

The complaint

Mr and Mrs D have complained about Aviva Insurance Limited's handling of a claim made under their home insurance policy.

What happened

The claim dates back to 2018 and is for subsidence damage to Mr and Mrs D's property.

Aviva has issued five separate final response letters, at different times and addressing different complaint issues.

The dates of, and issues covered within, each final response letter were as follows:

- 18 February 2022 – addressing poor service and delays with £1,500 compensation offered.
- 14 April 2022 addressing the delay in actioning Mr and Mrs D's data subject access request with £150 compensation offered.
- 4 July 2022 addressing additional service failings with £500 compensation offered. The £1,000 policy excess already paid was also reimbursed.
- 26 October 2022 addressing concerns with delays to the repairs, but no further compensation was offered.
- 12 July 2023 (with a follow up letter on 17 July 2023) addressing payments for damaged items, the fact two claims had been recorded and the impact on their premiums and damage to the middle bedroom. This also set out an offer previously made to waive the £1,000 excess for the second claim, to further recognise continued service failings and the delayed conclusion to the first claim.

Our investigator considered Mr and Mrs D's complaint. She didn't think the Financial Ombudsman Service had the power to consider any of the issues covered within the final response letters issued in 2022. This was because she said they were referred too late under our rules, and because she didn't think there were any exceptional circumstances which prevented them being referred in time. She thought we could consider the issues covered in the 2023 final response and she explained her thoughts on those issues.

The investigator said the issues we were able to consider were whether it was fair for Aviva to have recorded two separate claims, the pricing of the policy, the quality of the certificates of structural adequacy (CSA), outstanding repair works to a bedroom and additional customer service issues from October 2022 to July 2023.

Our investigator said it was fair for Aviva to record two claims because the evidence suggested two separate causes of damage to different parts of Mr and Mrs D's property. She said the pricing information she'd seen persuaded her the premium increase had been calculated fairly. She also said that while Aviva had made an error on the first CSA, it had now issued the correct ones and she was satisfied these were in line with what Aviva was required to provide. And, in terms of the middle bedroom, our investigator said Aviva should remedy the issues Mr and Mrs D had reported, and she recommended a further £200 compensation for service issues between October 2022 and July 2023.

Aviva accepted our investigator's recommendations, but Mr and Mrs D didn't. So, as no agreement could be reached their complaint has been passed to me to decide.

I've issued a separate jurisdiction decision to explain which elements of Mr and Mrs D's complaint the Financial Ombudsman Service has the power to consider and which we do not. This decision is solely in relation to the merits of the issues which I've decided we do have the power to consider.

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, and while I appreciate it will come as a disappointment to Mr and Mrs D, I've reached the same outcome as our investigator. I'll explain why, addressing the issues separately.

Number of claims

Mr and Mrs D feel strongly that it's both incorrect and unfair for Aviva to have recorded two separate claims. They say the issues with the front porch of their property materialised while repairs to the subsidence damage at the rear was still ongoing. They say all the issues result from the same cause – subsidence – and so should be covered under one claim. Mr and Mrs D also complain that they weren't notified, at the time, that the porch issues would be dealt with as a separate claim.

I've thought carefully about this. Having done so, I agree that it was fair and reasonable for Aviva to treat the porch claim as a separate claim. I also don't agree that Aviva failed to inform Mr and Mrs D that the claims would be treated as separate.

I say this because a senior technical manager and civil engineer, attended Mr and Mrs D's property in December 2022 to inspect the reported damage to the porch. In his opinion, the cause of damage to the porch was separate to that of the damage at the rear. He sent an email on 2 December 2022 setting out his thoughts on the matter (although it's not clear to whom this was sent). This explained:

“the porch has been formed from original open porch which had a mono-pitched roof running over from the integral garage projection (at the rhside) to a stand-alone brick pier. The area has been enclosed with dwarf walling and upvc window frames and entrance door. The work was probably done in the mid-1990's well before the policyholder purchased the property in 2016. I consider it highly likely that the original pier has a shallower foundation than the main building and has therefore suffered some settlement. Evidence on other properties of the same design indicates quite noticeable distortions. It is likely that movement is either very gradual or episodic, as there are some anomalies to the vertical distortions, suggesting probable previous settlement of the pier before enclosure to form the porch.

I am satisfied there is no link between this damage and the subsidence movement at the rear left-hand corner of the extension that was notified in 2019, and must therefore conclude that this is a separate subsidence event, possible triggered by the extreme hot weather during the recent summer. I do not consider that there is any mitigation measures that can be implemented and in the circumstances, I recommend that we should proceed with a stabilisation scheme to extend the foundations to the corner pier to. Given the very localised nature of the problem, I would propose to proceed with these works without undertaking any site investigations.”

I've also seen that the same senior technical manager wrote specifically to Mr and Mrs D on 8 December 2022 to explain his findings. To summarise the key points, this said:

“The nature and pattern of the above noted damage around the porch, clearly indicates slight rotational subsidence of the foundation to the left-hand corner pier. Whilst I believe that much of the distortion is historic, I accept your advice that recent movement has occurred, and this is supported by the fact that we have no record of damage in our original survey records from 2019. You advised that you first noticed the cracking around 3 4 months ago and that the cracking has worsened in the intervening period. It therefore seems that there may have been some shrinkage movement within the subsoils at shallow depth during the recent prolonged hot and dry summer period, as there is no other likely cause of the damage such as defective drainage or tree presence. In the circumstances, I am fully satisfied that this movement and damage is totally un-related to the damage to the rear left hand corner of the building which occurred before September 2019.

Given all of the above, we have concluded that you have a further valid claim for subsidence damage to the porch area. As the cause is unrelated to the earlier movement and damage at the rear, your insurers have advised that they will open a new claim...”

While I appreciate Mr and Mrs D's view that the cause of both sets of damage is subsidence, I'm not persuaded it's been sufficiently evidenced that the same episode of subsidence (resulting from the same underlying cause) has caused both sets of damage.

Instead, given the qualifications and expertise of the senior technical manager and the logic and rationale of his opinion, I'm persuaded that it's more likely than not that the cause of damage to the porch is distinctly separate from that which caused the damage to the rear.

It therefore follows that I think it was fair and reasonable for Aviva to treat the issues as two separate claims. And given the 8 December 2022 letter was sent directly to Mr and Mrs D, I'm also persuaded that Aviva made them aware that the claims were to be treated as such.

Premium increase

Mr and Mrs D have complained that their premiums have increased substantially during the life of their claim(s). Aviva has provided evidence, in the form of confidential pricing data, to demonstrate that the policy has been priced fairly, in line with the rules set out by the industry regulator – The Financial Conduct Authority (FCA). Aviva has also shown that despite the significant increase, Mr and Mrs D were still charged less than the equivalent new business price, i.e., the price a hypothetical new customer in their circumstances would be charged.

I do appreciate it must be concerning for Mr and Mrs D to see such a sharp increase in their premiums – around 80%. But having two open subsidence claims is likely to have a significant impact on renewal premiums. And I should also note that Aviva was correct when it explained to Mr and Mrs D that the cost of property insurance across the market has risen substantially during the relevant time, because of things like rising material costs and shortages. So, while I appreciate it may be little comfort given the financial impact to them, I am satisfied from the evidence that their policy has been fairly priced.

Another part of Mr and Mrs D's concerns about their premiums is that the additional cost of putting right some, accepted, poor workmanship has been recorded against their claim record(s) and so will have had an impact on their premiums.

I queried this with Aviva and it has pointed to the relevant parts of the pricing information it shared with us, which demonstrate that the premiums Mr and Mrs D are being charged haven't been rated based on the value of their claims. So, while the figures recorded on claims are higher than they would have been had the poor workmanship not occurred, I'm persuaded from the evidence that this hasn't impacted the amount they've since been required to pay in premiums.

How the claims are recorded

Mr and Mrs D have also raised concerns that costs from the claims could have erroneously been recorded on the wrong claim record.

Aviva has explained that the areas of damage between the two claims are reasonably remote and that most of the work on the rear damage claim had been concluded before the front damage claim repairs were undertaken. It also says different contractors were used for each claim, which is supported by the CSAs.

Aviva says that some minor snagging work (such as the touching up of some paint) to the rear claim may have taken place during the repairs for the front claim, but that these would have been on a gratuity basis, and so not recorded on either claim. Aviva also reiterates that the costs attributed to either claim would not have impacted the premiums Mr and Mrs D are required to pay.

Given what Aviva has said about the dates, it seems unlikely that there would have been any duplication or misalignment of costs – particularly as different contractors appear to have been used for each claim. I've also reviewed copies of the respective schedules of work and the CSAs for the two claims, and I've not been able to identify any works for either claim which appear to relate to the other.

Taking everything into account, I don't think there's anything for Aviva to put right, with respect to this complaint point. I say this because Mr and Mrs D haven't provided any evidence that costs have been assigned to the wrong claim. I'm also mindful that if this had happened, which appears unlikely given the evidence I have seen, the pricing data shows that this wouldn't have had any negative impact on Mr and Mrs D.

Certificates of Structural Adequacy (CSA)

Mr and Mrs D have raised concerns about the CSAs they have received following repairs.

I can see that the initial CSA which was provided in February 2023 included the incorrect cause of the subsidence damage, so I can understand Mr and Mrs D's concerns with this. However, I can also see that Aviva has since provided accurate CSAs for the repairs carried out for both claims.

I know Mr and Mrs D are unhappy because the CSAs say they don't provide a guarantee and that they may not be relied upon by another party. But as explained by our investigator, the CSAs issued are consistent with what we'd expect to see.

Our investigator recommended that Aviva should liaise with its contractor to ensure they provided the repair guarantees that Mr and Mrs D wanted. But Mr and Mrs D have said they've received no further contact about this. So, I'm directing Aviva to ensure that its contractors each issue the appropriate guarantees to Mr and Mrs D for their respective works.

Rear-middle bedroom

Our investigator recommended Aviva should arrange to attend Mr and Mrs D's property to remedy the issues they reported in the rear-middle bedroom and Aviva has accepted this recommendation.

Given the proposed agreement will fix the issues reported within the bedroom, it seems this matter is no longer in dispute. But for completeness, I'm including a specific direction for Aviva to carry out this work, as part of my decision.

Service issues

As explained in my separate jurisdiction decision, under this complaint I'm only able to consider the service provided between 26 October 2022 and 12 July 2023.

During this period Aviva has accepted several failings including delays in bringing the first claim (for damage to the rear) to a close, missed appointments and communication issues. To rectify this, Aviva agreed to waive the excess for the second claim.

Mr and Mrs D dispute that there should be a second claim. But as I've decided it was fair for Aviva to treat the issues as two claims, this means an excess of £1,000 would have been due for the second claim. So, by waiving this, Aviva has effectively compensated Mr and Mrs D £1,000 for these issues.

Our investigator also recommended Aviva should increase this by a further £200 to recognise a delay of nine months in Aviva appropriately responding to Mr and Mrs D's concerns about the further damage in the rear middle bedroom, and it has accepted this recommendation. This means that for issues between October 2022 and July 2023 Mr and Mrs D have been offered £1,200 compensation.

Compensation of this level is what I would consider awarding for issues which have caused substantial distress and inconvenience such as serious disruption to daily life over a sustained period, with the impact felt over many months, sometimes over a year. And I think that fits with what happened in Mr and Mrs D's case, particularly as these service failings followed numerous earlier failings. While I can't reconsider the impact of those earlier failings, I think it's fair to say that the failings which I can consider would have compounded the distress and frustration caused by those earlier failings and so impacted Mr and Mrs D more than they might have done had those earlier failings not occurred.

Taking all of this into account, I agree that Mr and Mrs D have suffered substantial avoidable distress and inconvenience because of the service failings I am able to consider as part of this complaint. However, I consider the £1,200 compensation on offer (waiving of the excess plus £200) is sufficient to fairly compensate for these issues. So, I won't be making an additional award here.

My final decision

For the reasons detailed above, I uphold Mr and Mrs D's complaint in part.

Aviva Insurance Limited must:

- Arrange for the minor cracking to the rear middle bedroom to be repaired
- Arrange for its contractors to provide any outstanding remedial work guarantees to Mr and Mrs D
- Pay Mr and Mrs D a further £200 compensation for the impact of the service issues between October 2022 and July 2023.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 3 July 2024.

Adam Golding
Ombudsman