

The complaint

Mrs B complains Aviva Insurance Limited (“Aviva”) unfairly declined a claim for subsidence.

Any reference to Aviva includes the actions of its agents.

What happened

The circumstances of this complaint are well known to both parties, so I’ve summarised events.

Mrs B has a home insurance policy which is underwritten by Aviva. She contacted Aviva when she noticed damage to her property.

Initially, Aviva said the damage wasn’t caused by subsidence. But following information from Mrs B’s expert, Aviva accepted some of it was, and arranged for an implicated tree to be removed. A period of monitoring followed which confirmed the property had stabilised.

Because Aviva didn’t think all of the damage to the property had been caused by subsidence it decided to settle the claim by making a cash settlement.

Unhappy with Aviva’s offer, Mrs B brought a complaint to this Service. An Ombudsman upheld the complaint in 2021, within their direction they said:

“I require Aviva Insurance Limited to increase its cash settlement offer so that it covers the cost of Mrs B putting right the subsidence damage to the main house based on the schedule of works, and the cost to put right all the damage to the external walls.”

The Ombudsman said her decision focussed on the damage to the main property as Aviva hadn’t accepted there’d been subsidence related damage to the rear of the property, and the evidence Mrs B had provided didn’t support there was either. Mrs B was told that if she had further evidence to show it was, she should provide this to Aviva for consideration.

Following the final decision, Mrs B claimed Aviva should cover the cost of her demolishing and rebuilding the rear of the property – which she said had now been shown to have been damaged as a result of subsidence.

Aviva reconsidered Mrs B’s claim in light of this information but didn’t agree it was subsidence related damage. It maintained the damage to the rear of the property was not related to the original subsidence claim.

Unhappy, Mrs B brought a complaint to this Service. An Investigator considered it but didn’t uphold it. He said the evidence suggested the subsidence damage to the front of the property was due to vegetation which had been removed in 2016.

He added that whilst Mrs B had provided an expert report, it didn’t explain how the damage to the rear of the property was caused by subsidence. Nor had she provided monitoring reports to show the property was moving. So, on balance, he was more persuaded by

Aviva's comments and didn't consider its decision to decline the claim to be unfair.

Mrs B responded with further points. The Investigator considered these, but it didn't change his mind. Mrs B remained unhappy and so, the complaint has been passed to me for an Ombudsman's decision.

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 also kept in mind Aviva's responsibilities as an insurer to handle claims fairly, promptly, and to not unreasonably decline a claim. Having done so, I agree with the outcome our Investigator reached – I'll explain why.

It's important to make clear I am only considering whether Aviva's decision to decline a claim for subsidence damage to the rear of the property was fair and reasonable.

When making a claim, the onus is on the consumer to show there is an insured event the policy terms can respond to. So, Mrs B needs to show the damage to the rear of her property was caused by subsidence.

It's not in dispute that when Mrs B first made a claim, Aviva initially said the damage to the main property wasn't caused by subsidence. But changed its position on receipt of information from Mrs B's expert. It agreed to cover a claim for subsidence to the front of her property and remove a nearby implicated tree. But Mrs B says damage at the rear of the property is also caused by subsidence.

The implicated tree wasn't in the vicinity of the rear of the property, and the property had stabilised following its removal. So, on its face it doesn't seem unreasonable that Aviva has concluded the damage at the rear of the property isn't related to the subsidence at the front.

So, I've considered whether Mrs B has shown the cause is subsidence. In doing so, I've considered her engineer's recent findings, which in summary say:

- The two-storey rear annex had subsided, settling to the right-hand side towards the neighbour's boundary. The subsidence was vertical, not lateral.
- Initially the subsidence damage was thought to be caused by defective underground pipes, but a CCTV survey showed they were free from defects.
- Internal checks to the first-floor joists within the bathroom, confirmed settlement was constant. The slope in the bathroom was significant.
- Having demolished the rear annex, it became apparent the property had previously subsided in a similar direction and there was evidence of an attempt to underpin.
- Drains may be repaired, and trees are cut down, and so, it is difficult to provide an initial cause.
- The workmanship of the annex was poor. The engineer suspected the previous underpinning foundations weren't sufficiently below the subsoil, resulting in subsidence of the structure over time.

Having considered Mrs B's expert's findings, I'm not persuaded it persuasively shows there

was subsidence at the rear of the property all along and that Aviva's initial findings - that only the front of the property had been affected by subsidence, and that damage to the rear was historic, lateral restraint failure - was unreasonable.

I say this because whilst the engineer says subsidence has occurred, he doesn't reach a conclusive finding as to the cause of it and indicates various possibilities which isn't enough to persuade me Aviva should accept a claim for subsidence.

I've also thought about Mrs B's concern that Aviva should have carried out further investigations in relation to the rear of the property before determining it wasn't covered by the policy. I note Aviva did consider photographs Mrs B had provided of her bathroom in the rear of the property, saying: *"The pictures appear to show lateral restraint failure of the external wall moving outwards and not downward movement."* As there wasn't an obvious cause - noting the implicated tree wasn't in the vicinity, the property had stabilised following its removal and Mrs B hadn't for example, provided readings which showed movement at the rear of her property - I don't think its actions were unreasonable.

But in any event, Mrs B demolished and rebuilt the rear of her property without approval from Aviva. And as it wasn't involved in Mrs B's decision, Aviva wasn't able to carry out further site investigations. As Mrs B went ahead with the works without Aviva's agreement arguably, its position has been prejudiced. In different circumstances, I *may* have directed Aviva to undertake further investigations but given Mrs B has already demolished and rebuilt the property, that's now not possible. And I don't consider it reasonable to hold Aviva responsible for that.

Ultimately, I'm not persuaded Mrs B has shown the damage to the rear of the property was linked to the subsidence at the front. And in the absence of persuasive evidence to the contrary, I'm satisfied Aviva's decision - that there isn't an insured peril - was fair and reasonable in the circumstances.

I appreciate my decision will be disappointing for Mrs B but based on the evidence I've seen I'm satisfied Aviva's decision to decline the claim was fair and reasonable in the circumstances, and so, I'm not upholding this complaint.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 11 November 2024.

Nicola Beakhust
Ombudsman