

## **The complaint**

Mr C and Ms C complain about Aviva Insurance Limited are dealing with a subsidence claim they have made on their building insurance policy.

Aviva are the underwriters of this policy i.e. the insurer. Part of this complaint concerns the actions of the agent. As Aviva have accepted they are accountable for the actions of the agent any reference to Aviva includes the actions of the agent.

## **What happened**

What follows is only intended to summarise the events that led to this complaint. It does not therefore provide all the detail or should it be taken as a detailed timeline of events.

Mr C and Ms C's property is suffering from subsidence and a claim is being dealt with by Aviva. Mr and Ms C have previously complained to this service about Aviva's initial decline of the claim.

In April 2021 an ombudsman here directed that Aviva should accept the claim and deal with it accordingly. As part of the submissions in that complaint Mr C and Ms C produced an engineer's report which recommended the property be underpinned. The ombudsman said that he would not be making such a direction as it is for Aviva to investigate. He also commented it would be reasonable for Aviva to consider the most cost-effective way of completing a repair that would be lasting and effective.

In June 2021, Aviva agreed for Mr C and Ms C to instruct their own engineer to provide a report on the property and recommendations on the remedial work required.

In October 2021 the engineer was chased by Aviva for the report, and this was provided in December 2021.

In March 2022 Mr C and Ms C made a further complaint about the lack of progress on the claim as their engineer reported to them, he had not subsequently been contacted by Aviva.

Mr C and Ms C also said to Aviva they would like to make a loss of rent claim. Aviva requested Mr C and Ms C provide information to support this. Mr C and Ms C are unhappy about the information they are being asked to provide and complained about that also.

Aviva considered Mr C and Ms C's complaint but didn't think it had done anything wrong. Mr C and Ms C brought their complaint to this service as they disagreed.

Our investigator looked at the complaint and recommended that Aviva pay Mr C and Ms C £750 compensation for the delays in dealing with the claim. She also explained to Mr C and Ms C that Aviva was entitled to request information from them to support their claim for loss of rent.

Mr C and Ms C didn't feel the compensation adequately reflected the stress they had been put to and asked for an ombudsman's decision.

The claim has continued in the meantime and Mr C and Ms C remain unhappy about how Aviva has been dealing with the claim. They have made it clear they believe Aviva should be paying for the rent they have lost on the property due to its delays in dealing with the claim and that they should be paying substantial compensation due to the stress it has put them and their family under.

### **My Provisional findings**

I issued my provisional findings on 4 April 2023. I said I intended to uphold the complaint for the following reasons.

*"I understand Mr C and Ms C have strong views about what has happened. I want to assure them I've read and considered carefully everything they've said.*

*However, my findings focus on what I consider to be the central issues, and not all the points raised. This isn't meant as a discourtesy. But the purpose of my decision isn't to address every single point the parties have raised or to answer every question asked.*

*My role is to consider the evidence presented by Mr C and Ms C, and by Aviva, to reach what I think is a fair and reasonable decision based on the facts of the case.*

*My decision only covers the year between the previous ombudsman's final decision in April 2021 and Aviva's final response in April 2022. And it broadly falls under two headings, delays and loss of rent.*

*I'm aware there have been further delays in the claim since and that Mr C and Ms C now want to claim for more consequential losses, however these will need to be dealt with as a separate matter. I will not be considering them here.*

#### *Delays*

*I asked Aviva to supply me with a copy of the telephone call it had with Mr C in June 2021 where it agreed to him instructing his own engineer. As I wanted to understand exactly what remit Mr C was given and if he was provided with any specific instructions as to what the engineering report should cover so that it would be acceptable for the purposes of informing the next steps in the insurance claim. However, Aviva has not been able to provide me with this information, instead it has replicated the notes of the conversation which simply confirms it was agreed an engineer could be instructed.*

*So, based on the above, I can't conclude that Aviva provided Mr C with full information about what would be required in order to fully move the claim forward.*

*I also note that subsequent to this conversation it doesn't appear there was any urgency to ensure the claim was moved forward in a timely manner. The report wasn't chased until October and when it was received it wasn't reviewed for a further month. And, up to the point of Mr C's further complaint, it appears no direct contact had been made with the engineer to resolve any of the questions that had arisen.*

*Having reviewed everything, I'm not satisfied that Aviva has dealt with this claim in a timely manner. It was aware of the condition of the property from the reports provided previously and that this was causing distress to Mr C and Ms C. Given the condition of the property and the length of time this matter has been outstanding I think fair compensation for the trouble and upset caused would be £1,500.*

#### *Loss of rent claim*

*Mr C and Ms C have said they wish to make a claim for loss of rent. Aviva has requested information to support the property was tenanted in order to assist with a decision on that claim. I don't think this is unusual, it is normal for policyholders to provide information in order to substantiate the losses that have been suffered.*

*I won't be upholding Mr C and Ms C's complaint on this aspect. However, I wish to make it clear that I have not made any decision on whether there is a valid loss of rent claim, as this will be for Aviva to do once it has reviewed the circumstances of the claim and any information that Mr C and Ms C are able to provide.*

*If Mr C and Ms C are then unhappy with any decision that Aviva makes in respect of that claim, they would be entitled to make a new complaint.*

*Similarly, I make it clear here that I have not considered whether Aviva should be held responsible for any consequential losses in respect of its delays in progressing this claim. Mr C and Ms C has said that had the claim been dealt with in a timely manner and repairs undertaken the house could have been returned to the market and rented out.*

*For this to be considered Aviva first need to make a decision on whether there is a valid loss of rent claim under the policy. So, this is a matter that cannot be decided on here”.*

### **Responses to my provisional findings**

Aviva said it accepted my provisional findings.

Mr C and Ms C said that while they would accept the compensation amount, I set out, they didn't think it truly represented all of the upset they'd been put to. They reiterated their point about losing rent money on the property and other issues they'd had since the date of Aviva's last final response letter.

### **What I've decided – and why**

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

I've considered Mr C and Ms C's comments however I'm not minded to change the level of compensation awarded. It is clear there are ongoing issues with the claim which has added to the upset Mr C and Mrs C have felt however I can't consider that here.

As I set out in my provisional decision, I am only considering the claim up to the date of Aviva's last final response letter. And I have not considered whether a claim for loss of rent is valid or whether Mr C and Ms C may be entitled to claim for any consequential losses.

Overall, I'm satisfied that Aviva is entitled to ask Mr C and Ms C for information to support their loss of rent claim. However, for the reasons set out above, I don't think Aviva have dealt with the subsidence claim in a timely manner and therefore I uphold this complaint.

### **Putting things right**

Aviva should pay Mr C and Ms C a total of £1,500 compensation.

### **My final decision**

My final decision is that I uphold Mr C and Ms C's complaint against Aviva Insurance Limited. I direct it to put things right as I have set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Ms C to accept or reject my decision before 26 May 2023.

Alison Gore  
**Ombudsman**