

## **The complaint**

The estate of Ms S complains about the way Aviva Insurance Limited has handled a claim made on their home insurance policy for damaged caused by subsidence.

The executors of Ms S' estate are Mr S and Miss S. They are being represented in bringing this complaint by a professional representative, Mr H. For ease I've addressed the decision to Mr S and Miss S as executors of the estate.

## **What happened**

Mr S and Miss S have an ongoing subsidence claim with Aviva. In December 2022, Aviva issued a complaint final response letter (FRL) about the way the claim had been handled. Aviva's response covered its decision to cash settle the works, rather than carry out reinstatement to the property. Aviva said it had issued a cash settlement as the subsidence related to trees on a third party's (TP) land, which hadn't been removed. It also said a cash settlement was necessary as there was other repairs needed to the property – including work to rectify unrelated damp issues - which hadn't been caused by the subsidence, so its contractors wouldn't be able to guarantee the work. Aviva said that this concluded the claim.

That complaint was considered by the Financial Ombudsman Service. Our Investigator thought Aviva had acted fairly in concluding that the damp issues were unrelated to the claim, and so a cash settlement was appropriate. She also didn't think Aviva had been unreasonable in refusing Mr S and Miss S' request for a drain survey. But she said if the TP removed the vegetation and Mr S and Miss S found further damage that might be related to the subsidence, Aviva should reassess matters. That complaint was resolved at this stage.

In November 2023 Aviva issued a further FRL in relation to the progress of the claim since December 2022. Aviva said - following the removal of the TP trees which had been done in December 2022 - it had reopened the claim in November 2023, and monitoring of the property had started to see if there had been further movement.

Unhappy with Aviva's response, Mr S and Miss S brought the complaint to this Service for a further review.

Our Investigator said she couldn't re-look at issues addressed in the previous (December 2022) FRL, as those points had already been considered by this Service. But she could consider issues from December 2022 until the date of the Aviva's second FRL which was 21 November 2023. She also she could review matters not complained about previously, which was the cash settlement amount, rather than Aviva's decision to issue a cash settlement.

Having done so, she didn't think Aviva had handled the claim as it should have done. She didn't think Aviva's contractor had done enough to keep Mr S and Miss S updated after December 2022, when they'd contacted it to confirm the TP trees had been removed. She recommended Aviva pay £400 as an apology.

In relation to the scope of works, she said she considered it fair for Aviva to cash settle the amount without VAT, until confirmation that the repairs had been carried out and VAT had been paid. She also said she considered it fair for Aviva to cash settle at its own contractors' rates, given that it was unable to carry out the repairs due to non-claim related damage to the property. To resolve matters our Investigator also recommended Aviva review the

difference in its scope of repairs and that provided by Mr S and Miss S, especially considering monitoring had restarted since the initial scope was set out.

She also said Aviva should confirm in writing that the claim had been reopened and share reports that it had carried out relating to the monitoring and inspection of the property, in relation to an extension. And to ease Mr S and Miss S' concerns, she recommended Aviva should confirm who had signed off its scope of works, as they felt it should be a structural engineer. Though she didn't recommend Aviva needed to appoint a structural engineer if it hadn't done so already.

Aviva said it would reconsider the scope of works, but it didn't provide a full response, so as matters were unresolved, the complaint was passed for an Ombudsman's decision. Mr S and Miss S also asked for an Ombudsman's decision, as it said it hadn't heard from Aviva since our Investigator issued her findings. So the matter 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.

As this is an informal service, I'm not going to respond to every point of piece of evidence provided by the parties, instead I've focussed on those that are key to the outcome I've reached. But I'd like to reassure Mr S, Miss S and Aviva that I have read and considered everything they've provided.

Since our Investigator issued her outcome, Aviva has confirmed it will reassess the scope of works, which I consider to be a fair and reasonable outcome to the complaint. I'm aware this is a long running claim and Mr S and Miss S would like it to be resolved as soon as possible, but given Aviva's commitment to reviewing matters, I'm satisfied this is a fair way to resolve things at this stage. Aviva should ensure it reviews the scope of works promptly in line with its obligations under ICOBs to do so. As investigations are still ongoing in this respect, any complaint about any new scope of repairs, can be looked at as a separate complaint by this Service – subject to our usual rules - if needed.

However, to avoid repeating of issues in the future, I agree with our Investigator that Aviva is reasonable to withhold any VAT element from the cash settlement until confirmation it has been paid. I also consider Aviva is reasonable in settling at what it would have cost its contractors to do the works, had it been able to, given the non-claim related damage means it can't reasonably carry out the works.

So as the scope of repairs has moved on, there is little for me to decide on here. I agree with our Investigator that Aviva should have done more to respond to Mr S and Miss S when their representative was emailing about reopening the claim throughout 2023. I consider this did cause unnecessary inconvenience and so I require Aviva to pay £400 by way of an apology for this.

Our Investigator said Aviva needed to confirm in writing that the complaint has been reopened. I'm satisfied that all parties are now aware that the claim was reopened, and Aviva have been in contact with Mr S and Miss S since our Investigator issued her findings, so further confirmation doesn't seem to be necessary. The parties also have this final decision as confirmation the claim was reopened. Our Investigator also asked for Aviva to release any reports on the reinspection of the property, and for it to confirm its findings on the damage to the extension, Aviva should do this if it hasn't already. It should also confirm who (in terms of their title and experience) has signed off Aviva's scope of works, in line with Mr S and Miss S' request.

In relation to the extension, Aviva said the final monitoring result was concluded in March 2024, which hadn't shown any movement to this during the monitoring period. I trust Aviva has shared this data with Mr S and Miss S for review.

## **My final decision**

My final decision is that I uphold this complaint and I require Aviva Insurance Limited to:

- Pay £400 compensation.
- Reconsider the scope of works, taking into account the recent monitoring carried out, and the report submitted by Mr S and Miss S, to produce a cash settlement based on its own contractor's rates, less any VAT amount, until evidence is provided that VAT has been paid.
- Share any reports of inspections or monitoring carried out with Mr and Miss S and confirm who at Aviva (in terms of their title and experience) has signed off on the scope of works.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs S to accept or reject my decision before 9 September 2024.

Michelle Henderson  
**Ombudsman**