

The complaint

Miss W complains Aviva Insurance Limited unfairly declined to cover some damage she claimed for against a property insurance policy.

Miss W's been represented for the claim and complaint. For simplicity I've referred to the actions of the representative as being those of Miss W. Aviva's had agents and contractors working on its behalf. For the same reason, in places, I've referred to their actions as being those of Aviva.

What happened

Miss W is the leaseholder of a flat in a converted industrial building. The block is covered by an insurance policy provided by Aviva. The block experienced subsidence resulting from problems with a local waterway. She made a claim against the policy for loss. Miss W was unhappy with progress of the claim and Aviva's failure to provide alternative accommodation (AA) for her. In August 2021 a different Ombudsman at the Financial Ombudsman Service issued a final decision for that complaint. The Ombudsman had considered matters up until a complaint final response issued by Aviva in January 2020.

Miss W made a further complaint to Aviva. Her main dispute is about a slope and dip in the floor of her home. She accepts there was a slight historic slope when she purchased the flat. But she feels the evidence supports there having been further movement from the subsidence. She feels this has caused an increased incline and that movement has caused further damage. Aviva had denied any recent, claim related movement in the floor, stating any slope is historical.

Miss W wasn't satisfied so returned to this service in September 2022. She feels Aviva's denial of the increased incline means its proposed schedule of works (SoW) doesn't include key repairs. Aviva's stood by its existing SoW – adding that several of the issues Miss W's raising are already covered by it. Other items, like internal doors, it accepted didn't meet building regulations but denied problems are claim related or covered by the policy.

When coming to this service Miss W said she isn't asking for an adjudication on the SoW. Instead she asked for us to require Aviva and herself to be bound by the opinion of an independent professional on the scope of insured damage and necessary repairs.

Our Investigator felt Aviva had acted fairly. He wasn't persuaded the slope was subsidence related. Miss W didn't accept the outcome. After that I asked Miss W's representative and Aviva to discuss the proposed independent professional appointment and site meeting. Aviva declined the proposal. It said the items proposed for discussion had already been covered before. It added some are accepted as not being subsidence related and are being dealt with by the property's managing agent.

I explained to Miss W's representative that I didn't intend to require Aviva to agree to, and be bound, by a third-party report. I said I wasn't persuaded doing so would resolve the dispute. I explained I could consider Aviva's position on the disputed damage if Miss W would like me

to do so. She agreed, providing a list of items for me to consider. These include levelling the floor to its pre-event gradient and repairs to fire doors.

I issued a provisional decision in August 2023. As its reasoning forms part of this final decision I've copied it in below. In it I explain why I intended to require Aviva to fulfil the recommendations of an October 2021 report, reimburse it and the author's site visit costs and pay Miss W £300 compensation.

I also invited Aviva and Miss W to provide anything they would like me to consider before issuing this final decision. Aviva didn't respond. Miss W accepted the provisional decision but raised a couple of issues. I've addressed those below.

what I've provisionally 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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Miss W and Aviva have provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything provided.

Miss W's home is insured by a policy that covers the block its part of. Its an 'all risks' policy. It says 'We will indemnify You in respect of the Damage to the Property Insured occurring during the Period of Insurance at the Premises'.

As its 'all risks' Miss W isn't required to show any damage she's claiming for was caused by a specific insured event – like subsidence, fire or escape of water. Instead, looking at the terms, she just needs to show there was 'damage' during the period of insurance. If Aviva wishes to decline a claim for any 'damage' Miss W's claiming for it needs to show a term, condition or exclusion in the policy reasonably allows it to do so.

Central to the complaint is the issue of the floor slope. Miss W believes the evidence supports the historic slope having been exacerbated by the recent subsidence – causing damage to various part of her property. Aviva doesn't accept this – instead it feels all floor distortion present is historic and pre-dates the subsidence. So it doesn't accept there's any floor movement, or associated damage, to be covered by Miss W's policy.

The key evidence for this issue includes Miss W's October 2021 surveyor's report and Aviva's May 2022 site visit report and notes. Having considered those and everything else, I think it's likely there has been some further movement of the floor.

Fire doors, within Miss W's property, have gaps that exceed building regulations. It seems likely to me they would have been originally installed to meet building regulations. These doors no longer fully serve their purpose, so its reasonable to consider them as 'damaged'.

Something's caused this damage. Its accepted there's been subsidence, so without a more persuasive cause, it seems the most likely cause. Both Miss W's report and Aviva's note the doors were planed to allow them to open and close. I haven't been provided with an explanation of why this was required. Without one it seems most likely it was due to the movement of the property resulting from the subsidence.

Miss W's report also refers to various cracking, including at the junctions of partition wall perpendicular to the front elevation. It notes similar cracking at junctions of partition walls and the front elevation in neighbouring flats. The report provides descriptions of other damage to the building that it feels is indicative of downward movement of the front elevation of the building.

Aviva's May 2022 report makes some reasonable points about the absence of damage that would be expected if the floor had dropped – including to kitchen sealant and cabinet joins. However, it fails to adequately explain a 20mm gap under skirting shown in its photos. I accept the skirting will have been installed to accommodate an existing incline, but it seems unlikely to have been fitted with such a significant gap. So again it seems likely something caused the gap – and with no other explanation the recent subsidence would seem the probable cause.

Overall I'm currently persuaded there's been an increase in the incline of the floor. And Aviva hasn't shown a policy term or exclusion reasonably applies to limit or remove its liability. So it's reasonable for Aviva, in line with the terms of the policy, to cover any related damage.

As I've so far found Miss W's survey report the most persuasive it seems reasonable to refer to its recommendations for adjustments to the SoW. So I intend to require Aviva to undertake most of its recommendations. These are:

- *Replace or repair the fire doors, within Miss W's property, to ensure they are compliant with the relevant buildings regulations.*
- *Ensure the floor is secure and level where possible.*
- *Re-level kitchen units and worktops replacing where necessary.*
- *Replace damaged tiling in bathroom and kitchen.*
- *Service and adjust windows and replace as required.*
- *Secure an inspection hatch to hallway and replace damaged carpet.*

I don't intend to include the recommendation to expose the front elevation and repair cracks to masonry. The report justifies this with reference to missing pointing and stepped cracks on the external side of the elevation. Aviva says it can't identify any cracks or damage to that area of the building. Having seen a few photos I haven't been able to either. So currently I don't intend to require Aviva to take on this recommendation.

Miss W was charged for her October 2021 report. She also paid for its author to attend a site meeting with Aviva. As his evidence has had an impact on the outcome of the claim and complaint it will be reasonable for Aviva to cover those costs. So I intend to require Aviva to reimburse her. It will also need to add simple interest at 8%, from the date she paid the invoices, to the date of settlement. This is to make up for her being without those funds.

Finally I intend to require Aviva to pay Miss W some compensation. I'm satisfied that if Aviva had accepted Miss W's October 2021 report recommendations some unnecessary distress and inconvenience would have been avoided. £300 is a fair amount for it to pay to recognise this.

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.

First Miss W pointed out that I had, in places, mistakenly referred to her October 2021 report as dating from October 2022. I've now corrected that mistake in my provisional decision reasoning.

Miss W asked for clarification regarding my intended award of her surveyor's fees. She explained there were two site visits by the surveyor – one to inspect and provisionally scope and a later one to meet with Aviva's loss adjuster. For clarity I require Aviva to cover the cost of the initial visit, the resulting report and the later site visit.

Miss W referred to her policy covering AA costs. She said the condition of the fire doors made the property uninhabitable. She explained she's been living with family for the past four years. She said as a result she hasn't incurred additional rental costs but has still had to pay the expenses for her property – including council tax and utilities.

I note the ombudsman for the Miss W's previous complaint, considering events up until January 2020, didn't feel the claim damage made the property unfit to reside in.

I didn't consider the issue of AA or related costs in my provisional decision. That was because in Miss W's initial referral submissions for this complaint she said she was reserving submissions of the issue until she's able to move back in the property and offer it for sale. In addition she responded to our investigator's assessment of this complaint by stating she hadn't asked for a decision on habitability. And the matter wasn't raised by Miss W in her July 2023 emails sent in response to me outlining what issues I felt I could consider.

Miss W also referred, in response to my provisional decision, to the cost incurred for the services of her loss assessor. I can't see that she previously asked for this to be considered as part of this complaint.

I don't feel it's reasonable to introduce these two issues at this stage. Miss W should have raised them earlier if she wanted them considered. For me to do so now would inevitably delay the resolution of the complaint and claim even further.

My final decision

For the reasons given above, I require Aviva Insurance Limited to:

- fulfil, as bulleted above, the recommendations of Miss W's October 2021 report,
- reimburse her the cost of her October 2021 report and its author's two site visits – plus simple interest on those amounts at 8% and
- pay her £300 compensation.
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Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 3 October 2023.

Daniel Martin
Ombudsman