

## **The complaint**

Mrs R complains that Aviva Insurance Limited (“Aviva”) refused to insure her property, incorrectly stating it had suffered from subsidence.

## **What happened**

In 2019 Mrs R took out contents insurance with Aviva. She says she was told that she would be able to take out building insurance too. But when she spoke to Aviva in 2023 she was told they wouldn’t be able to insure her property, as it had suffered from subsidence, which Mrs R disputes.

Mrs R raised a complaint. Aviva said in its response that when Mrs R phoned them in 2019 she was told that Aviva wouldn’t offer building insurance until 5 years after the claim for subsidence had been settled. But Mrs R maintained that the property had never suffered from subsidence. She says the underpinning work that took place was as a result of negligence by her neighbour’s builder, who had breached planning permission.

Mrs R says that both her council and her previous insurer admitted that the damage to her property was caused by negligence and not subsidence. So she felt Aviva’s decision not to offer her cover was unreasonable. Because she didn’t agree with Aviva’s position, she referred her complaint to this service.

Our investigator considered the complaint but didn’t think it should be upheld, saying in general that it was for an insurer to decide which risks it wanted to cover.

Mrs R didn’t agree with our investigator’s assessment, so the complaint has now come to me to decide.

## **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’ve decided not to uphold this complaint. I’ll explain why.

Aviva has sent evidence to show that due to the property being underpinned, it isn’t a property that it would now cover. It’s also said that this wouldn’t have been the case in 2019 when she spoke to them about buildings cover, as the decision was made in May 2023 not to insure properties where there have been claims for subsidence, heave or landslip. So I can’t say Aviva gave her incorrect information in 2019.

I appreciate Mrs R’s point – that because the damage to her property was caused by the neighbour’s builder and the breach of planning permission, the property cannot be said to have suffered from subsidence. But I’ve looked at the available information and irrespective of the cause of the movement, Mrs R’s property has suffered from movement due to its support structure being compromised, so it wouldn’t be a property that Aviva would be obligated to provide cover for.

I note that Mrs R's previous insurer categorised the claim as "withdrawal of support". I don't consider this makes a difference to Aviva's responsibility to provide cover. An insurer can decide the level of risk it is willing to cover, and any movement – including due to the withdrawal of support – would be a risk that in this instance Aviva is unwilling to insure.

From what I've seen, Aviva has declined to offer cover in line with its own underwriting criteria, and it's shown that it hasn't treated Mrs R differently to other customers in the same position, or left her without insurance. So, I'm satisfied that it hasn't acted unfairly in this case.

Mrs R has referred to statements which were made in a letter to her dated 27 December 2023, which mention that her previous insurer and her solicitors were unsuccessful in proving that the builder was liable. Mrs R says these statements are untrue. I don't doubt what Mrs R has said. But I'm satisfied that Aviva sought to put things right promptly and issued a revised letter on the same day. I appreciate Mrs R's concerns that the revised letter still refers to subsidence, but I can see that the statements regarding the liability of the builder were removed.

And regarding the remaining reference to subsidence, although I can see Mrs R disagrees, subsidence damage can be caused by the withdrawal of a support structure, due to negligence for example. So I don't think Aviva was incorrect in referring to this in its revised letter. This is because the property had to be stabilised and the foundations strengthened, due to movement or subsidence which occurred, irrespective of the cause. I appreciate that Mrs R has maintained that the builder was liable. But Aviva isn't obliged to offer insurance in such circumstances if it's not in line with its chosen level of risk.

Whilst I know Mrs R accepts that Aviva won't provide cover, and she is unhappy about the incorrect recording of "subsidence" on her file, Aviva has confirmed that subsidence has not been recorded on any database and will not be shared with any other insurance companies.

Although Mrs R finds it unacceptable that subsidence should be recorded anywhere, I'm satisfied that references to subsidence in correspondence alone will not be seen by other insurance companies. Should Mrs R have evidence to the contrary in future, then she can complain to Aviva about this in the first instance, and ultimately refer a complaint back to our service subject to the usual time limits that apply. But I can't consider a hypothetical situation in which an insurer might see information that Aviva has confirmed to us in writing has not been recorded on any database or shared platform.

I know Mrs R will be disappointed with my decision. But I can confirm that the letters from Aviva and the investigator's assessment have not been the basis on which I've made my decision. And for the reasons I've explained above, I won't be requiring Aviva to do anything differently here.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 27 June 2024.

Ifrah Malik  
**Ombudsman**