

## **The complaint**

The estate of Mrs P complains about Aviva Insurance Limited's handling of a subsidence claim made under the late Mrs P's home insurance policy.

This complaint has been brought to the Financial Ombudsman Service by the Executors of the estate of Mrs P. The Executors also represented the late Mrs P on her claim.

Aviva has also been represented on the claim by its agents. All references Aviva include its agents.

## **What happened**

Mrs P had a home insurance policy with Aviva. In January 2019, she made a claim for cracking at her property.

In February 2019, after its engineer visited the property, Aviva declined the claim on the basis damage was not caused by an insured event, such as subsidence.

In April 2019, Mrs P arranged her own investigations, including a Structural Engineer visit and report. She submitted the claim again to Aviva.

In May 2019, Aviva maintained its decision to decline the claim. Mrs P arranged further inspections following this, and in March 2022, she reported further damage to the property. Photos of the damage were sent to Aviva in June 2022.

In September 2022, Aviva carried out a second site visit. This recommended further site investigations and level monitoring, to determine the cause of the damage.

Between October 2022 and November 2022, Aviva carried out further investigations. This included site investigations (involving trial pits and boreholes) and drainage surveys. Aviva set up the level monitoring in October 2022, which carried on to around September 2023.

In December 2023, Aviva said following its investigations and monitoring, it didn't find the property was suffering from damage caused by subsidence. So it declined the claim.

In April 2024, Mrs P sadly passed away.

In September 2024, the Executors complained to Aviva. They said Aviva hadn't carried out the correct investigations and they were unhappy with its decision on the claim.

Aviva issued a complaint response in December 2024. It said based on its site investigations (including soil analysis), drainage investigations and monitoring, it didn't find evidence of downward movement of the property. But because it accepted there was a difference of opinion between the experts representing each party, Aviva agreed to provide a choice of three independent Surveyors to review all the evidence from both sides, visit the property and conduct their own investigation. And on review of its handling overall, it accepted there was poor communication, poor service and some delays. So it offered £200 compensation.

The estate of Mrs P referred a complaint to the Financial Ombudsman Service. It didn't feel Aviva's Surveyors would be fully independent. It said there had been further recent cracking and that Aviva's offer of compensation was not acceptable.

In January 2025, Aviva maintained its offer of the choice of Surveyors, but increased its offer of compensation to £650.

The Investigator reviewed the information and said Aviva's offer overall, was fair in the circumstances. They said this was because there wasn't sufficient evidence to show the property was suffering from subsidence or heave.

The estate of Mrs P didn't agree. It wanted Aviva to cover the cost of the estate's expert moving forward instead. And it disputed that Aviva carried out site investigations involving boreholes.

Because the complaint couldn't be resolved, it's been passed 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.

The estate of Mrs P has provided a lot of information in support of its complaint. I assure the estate of Mrs P that I've taken everything it's provided into account. But in this decision I've focused on what I think are the key issues in this complaint. No discourtesy is intended by this, but it simply reflects the informal nature of the way the Financial Ombudsman Service reviews complaints.

I should first set out that the Financial Ombudsman Service is a dispute resolution service. Our role is to look at whether a business has acted fairly in the circumstances of the complaint and decide what it needs to do where it hasn't. Our role isn't necessarily to decide how a business should progress and conclude a claim. This is a subtle but important distinction to make. Under this decision, I've considered what is a fair resolution to the estate of Mrs P's complaint.

The estate of Mrs P said it wanted to keep the complaint open, and that it may carry out its own further investigations. But as an informal service, it's not practical for us to keep complaints open indefinitely. And because I'm satisfied I have the information I need to reach a conclusion, I've proceeded with my decision.

The terms of the late Mrs P's policy covers loss or damage caused by subsidence and heave, but excludes damage caused by settlement. I've reviewed the information with this in mind.

Aviva's Engineer in February 2019 concluded, based on the pattern and location of the cracking, that it wasn't caused by an insured event such as subsidence, but rather differential thermal/moisture movement.

The late Mrs P arranged a drainage survey in March 2019, which said there was no evidence of defects and escape of water. So I think this meant there wasn't evidence to show water was picking up particles from the soil, carrying them away and reducing the density of soil, causing subsidence.

In April 2019, the late Mrs P's Structural Engineer, who I'll refer to as PW, initially said on review of photos, the cracking appeared to be due to settlement. But he did disagree with

Aviva's agent's conclusions on the cause of the cracking. He went on to state the cracking he saw wasn't relevant to information for subsidence caused by clay shrinkage. Although he referenced settlement, he did say cracks were considered recent, indicating ongoing movement that was unlikely to stabilise. But overall, I don't consider PW explained what the cause of any alleged subsidence or heave was likely to be in the circumstances.

In August 2019, a further Surveyor visit took place for the late Mrs P. The resulting report in September 2019 referenced structural defects but was unable to confirm the cause of damage. So further investigation was recommended. And in outlining the possible causes, the report referenced subsidence, but also uninsured causes such as settlement and thermal movement. The report did say it was possible the damage could be due to land heave, but provided no persuasive explanation as to what would've caused the heave in the circumstances.

Following the above, Aviva carried out further investigations, which I consider to have been reasonable and in line with the above recommendations. Aviva's site investigations (including boreholes and inspection of soil samples) showed no roots were encountered, which would mean there wasn't evidence to show root induced clay shrinkage was causing subsidence. And after further drainage inspections, Aviva, in line with the late Mrs P's surveys of March 2019, concluded there was no escape of water from the drainage system that was likely to cause subsidence.

In addition to the above, Aviva carried out level monitoring between October 2022 and September 2023, which didn't show progressive downward movement that would have been indicative of subsidence. The estate of Mrs P questioned the location of the pegs around the property during the monitoring, but I've not seen evidence to persuade me they were located in areas that would make the results unreliable.

The estate of Mrs P also said Aviva didn't carry out boreholes. But the evidence I've seen shows Aviva's agent made contact in September 2022 to ask for utility plans to carry out the geotechnical works and proposed a date for the end of September 2022 for this. In addition, Aviva's report from October 2022 references three boreholes, with a detailed breakdown of the depths, and the respective description of the layers below ground level. So overall, I'm satisfied it was more likely than not Aviva did carry out site investigations involving boreholes.

I've seen evidence of comments from a Structural and Civil Engineering company that said Aviva's investigations were not conclusive. But I can't see that this itself was conclusive that there is subsidence or heave damage.

The estate of Mrs P also provided evidence of a valuation report from July 2024. Although this referenced structural movement that appeared to be a result of ground movement, I'm conscious the purpose of this report was to provide a valuation, and not to report into the cause of damage or works needed to repair this. And I can't see that it provided an explanation as to what was causing any alleged subsidence or heave damage.

The estate of Mrs P provided laser line photos to show walls and ceilings at the property are not level. But I'm not satisfied that this itself is proof that the cause of this was by a current or ongoing instance of subsidence or heave, as opposed to other uninsured or historical causes.

Overall, for the reasons outlined above, I'm not satisfied it has been demonstrated on balance, that the damage to the property was caused by subsidence or heave, what caused this to happen and how this can be addressed. So it follows that as it stands, I don't consider Aviva responsible for the consequences of the damage claimed for. But I acknowledge there

are differences in opinions between the experts representing both parties, and I can understand the concerns of the estate of Mrs P in the circumstances. So I've gone on to consider Aviva's offer to resolve the complaint.

Aviva offered to provide the option of three independent Surveyors for the estate of Mrs P to choose from. This is to allow the chosen Surveyor to review all the available evidence and reports from both sides, and visit the property to provide an independent perspective. Aviva said it would cover this cost. And in the circumstances where it's not established damage was caused by an insured event, and there is a dispute over this, I think Aviva's offer is fair.

The estate of Mrs P said Aviva hadn't offered the choice of Surveyors yet, despite offering this. But if I direct Aviva to do this under this decision, and the estate of Mrs P accepts the decision, Aviva will be required to do so.

I acknowledge also that the estate of Mrs P would prefer Aviva to cover the cost of their Structural Engineer (PW) instead of the proposed three independent Surveyors. But I can't see this is something Aviva is required to do under the terms of the policy.

The estate of Mrs P said there had been further recent cracking and provided evidence they said was of raft damage. But I consider it appropriate in the circumstances, to allow the chosen Surveyor to review further evidence and information provided by the estate of Mrs P, in order to reach their own conclusions on the cause of damage and required repairs.

Overall, for the reasons outlined above, I consider Aviva's offer of the option of three independent Surveyors to be fair and reasonable in the circumstances.

I've also considered the compensation Aviva offered under the complaint. I've done so because Aviva included this within its final response, and the estate of Mrs P told our service following this, that the offer of compensation was unacceptable.

The Executors are acting as representatives of the late Mrs P's estate, which means I don't have the power to award compensation to them. And the estate can't suffer distress and inconvenience, so I can't award it compensation for delays and poor service. I can award compensation for the impact of Aviva's actions on the late Mrs P before she passed away, so this is what I've considered.

In doing so, I can see evidence of delays on the claim, poor communication and insufficient updates. In addition, I can see Aviva didn't adhere to the timescales it gave the late Mrs P, and didn't manage her expectations well. Aviva also took an unreasonable amount of time to review information before it provided its claim decision in December 2023. I accept this would've caused Mrs P considerable distress, upset and worry, but I'm also conscious that a lot of her matters were being handled by those authorised to act on her behalf. And I think this would've mitigated some of the impact on Mrs P, of Aviva's actions. Overall, having considered all the information, I think Aviva's offer of £650 compensation is fair and reasonable in the circumstances. So this is what I will direct it to pay.

### **My final decision**

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

- Present a choice of three independent Surveyors, to the estate of Mrs P, to review the information from both parties, visit the property and conduct their own investigation.
- Cover the cost associated with the above.
- Pay the estate of Mrs P £650 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs P to accept or reject my decision before 11 September 2025.

Monjur Alam  
**Ombudsman**