DRN-5529115

## The complaint

Mr and Mrs D complain about the decision of Aviva Insurance Limited ('Aviva') to not indemnify them for damp issues at their property under an existing buildings insurance claim.

Some of Mr and Mrs D's dissatisfaction arises from the actions of Aviva's appointed agents. As Aviva have accepted responsibility for the actions of those agents, in my decision any reference to Aviva should be interpreted as also covering the actions of their agents.

## What happened

The background to this complaint is well known to Mr and Mrs D and Aviva. Rather than repeat in detail what's already known to both parties, in my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

Mr and Mrs D previously had a subsidence claim accepted by Aviva in 2020. Later, Mr and Mrs D contacted Aviva about damp issues, which they believed were linked to the earlier subsidence issue. Aviva investigated, but they said the damp wasn't linked to subsidence.

Unhappy with Aviva's response, Mr and Mrs D made a complaint. Aviva partially upheld the complaint and offered £200 compensation. Mr and Mrs D referred their complaint to our Service for an independent review. Our Investigator considered the complaint and recommended that it be upheld. Aviva didn't accept the recommendations, and the complaint has been referred to me for a 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

*The scope of my decision*

My role in this complaint is to decide if, on balance, Aviva fairly carried out appropriate investigations and considered the available evidence before deciding to decline cover for the damp issues under the earlier subsidence claim. I'll also be considering the service provided by Aviva.

*My key findings*

The key evidence in this complaint are the three reports were carried out related to the damp issue. For ease, I've summarised the key parts of each report below [bold added for Ombudsman's emphasis].

Report one October 2023:

- Conclusion: *'**The subsidence** appears to have cracked or damaged the damp proof course to the gym and ground floor office.'*
- Recommendation: *'…an inspection is carried out by a damp specialist and if necessary, repaired as soon as possible to avoid further damage and additional costs. **The property may possibly need a new damp proof course injected** where it had failed.'*

Report two March 2024:

- Inconclusive conclusion: *"adjacent tree roots have caused subsidence in the building however there is no visible evidence that this is a direct cause of the dampness detected, indeed as all the internal finishes were intact at the time of our inspection **the exact cause of the dampness cannot be ascertained**. However, after consideration of the pattern of moisture readings found and the general pattern of dampness noted, we conclude that **the dampness is probably due to**:*
    - *The presence of hygroscopic salts within the wall fabric.*
    - *Possible absence of or bridging of any existing Damp Proof Course."*
- Recommendation: *'Remedial work carried out via a cavity drain membrane'*.

Report three June 2024:

- Conclusion: ground water penetrating the damp proof course in the garage.
- Recommendation: A damp proof specialist be appointed, inspect the DPC and carry out any remedial work needed.

I find that the earliest report identified the possible connection between the damp issues and the earlier accepted subsidence. No persuasive explanation has been provided by Aviva as to why they failed to act on the report one recommendations. It's clear they've sought to clarify with the author of the report - but no response doesn't detract or undermine the findings and recommendations that report made. Report two doesn't commit to a specific cause.

The available evidence doesn't support Aviva's assertion that *'…Two independent damp reports have been conducted, neither of which established a connection to the subsidence event.'* To be clear, the first report links to it as a possible cause and ultimately Mr and Mrs D arranged for the repair suggested in report one to be carried out. The evidence supports the report one findings - as the repair suggested resolved the damp issues.

In response to our Investigator's assessment, Aviva have said:

> *"The subsidence movement was to the rear left of the property, not the front where the DPC renewal was undertaken. Where the dpc treatment works were undertaken no cracking was apparent to that area that would indicate subsidence related movement. There was no subsidence damage in the area of dpc treatment works so liability does not attach."*

I find that the above response doesn't undermine the findings or recommendations within the earlier reports. For example; the 2023 report refers to vertical cracks spanning from ceiling to floor level on the external wall. High moisture readings were also recorded. It's my opinion that Aviva have had a more than adequate opportunity through their surveys/reports to investigate the proximate cause of the damp issues, but instead they have tried to pin the cause on various explanations (for example, internal notes refer to a *'steep driveway and hill allowing surface water and ground water to go against that area. The channel drain they have in place is not sufficient for the design of the land.'* At another point they've referred to the workmanship/build quality of the extension.

I find that given the damp issues, how long this matter had gone on for and Mr and Mrs D's personal circumstances, it was a reasonable course of action that they took their own mitigation steps and arranged for the necessary repair/remedial works to be carried out privately.

I also find that Aviva's actions have compounded the impact on Mr and Mrs D and they'll need to recognise this further. Specifically, the time taken and the poor communication across many months.

**Putting things right**

Aviva Insurance Limited will need to:

- Subject to reasonable proof of their outlay (for the repair works and additional independent report), reimburse Mr and Mrs D and add 8% simple interest* per annum. To be calculated from the date Mr and Mrs D made payment until they are reimbursed.

- Pay Mr and Mrs D a total of £500 compensation to recognise the avoidable distress and inconvenience their actions have caused. Aviva Insurance Limited can deduct the previously offered compensation of £200 if they've already paid it to Mr and Mrs D.

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

**My final decision**

My final decision is that I partially uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 18 August 2025.

Daniel O'Shea
**Ombudsman**