

The complaint

Ms K complains that Aviva Insurance Limited (Aviva) has unfairly handled a subsidence claim under her buildings insurance policy.

Any reference to Ms K or Aviva includes respective agents or representatives.

What happened

The background of this complaint is extensive and will be known between parties. It has also been detailed at length by our Investigator within the previous assessments issued. For this reason, I will summarise events.

Ms K made a subsidence claim in 2016. Following a back-and-forth Aviva accepted a claim in 2017. It said tree roots had caused damage and arranged for the relevant vegetation to be removed.

Ms K has brought previous complaints to Aviva and then this Service. In September 2019 Aviva issued a final response letter addressing its initial decline of the subsidence claim. It awarded £750 as a gesture of goodwill. Our Investigator assessed a complaint in March 2020 and determined the compensation was fair and that Aviva should cover costs of reimbursement works related to decoration and repairs. This matter closed some years ago.

In January 2021 Aviva issued a follow up final response letter regarding the events that followed. Aviva said monitoring and investigation was vital and it could not speed up the process of the claim. The matter came to this Service and a final decision was issued in July 2021. The deciding Ombudsman said there was evidence to show considerable delays during the claim and awarded £1,000 in compensation for distress and inconvenience caused by the impact of the delays. After that the claim continued and following various visits and communications Aviva sought to cash settle the remaining issues.

Following this Ms K raised another complaint with Aviva concerning a wide range of issues related to the claim and settlement. It issued a final response letter in August 2023, saying:

- It had found a significant period of inactivity and lack of progression with the claim. And that the timescales were outside of what it would set out to resolve snagging issues or quality issues with works.
- A cash settlement was made in July 2023 for outstanding payments and there were only repairs left to be completed – which it said it would expedite arranging final repairs.
- It awarded £1,000 in compensation for the service issues.

Ms K was unhappy with this and brought the complaint to this Service, saying:

- Aviva's delays of around a year to repair her property led to financial losses.
- The poor handling of the claim had a severe impact on her health.

- She was unhappy with Aviva offering cash settlements for snagging/poor workmanship issues.

In February 2024, one of our Investigators assessed and upheld the complaint, saying:

- *Disputed additional items and costs not included in settlement*
 - *Redecoration costs:* Ms K had said the Aviva quote did not include a dust free system to sand her walls which was necessary given her health concerns. She provided a quote for £16,800 that she said achieved this. The investigator agreed Aviva should settle this.
 - *Repair desk (damaged during installation), repair wall, reinstall shelves in study, ease and adjust all doors in property:* The Investigator said Aviva's existing quote (which I understand was £55.82) for this work wasn't realistic – so to pay Ms K's carpenter's quote of £1,250.
 - *Sunken pool patio:* Ms K said Aviva's piling work had caused damage to her pool patio. Aviva had disagreed stating this was down to poor workmanship. The Investigator said the evidence provided by Ms K (commentary from a pool expert and local contractor) wasn't persuasive enough to direct Aviva to do anything further at this time.
 - *Replacement windows, doors, and front door:* Ms K said cement splashes had damaged her windows and doors. Aviva accounted for cleaning costs within its settlement. Ms K said her cleaning specialist explained this process would damage the UPVC coating and therefore the items should be replaced. The Investigator said the cleaning process should be attempted in the first instance, and if such an impact occurs Aviva may need to reconsider.
 - *Replace heat courses, pump and filter for pool:* Ms K says Aviva is at fault for damage to the above listed items. The investigator took on board Ms K's comments but said in the absence of a report to detail on why and how this equipment failed he wouldn't direct Aviva to do anything further.
- *Items not included in snagging list*
 - The Investigator made a finding on items that were not yet included on the snagging list. He said Aviva should include/reconsider damage across the home, including:
Cut and fit of thresholds, repair and decoration of any remaining cracks (including removing/replacing any fixtures or fittings to allow this), damage to the plasterboard ceiling, porch and porch cupboard, hall, landing and stairway, cost of rehanging artwork, damage to a radiator in the lounge, work within downstairs W/C, works within the kitchen, multiple bedrooms, airing cupboard, dressing room, en-suite, various works to the front elevation, repair of turf, cleaning of driveway to account for staining, works to garage including removing and disposing of a freezer, rear and side elevation works, rear external wall.
 - Overall – the Investigator's direction included a principle that any costs Aviva would be settling for, this would need to be reflective of actual costs Ms K would incur. And where it has sought to repair in the first instance it should be allowed to do so – but if such a repair is not effective Aviva should reconsider whether it will need to replace or take further steps.
 - The Investigator wasn't satisfied there was enough evidence at this time for

Aviva to reconsider certain items, including an issue related to shower pump noises. And this, alongside other items required further evidence on part of Ms K if she wished Aviva to reconsider them.

- Additional financial losses

- *Accrued interest on debts:* the Investigator said due to a 13-month delay in Aviva providing a certificate of adequacy that it had but had not shared with Ms K, he was satisfied Ms K had incurred £3,987.43 interest on debts she had across this period, and but for the delays in the claim progressing and delay in providing a guarantee to her, Ms K would have been able to release equity within her property to pay off debts and avoid this interest. The Investigator said this is what took place very quickly after the guarantee was provided to her – so it was fair Aviva pay these costs plus 8% simple interest.
- *Boiler issue:* Ms K said due to the boiler being installed incorrectly, the boiler heated water at all times – despite it being “off”. The Investigator said Ms K shouldn’t have to pay additional costs for what appears an oversight at installation. So upon evidence it should reimburse Ms K £887.50 plus 8% simple interest.
- *Gas fires:* Ms K had said she’d bought two gas fires at a cost of around £800 to account for the home being colder. The Investigator wasn’t satisfied Aviva needed to reimburse these costs and highlighted she ultimately owned them and would continue to do so.
- *Electricity costs:* Ms K said she incurred £834 in electricity costs while away from the property. She attributed this to contractors during reinstatement. The Investigator agreed and awarded this plus 8% simple interest upon receipt of evidence.

- Impact and compensation – the Investigator recognised the impact of the health conditions Ms K suffered from and recognised why the claim was likely to have impacted her wellbeing and caused stress, but he wasn’t satisfied there was sufficient evidence to conclude Aviva had caused these conditions. But he said Aviva needed to increase its award to £1,500 to account for the extent of the impact of Aviva’s mistakes, including the extent of matters still outstanding.
- The Investigator said if there was any complaint about Aviva’s considerations related to gas or electricity usage, the schedule of work/snagging list (including costs) and cleaning works following the assessment this would need to be raised to Aviva in the first instance as a new complaint. And the matter regarding compensation, the two quotes he’d told Aviva to pay, and the subject of accrued interest would fall under this decision.

In response to the assessment, Ms K raised several points, including:

- The principle of Aviva attempting to repair the floors in the first instance was fair. But she said the damage/movement to the floor had been extensive since Aviva’s last visit in November 2022. She also made other comments regarding the flooring including its lack of insulation.
- A number of points within the initial schedule of works that were omitted from the most recent one provided by Aviva, including issues with flooring in the landing, middle bathroom, rear right bedroom. She also said points about the understairs cupboard shelving were unaddressed.
- She provided a quote and report from a lawn care company regarding her turf. As

well as a report from a company that deal with pool surveyance – which she said showed considerable movement and deterioration since 2021 when the property was stabilised and reinstated. And she provided a statement from a pool services company who said they inspected the pool plant equipment in mid-2022, and due to non-use, the filtration pump was seized and needed replacement due to the lack of use over the time the works were carried out.

Aviva did not respond. Our Investigator looked over Ms K's responses and completed a second assessment, saying:

- The Investigator stood by his initial view, but clarified his comments regarding the flooring were in relation to the whole property, not a particular area.
- The quotes and reports related to the pool, lawn and pool filtration system should be reviewed by Aviva in the first instance and any following matters can be looked at by this Service as a new complaint if necessary. He also said he couldn't see Aviva had answered the point about insulation anywhere previously, so put this to Aviva to answer in the first instance.

Ms K said she believed the latest reports she'd provided should be considered under this complaint given the debate between her and Aviva across the preceding years. Ms K also commented on steps Aviva had taken regarding its handling of the claim and requirements she would have regarding its reattendance to carry out further inspection/works – this included access for her pets to the garden, and expectations that would minimise disruption.

Aviva also responded, saying:

- A cash settlement of Ms K's claim was reached due to the relationship between Ms K and its agent becoming untenable. It said Ms K's behaviour had been unreasonable, including delays in responding, and not being willing or facilitating access to contractors to allow snagging and repair to quality of works to take place. It was also clear any direction to pay quotes should take into account any amounts already paid by Aviva for these same works.
- Disputed additional items and costs not included in settlement
 - *Redecoration costs* – it said it had previously paid £8,703.13 for redecoration and plaster repairs throughout the property. And it had concerns about the quote provided by Ms K so was unwilling to accept the estimate as there were discrepancies between telephone numbers and addresses for the company.
 - *Sunken pool patio* – Aviva said its piling works were unconnected to the damage to the pool given its 25 metre distance between it and the house, and that its condition was due to poor workmanship.
 - *Repair desk (damaged during installation), repair wall, reinstall shelves in study, ease and adjust all doors in property*: Aviva said the desk had minimal damage to the corner where this was refit within a tight recess. It said a small amount of work would rectify this and make it unnoticeable.
 - *Replacement windows, doors, and front door*: Aviva said it had included cleaning costs within its previous settlement (at a sum of £563.52) and also paid £20 for material costs and £350 for UPVC repairs as required.
- Items not included in snagging list
 - Aviva provided a response to each of the points previously mentioned within

the initial assessment. Its position was largely that it would either agree to reconsider matters upon a further review, or it had been trying to review matters but had been unable to gain access.

- **Additional financial losses**

- *Accrued interest*: Aviva said it was unaware of this point but if FOS felt it was an appropriate remedy it was unable to comment otherwise.
- *Boiler issue*: It said it would reconsider this matter further.
- *Gas fires*: it agreed with the Investigator's comments.
- *Electricity costs*: it agreed to pay these upon receipt of costs.

So, the matter has been passed to me for an Ombudsman's final 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.

Ms K's submissions to this Service are extensive. Within this decision I won't be responding in similar detail. This is not intended as a discourtesy, but a reflection of the informal nature of this Service. My role is to focus on what I consider the crux of the complaint to be which means I will only comment on those things I consider relevant to the decision I need to make. That may also mean I don't comment on everything Ms K has said, and in places I may group matters together, but I confirm I have read and considered everything provided.

When considering what's fair and reasonable in the circumstances I need to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good practice at the time.

Before I begin, I want to highlight Ms K has detailed her medical history to Aviva and this Service. The nature of these circumstances is known to both parties. So, out of respect for Ms K, I don't feel it necessary to repeat the details here, suffice to say I'm sorry to hear of the circumstances and conditions has suffered, and that she has my sympathies.

I also want to outline that in places I've been given little to consider by Aviva following our Investigator's opinion. As a result – in places – I've had to make pragmatic decisions based on limited evidence to move this complaint forwards for the benefit of Ms K and to avoid this matter stagnating longer than it already has.

Scope of this decision

This claim has been ongoing for many years and subject to previous reviews from this Service. With this in mind, I want to be clear I won't be revisiting any of the claims' history prior to the previous final decision issued in 2021. And I'll be focusing mainly on the issues answered within Aviva's August 2023 final response letter. Unfortunately, many of the points in dispute right now are ongoing and without conclusion.

As our Investigator has made clear within his previous assessments, some of these matters Ms K has complained about will need to be brought to Aviva to investigate as a new complaint. I want to repeat this point here for clarity as I don't think I can fairly answer *all* of the complaint points Ms K is raising at this time with the limited information I have.

So, I want to begin by explaining what will and won't be covered by this decision. I will

include some matters that were not answered within the 2023 final response letter where I believe I have sufficient evidence to answer them fairly and there is reason to bring them to a close.

The matters in this complaint I will consider are:

- The impact of delays and Aviva's actions – and any distress and inconvenience to be awarded – since the previous final decision in 2021.
- Each of the items that were considered under the heading "*Disputed additional items and costs not included in settlement*" – up until the point of the investigator's assessments.
- Financial losses Ms K has described, including accrued interest on debts, issues with her boiler, her gas fires, and increased electricity costs.

While I will comment on the overall handling of matters including the extent of snagging and repair issues – I will not engage within this decision on a line-by-line account of items not previously included in the snagging list. This Service is not here to manage claims on an ongoing basis and our involvement here would stray into that. And the back and forth between parties on the snagging list in question has taken place while the complaint has been with this Service.

From Aviva's most recent response, it appears it is open to reconsider some of these points around outstanding repairs and damage. And simply what needs to be done here is a professional and up to date review of the property to assess these outstanding issues – many of these may have either developed or progressed since the last Aviva visit.

So, while I recognise Ms K may be disappointed by this decision I'm satisfied my input at this stage on these points with the limited information we have would only hinder this and elongate the time it takes to resolve this complaint preventing other matters from resolving.

Aviva needs to investigate all of these points regarding the snagging list and provide a formal response on each of these points for Ms K to understand its position. I would encourage it to arrange a meeting with Ms K and any representatives she has about this snagging list – and if there are any unresolved issues, to issue a final response letter answering these to allow her to bring it to this Service. And I would encourage Aviva to consider whether it may wish to appoint an independent party to attend this review and produce findings on what is necessary under the policy.

Disputed additional items and costs not included in settlement

Aviva will be aware that typically where a consumer has asked for a cash settlement, this Service would take the approach that the insurer could cash settle at the cost of the works to the insurer. But, if it is the insurer who elects to cash settle, we wouldn't typically think it was fair or reasonable for it to do so at a sum that isn't reflective of the cost of the works to the insured/policyholder.

Aviva has said it would cash settle matters due to Ms K's engagement with Aviva and relationship breakdown with its agents. I understand the relationship between parties may have been challenged at times. But I would remind Aviva here across a claim that has spanned many years, it has acknowledged it has made mistakes across the handling of this. And given the extent of the snagging issues and works still required I think it is fair to say there is still a lot to do. So, it's understandable the relationship may have become strained at times.

I accept Aviva will need to engage with Ms K in resolving these issues, and in turn Ms K will need to allow visits and assessment of the property. But based on what I've seen I do not think at this time it would be fair to cash settle at a price that leaves Ms K out of pocket. So I want to be clear any cash settlement Aviva has made, or goes on to make, to Ms K should reflect the cost to Ms K, not Aviva.

Following the investigator's assessment, Aviva said it has paid sums towards some of the items in dispute and wants this Service to acknowledge this. I take this point on board, and any direction I make to pay a quote within this decision is subject to any sums already paid for the same purpose. I'll now consider these points in turn.

Redecoration costs

Ms K has provided a quote for redecoration costs of £16,800. She said the amount paid to her already does not account for the dust free system to sand her walls which was necessary given her health concerns. Given Ms K's health conditions I think her point is reasonable. And I've reviewed the quote and see it is reflective of costs of £16,800.

Aviva raised some concerns about the quote following the investigator's assessment. But from what I've seen this was the first time we were made aware of any such concerns, and I've seen nothing that reflects this was ever drawn to Ms K's attention. Given the limited detail its given us alongside the ample time it has had to response, I'm not satisfied these concerns are enough to justify not paying the quote. I would also highlight that Aviva's response hasn't engaged on any points regarding the method of work, so I've seen nothing to show it disagrees such work needs to be carried out. For these reasons I'm directing Aviva to pay the quote she provided. From this it can deduct the sum already paid towards redecoration.

Repair desk (damaged during installation), repair wall, reinstall shelves in study, ease and adjust all doors in property

Aviva said the desk had minimal damage to the corner where this was refit within a tight recess. It said a small amount of work would rectify this and make it unnoticeable. It's given me little to consider here other than some historical commentary. With that in mind and to move matters forward – I'm going to direct it to pay the £1,250 from the quote provided minus the cash settlement sum Aviva has already paid her towards this repair.

Sunken pool patio and heat courses, pump, and filter for pool:

When considering these points, I've looked at all of the evidence Aviva had been provided with up until the point of the initial assessment.

Ms K had said Aviva's piling work had caused damage to her pool patio. Aviva had disagreed stating this was down to poor workmanship and quoted the distance between the pool and the main property.

Having reviewed the initial evidence provided by Ms K (which was her quoting commentary from a pool expert and local contractor she'd spoken to) I'm in agreement with our investigator that this wasn't persuasive enough to direct Aviva to reconsider on this point. I say this as I'd most likely need the technical opinion provided by the expert directly or in the form of a report or commentary.

Ms K provided additional evidence to this Service following the assessment – around March 2024. The Investigator explained at this time he would allow Aviva to consider this in the first instance and this would be looked at under a separate complaint. For this reason – and

alongside what I've said above snagging issues above – I won't interfere with this and expect that Aviva will need to produce a final response on these points if it hasn't done so already.

Replacement windows, doors, and front door:

Ms K said cement splashes had damaged her windows and doors and the cleaning proposed by Aviva would lead to damage to the UPVC coating.

Aviva said it had included cleaning costs within its previous settlement (at a sum of £563.52) and also paid £20 for material costs and £350 for UPVC repairs as required. On its face, I see no reason for the repairs not to be attempted in the first instance. I recognise Ms K's concerns but I think going to replacement before trying to repair is not a reasonable step for a prudent insurer to take – and based on what I've seen while it may be the repair is not possible, this does not seem like a foregone conclusion until the repair is first carried out.

Financial losses

Accrued interest:

Ms K has provided evidence to support that she's incurred unnecessary losses due to delays on part of Aviva in providing a certificate of adequacy. In response to the assessment Aviva simply said it was unaware of this point and wouldn't comment otherwise if this Service deemed this to be an appropriate remedy. As a result, I've been given no reasons opposed to those set out previously by our Investigator, and it leads me to conclude that Aviva seems to have accepted that and should cover this loss as the evidence I've seen points to Aviva not providing this certificate for just over a year. Aviva will need to pay Ms K £3,987.43 plus 8% simple interest from date the costs were incurred until the date of settlement. Ms K will need to provide evidence to Aviva to demonstrate when these costs were incurred.

Boiler issue:

From what I've seen Ms K's boiler was installed initially with issues that led water to be heated at all times. I understand Aviva had said this should have been rectified by Ms K referring to her manual. While we expect consumers to mitigate losses, I don't think this is good enough on its part to hold Ms K responsible for something she didn't cause. Ms K has said upon a visit from an engineer she was told this was something she would've never found in the manual. Aviva's given little to support why it believes Ms K should've reasonably known how to address and fix this – nor why she would've allowed it to continue going wrong willingly.

And following the view Aviva said it would reconsider this matter. It's provided nothing more so simply I'm directing it to pay £887.50 to reflect the additional costs Ms K described, plus 8% simple interest from the date payment was made until the date of settlement. Ms K will need to provide evidence to Aviva to demonstrate when these costs were incurred.

Gas fires:

Ms K has said she had to incur costs in purchasing two gas fires for around £800 to help heat her home. I accept the reason why Ms K may have purchased these, but ultimately she still retains them and I'm not satisfied this is a cost that Aviva would need to cover. In regard to the impact of the cold, I've factored this into my compensation consideration below.

Electricity costs:

Aviva has agreed to pay the additional electricity costs Ms K has quoted of £834 upon receipt of costs. I'm satisfied it should do this plus 8% simple interest from the date the costs were incurred until the date of settlement. Ms K will need to provide evidence to Aviva to demonstrate when these costs were incurred.

Overall handling and compensation

Under ICOBS 8.1 insurers must handle claims promptly and fairly. And it must provide appropriate information on its progress.

Aviva has been clear within its communications to Ms K and this Service that there have been various failings across the life of this claim. These included a significant period of inactivity and lack of progression with the claim. And that the timescales were outside of what it would set out to resolve snagging issues or quality issues with works.

Aviva has in places said Ms K's actions have led to delays and inaction on the claim. As I've outlined above, Aviva said this was the reason it would cash settle the matter. Given the extent of issues still outstanding against the timeframe the claim has been ongoing, coupled with Ms K's personal circumstances, I think it's reasonable to understand that her relationship with agents may have been tested when confronted with the extent of remedial works and failings that Aviva itself has freely accepted previously.

Again, I don't think it's necessary to recount all of the concerns Ms K has raised here. But suffice to say I've reviewed the history of the claim in detail, and it's clear to me that Aviva did not handle this matter promptly or fairly in line with its obligations. Along the same lines as our Investigator has outlined previously, I'm not satisfied there's sufficient evidence to show Aviva is directly responsible for Ms K's health concerns – albeit I recognise it would've made a challenging time in her life more difficult. Considering that frustration, distress and inconvenience caused to Ms K I'm satisfied it needs to award her a total of £1,500 in compensation for the impact it has caused.

Ms K has raised points to say the quotes she provided previously may be outdated at this time. I recognise this may be the case, but I've not been given updated quotes and given the timeframes between their production and now, I'm not going to make any allowance for this within the direction simply to bring these matters to a close and because I've got little to allow me to speculate on the differences in cost.

My final decision

For the above reasons I uphold this complaint. I direct Aviva Insurance Limited to pay Ms K:

- £1,500 in compensation for the distress and inconvenience it has caused her.*
- £16,800 to cover redecoration costs in line with her quote.*
- £1,250 to cover repair and carpentry costs in line with her quote.*
- £3,987.43 plus 8% simple interest from date the costs were incurred until the date of settlement to account for losses caused by Aviva's delays in providing a certificate of adequacy. Ms K will need to provide evidence to Aviva to demonstrate when these costs were incurred.
- £887.50 to reflect the additional costs Ms K described related to her boiler, plus 8% simple interest from the date payment was made until the date of settlement. Ms K will need to provide evidence to Aviva to demonstrate when these costs were incurred.

- £834 to reflect the additional electricity costs Ms K described, plus 8% simple interest from the date the costs were incurred until the date of settlement. Ms K will need to provide evidence to Aviva to demonstrate when these costs were incurred.

** Aviva may deduct any respective sums it previously paid her for redecoration, desk repair, or compensation award from the above payments.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 28 November 2024.

Jack Baldry
Ombudsman