.

- The parties will then have one opportunity to put questions to the independent engineer. After this has happened, the engineer will issue their final report to both parties.

- On receipt of the report, Aviva must use it to decide how to settle the claim:
  - If Aviva offers to settle the claim by repair or reinstatement, Mr A can accept that, and Aviva's contractors will carry out the work. It should be overseen by a suitably qualified engineer. A Certificate of Structural Adequacy should be issued on completion.
  - If Mr A doesn't accept Aviva's offer to repair or reinstate, Aviva will settle the claim by cash payment, based on the cost it would incur if its contractors carried out the work.
  - If Aviva offers to settle the claim by cash payment, without offering to carry out the work, Aviva will settle based on the engineer's costed schedule of work.

- Any settlement is subject to the principle of indemnity, and any policy excesses or limits that may apply.

- The cost of the independent engineer is to be met in full by Aviva.

- All of the above steps must be carried out in accordance with Aviva's duties under ICOBS 8, including to handle claims 'promptly and fairly'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 13 April 2023.

James Neville
Ombudsman