

## **The complaint**

Mr M has complained about the way Aviva Insurance Limited (“Aviva”) handled a claim for subsidence made under his home insurance policy.

Any reference to Aviva in this decision includes its appointed agents and representatives.

## **What happened**

Both parties are aware of the full circumstances of this complaint, so I’ll summarise the key events. In November 2020, Mr M made a claim for subsidence to his property. Aviva appointed its subsidence specialists to assess the damage and it was determined that the soakaway was causing the subsidence and needed to be replaced.

As soakaways weren’t covered by Mr M’s policy, Mr M replaced the soakaway at his own expense. Aviva agreed to carry out mitigation work and level monitoring to see if the property had become stable.

Once Aviva had confirmed the property was stable, it said it was ready to carry out repairs to the areas where there was claim-related damage. However, Mr M felt the property wasn’t yet stable and that there were new cracks forming as a result of ongoing movement. He asked for the property to be re-assessed, so the property was revisited. The report following this said there was defective drainage in the area which was contributing to the damage and that the monitoring results had confirmed the property was stable.

As Aviva didn’t offer cover for historical damage due to latent or inherent defects, it didn’t accept there was any further mitigation work to be done. But Mr M remained unhappy and reported further damage. Aviva noted that previous repairs had been carried out in those areas and said that the damage, including cracks due to lintel failure or a lack of lintel, wasn’t covered as the policy excluded damage due to wear and tear or defective design.

Although the report confirmed that the level monitoring had shown no ongoing movement, Aviva agreed to continue monitoring for a short period of time and agreed to a further CCTV survey of the drains to allay Mr M’s concerns. The additional monitoring and survey didn’t change Aviva’s decision, so Mr M made a complaint.

In its response to his complaint, Aviva said its subsidence specialists had continued monitoring beyond what they thought was sufficient to confirm the property was no longer moving. It also confirmed that the policy only covered certain specified events and the damage to the area around the retaining walls hadn’t been caused by subsidence and was not therefore covered by the policy.

Mr M didn’t accept Aviva’s response so he referred his complaint to this service. Our Investigator considered all the evidence, but didn’t think Aviva had to do anything further, as the information suggested it wasn’t unreasonable for Aviva to conclude the property was stable. Because Mr M didn’t agree with our Investigator, the complaint has now come to me for an Ombudsman’s 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.

As this is an informal service, I'm not going to respond here to every point raised or comment on every piece of evidence Mr M and Aviva have provided. Instead, I've focused on those I consider to be key or central to the issues in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm afraid I'm not upholding this complaint. I'll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a claim. It should also settle claims promptly once settlement terms are agreed. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

When making a claim on an insurance policy, it is for the insured – so in this case Mr M – to demonstrate he's suffered a loss covered by the policy. If he can do so, then Aviva will need to accept the claim unless it can show it can fairly rely on a valid exclusion to decline it.

What this means for Mr M's complaint is that for me to uphold it, Mr M would've needed to evidence that there was ongoing movement at his property, which was caused by an insured event covered by the policy. Having considered all the information provided, I'm not satisfied he's done that, for the following reasons:

- I've read the reports provided. There are numerous level monitoring reports, crack monitoring reports and reports of visits by the subsidence specialists. I've carefully considered the results of those reports. These show that once mitigation work had been carried out, there was no discernible movement or increase in cracking to the areas inspected. The levelling off on the graphs shows me that the property had indeed become stable following the repairs.
- I've considered the photos provided of the property and various areas of damage, but these don't persuade me that the damage Mr M has observed was due to an insured peril that his policy covers. And I accept Aviva's explanations as to why some cracking might have occurred, or why there was the impression of continued movement of the ground – due to the subsoils and consolidation of the ground or minor settlement. I don't think Aviva's explanations are unreasonable or implausible, and they're supported by the results of the various monitoring reports.
- I've considered Mr M's new report, a copy of which he's sent to Aviva. Aviva has also had the opportunity to consider the report and provide its comments so I'm able to comment on it in this decision. And I'm afraid I don't think the report shows what Mr M thinks it does. His engineer has suggested cracks of 1mm+ are repaired, when the Building Research Establishment (BRE) recommends repairs to cracks of 5mm+. The recommendation by Mr M's engineer to check the drainage situation has already been carried out twice and all the evidence shows the required repairs have been completed. The other suggested areas of work are in relation to damage caused by wear and tear or gradually operating causes – which are specifically excluded under Mr M's policy. Insurance policies aren't designed to cover every eventuality or situation. An insurer will decide what risks it's willing to cover and set these out in the

terms and conditions of the policy document. The test then is whether the claim falls under one of the agreed areas of cover within the policy. In Mr M's case, his policy doesn't cover historical damage due to latent or inherent defects, or damage caused by wear and tear or gradually operating causes, defective design or poor workmanship.

- I also don't find Mr M's engineer's report to be persuasive enough to satisfy me that Aviva needs to do more. The engineer also says: *"We do not know what the sub soils comprise of or the foundation details to the property, as we have not investigated this. We have no knowledge of the existence of springs or of the previously dry well that you mention. We are obviously aware that the property is constructed on a sloping site and there is a possibility that significant changes to the water table level and / or water flowing through the subsoils could cause movement to the property but again the monitoring of the property (cracks and levels) would confirm if this is happening"*. Mr M's engineer was not instructed to review the monitoring or survey results, and I've not seen anything to suggest there is ongoing movement that would be covered by the policy, so I'm afraid I don't consider Aviva needs to do any more to put things right.

It follows therefore, that I'm not persuaded Aviva has acted unfairly here, by reaching the conclusion that the property is currently stable. Any new evidence Mr M wishes to obtain can be passed to Aviva in the first instance, if Mr M has ongoing concerns about the stability of his property – and I'd expect Aviva to consider it fairly and in line with the terms and conditions of the policy.

### **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 Mr M and the estate of Mrs M to accept or reject my decision before 15 June 2025.

Ifrah Malik  
**Ombudsman**