

The complaint

Mrs M complains that Aviva Insurance UK Limited didn't carry out a lasting repair to her floor, which has started to deteriorate.

What happened

In 2012, Mrs M's home suffered flood damage and required repairs, completed in 2013. These repairs included replacing the concrete floor to the living room and kitchen.

In 2015, Mrs M contacted Aviva as she'd noticed damp-related issues to the kitchen walls and units. Aviva arranged for an inspection that found that the damp issues were due to the construction of the property rather than the claim-related works Aviva had carried out.

Then, in 2022, Mrs M noticed unevenness to the living room floor and mounds rising under the carpet. She contacted Aviva who suggested Mrs M arrange for an inspection. So she arranged for an engineer to inspect the floor and produce a report. The engineer found that the levelling material Aviva had used to replace the concrete floor had failed and started to crumble.

In response, Aviva arranged for another inspection of Mrs M's property and a review of her engineer's report. This confirmed that the levelling material had in fact failed but the surveyor couldn't determine the cause of this. They did however note that the problem had arisen nine years after the original works.

Mrs M complained to Aviva when it wouldn't agree to repair the floor. Aviva reviewed the complaint but didn't change its stance. It thought the damp issues had contributed to the problems with the floor and said there was no evidence that the original works were defective. So, due to the time that had passed, it didn't think it should be responsible for carrying out further repairs.

Mrs M didn't think this was fair, so she referred her complaint to the Financial Ombudsman.

Having reviewed the complaint, I issued a provisional decision to both parties. In it I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'd like to reassure the parties that although I've only summarised the background to this complaint, so not everything that's happened or been argued is set out above, I've read and considered everything that's been provided, and I've focused my decision on the issues that are in dispute.

Insurers have a duty to handle claims promptly and fairly. And when an insurer carries out claim-related repairs, our service takes the view that these should be effective and lasting. 'Lasting' will depend on the characteristics of the object in question – in this case, the concrete floor of Mrs M's living room and kitchen.

The living room floor

Mrs M and Aviva agree that the self-levelling screed used as part of the original repair to Mrs M's concrete floor has failed, at least in her living room. I don't think a new concrete floor should crumble after only nine years – and I think it was reasonable for Mrs M to expect a more durable repair. Aviva has given three main reasons why it doesn't think it should be responsible for the failure of the floor. First, it says the property suffers from pre-existing damp issues and believes these have affected the floor's durability. Second, it says nine years have passed without any problems and it would have expected any quality issues to have arisen sooner. And third, it says there's no evidence the original works were inherently defective.

On the issue of damp, the inspection in 2015 found that the damp issues affecting the property were due to its construction and not related to the works that Aviva carried out. Rising damp was also observed by Mrs M's engineer in 2022. So, I accept there are existing damp issues, but I don't think Aviva has shown that those issues materially contributed to the breakdown of the concrete floor. I say that for a few reasons.

First, the 2015 report was focused on the dampness to the walls, but it also mentioned the concrete:

"We checked the moisture content of the concrete slab adjacent the internal face of the solid rear wall with a concrete encounter, measuring 2.8% and 3% and we can confirm is acceptable for carpet covering."

Given the surveyor in 2015 believed the concrete was dry enough for carpeting, this doesn't suggest to me that damp was materially affecting the floor.

Second, I can't see that any further moisture readings have been taken to confirm dampness to the concrete floor – and the 2022 report didn't observe any dampness either, stating:

"The screed material appeared and felt dry (no direct moisture measurement was possible due to limited access) and the concrete slab partially exposed also appeared to be dry."

So, I don't think Aviva has shown that damp is affecting the concrete floor.

Third, even if there were damp issues affecting the floor, I don't think Aviva has given a clear explanation of how this could cause the failure of the screed material that's been observed in this dispute. In the internal notes from a conference call between Aviva and its surveyors, it was noted that:

"[The surveyors] advised even after investigation it is may not know the exact cause, however, the screed has delaminated from the concrete slabs and there is definitively a problem of some kind. They advised this is likely related to the damp issue noted in 2015 report and they feel these issues would have presented themselves sooner."

And internal notes from a conversation between Aviva and another expert recorded this connection more strongly, saying that the 2022 report found that:

"...the damage to the floor is related to inherent issues and the damp issue has caused the delamination of the screed."

However, I've read the 2022 report and I couldn't see where the surveyors said that damp or inherent issues had caused the failure of the screed. Rather, the report concluded that, "The cause of the failure is not known and would require further investigation".

Finally, one of the surveyors Aviva was engaging said:

"We are supportive of Aviva's decision to decline to address the damage in the circumstances however we would be inclined to focus more on the passage of time, rather than some of the more technical issues, which otherwise leave matters a bit more open for debate."

This suggests to me that there isn't a clear explanation of how the damp issues have caused the screed layer to fail across at least both levels of the living room. Without a clear explanation of this, and without clear evidence of dampness to the floor, I don't think Aviva has shown that this is why the screed has now failed.

Turning to the time that's elapsed, the 2022 report said that the problems with the floor would have presented sooner if they were due to the quality of the original works. But I haven't seen an explanation of why that would be. I recognise that nine years is a relatively long time, but I think it's fair to expect a floor to last much longer than this before crumbling and needing to be replaced. So, I don't think it's reasonable for Aviva to rely on the passage of time, either.

Aviva has also said there's no evidence that the original works were defective. But I think the debonding of the screed material, and the resulting unevenness, speaks for itself, given the timeframe. While I haven't seen persuasive evidence of defects in other areas of the original works, the floor has now failed. And in the absence of a clear external cause, I agree with the comments of Mrs M's engineer that the floor is defective. So I'm not persuaded that Aviva carried out a lasting repair and I don't think the reasons it has given should mean it isn't responsible for correcting this.

To put this right, I intend to tell Aviva to do everything necessary to carry out an effective and lasting repair to the affected flooring of Mrs M's home. I would expect this to include putting right any damage to Mrs M's coverings such as carpets or vinyl flooring.

The kitchen floor

In terms of the kitchen floor, I can see the 2022 report said:

"With regard to the kitchen floor, a cushioned vinyl sheet covering forms the finished floor layer. We have tapped this in multiple areas and found that hollow sounds are emitted which can be consistent with debonding of one material from another. We have not noted any humps to this floor."

The surveyor also recommended further investigation, concluding that:

"In the kitchen, the extent and cause of apparent debonding requires further investigation and this requires at least the removal of dining table / chairs and cushioned vinyl sheet floor."

Mrs M's engineer also said it was likely that the issues affecting the living room floor would be present in the kitchen. While no mounds have been observed, the above

findings suggest that there may be a problem there. So, I would expect Aviva to inspect this fully as part of its repairs and, if there are signs of deterioration like those in the living room, I would expect Aviva to include the kitchen floor in its repair.

Damp-proofing

Our investigator recommended Aviva install a damp-proof layer as part of any repair works. But it isn't clear to me what damp-proofing the property had under the floor before and after the original claim. Mrs M's engineer said he didn't know whether there was a damp-proof membrane under the floor but thought probably not. And the other reports don't clearly address this. Mrs M has provided a mortgage valuation from 1998 which said that a damp-proof course was added between 1994 and 1998. But it isn't clear whether this was traditional damp-proofing to the walls or damp-proofing under the concrete floor.

In any case, I haven't seen persuasive evidence to show that damp-proofing to the floor is, or isn't, necessary to ensure the floor will last a reasonable amount of time. And I don't have expertise in building construction methods. So, I would expect Aviva to seek expert opinion on whether damp-proofing to the floor is required to complete an effective and lasting repair – and, if it is, I would expect Aviva to include this as part of its repair.

Compensation and reimbursement

Our investigator recommended Aviva pay Mrs M £200 for distress and inconvenience. I've thought about this, and I think Aviva's refusal to repair the floor would have been upsetting. But I also think the works I intend to require Aviva to carry out will take time and be disruptive and distressing for Mrs M. I think £350 in total would be a fair amount to recognise this, and I intend to tell Aviva to pay this to Mrs M.

I appreciate Mrs M has told our investigator that she doesn't want any compensation, but I think it is a fair way to resolve the complaint.

I also think it would be fair for Aviva to reimburse Mrs M the cost of the engineer's report she obtained. I say this because I'm satisfied the problems with her floor are the result of a lasting repair not being carried out, so I don't think Mrs M should have to incur the cost of investigating this. I also intend to tell Aviva to add 8% simple interest per year, from the date Mrs M paid for the report to the date it's reimbursed. Mrs M will need to provide Aviva with proof of payment.

I set out what I intended to tell Aviva to do to put things right and asked both parties to send me any further evidence or arguments they wanted me to consider.

Mrs M and Aviva both accepted my provisional decision. So I think it's now appropriate for me to issue my 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.

In light of the fact that both parties agree with the findings set out in my provisional decision (which I've reproduced above and which forms part of this final decision) I'm satisfied my findings represents an appropriate way to resolve the dispute.

Putting things right

To resolve this complaint, Aviva must:

- Carry out an effective and lasting repair to Mrs M's living room floor – including installing damp-proofing to the floor if this is required.
- Investigate Mrs M's kitchen floor and, if there are signs of similar issues to the living room floor, include the kitchen floor in any repair works.
- Reimburse the cost of Mrs M's engineer's report, subject to proof of payment.
- Add 8%* simple interest per year to the cost of the report, from the date Mrs M paid this to the date Aviva reimburses her.
- Pay Mrs M £350 compensation for distress and inconvenience.

*If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs M how much it's taken off. It should also give Mrs M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint. I direct Aviva Insurance UK Limited to do as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 7 June 2024.

Chris Woolaway
Ombudsman