

## **The complaint**

Mr L and Mrs S complain that Aviva Insurance Limited unfairly declined their claim for subsidence on their home insurance policy.

Mr L and Mrs S have been represented by a third party throughout this complaint. However for ease of reading all references to Mrs S include the actions of both Mr L, Mrs S and their representative.

## **What happened**

Mrs S bought a new home in 2006. She had home insurance with Aviva to cover the property. In October 2020 she made a claim after noticing cracking to the external and internal walls of the property.

Aviva sent a loss adjuster and an arborist to the property to inspect the damage and subsequently declined the claim. It said the foundations of the property were only built to a depth of 1,800mm when new home building guidance says that they should be 2,400mm based on the nearby trees. It said there was an exclusion in the policy for faulty workmanship and as the foundations hadn't been built to the requirements in the relevant guidelines, this would apply.

Mrs S complained but Aviva didn't change its position. So she asked this service to investigate.

Our investigator recommended the complaint be upheld. She said this service would only say it were fair for Aviva to rely on the new home guidelines if the property had been built by a builder registered to the new home provider that issues those guidelines. Otherwise they wouldn't be required to follow these, and instead would be bound by the building regulations at the time. She said Aviva had been unable to show this was the case so hadn't fairly applied the exclusion. She said Aviva should therefore consider the claim in line with the remaining policy terms.

Mrs S accepted our investigator's outcome. However Aviva didn't. As agreement hasn't been reached, the matter has been passed to me to decide on.

## **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.

Having done so I agree with our investigator's outcome for the following reasons:

- When an insurer considers a claim, it is for it to prove that an exclusion applies if it chooses to apply one. Here, Aviva has relied on the exclusion for faulty workmanship as it says the foundations didn't meet the requirements in new home guidelines. These guidelines are in place specifically for builders registered to one of the leading new home builders, in order to meet the requirements for a warranty it provides with

new homes.

- This service would only expect these guidelines to be the measure of whether foundations were poorly built where the builder was registered by the company who issue the guidelines. As otherwise there is no requirement for the builder to meet these guidelines, instead the relevant requirements would be the building regulations at the time.
- We've asked Aviva to provide evidence that the builder was registered to the new home builder and that one of its warranties was issued with the property, but its been unable to do so.
- Building regulations that were in place at the time require the foundations to have been a minimum of 750mm, increasing to take into account vegetation and soil type. As the foundations of Mrs S' property were 1,800mm I'm satisfied they meet these requirements.
- Aviva has argued that the regulations at the time state that the building '*should be constructed so that ground movement caused by shrinkage of the subsoil will not impair the stability of any part of the building*'. It says as the stability of the property has been impaired the build hasn't met these requirements. However I don't agree this is a fair measure, as this would mean that regardless of the depth of the foundations, if the building encounters any issues with stability then Aviva could say it hadn't been built correctly, which isn't a fair application of the regulations.
- As the onus is on Aviva to prove an exclusion applies, I don't think it's done enough to show that the building didn't meet the required standards at the time. As it met the minimum requirements contained in the relevant building regulations and it has provided no evidence that the builders were required to meet the new homes guidance.
- Additionally to this, I note in the arborists report that while roots were found at a depth of 2,400mm, they were also found at as shallow a depth as 1,400mm. So even if the foundations were built to the new homes guidance, I've not seen enough to convince me that this would have prevented the subsidence.
- And further, the property was built in 2006 and the first cracks were noticed in 2020. This means the building stood without issue for 14 years. Had the foundations been unsuitable, I'd have expected the building to have experienced problems much earlier than this.

For these reasons I don't think Aviva has done enough to show that the exclusion for poor workmanship would fairly apply in the circumstances. I therefore agree with our investigator that it should consider the claim in line with the remaining policy terms, without applying this exclusion.

### **My final decision**

For the reasons I've given, I uphold Mr L and Mrs S' complaint and require Aviva Insurance Limited to consider their claim in line with the remaining policy terms and conditions, without applying the exclusion for faulty workmanship.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs S to accept or reject my decision before 2 January 2023.

Sophie Goodyear  
**Ombudsman**