

## **The complaint**

Mr M complains that Aviva Insurance Limited has poorly handled a claim for subsidence damage to his property.

He feels delays have been added, with the claim not being accepted in 2020 when damage was first noted and the general handling and progress of the claim since it has been accepted as subsidence damage, has been poor.

This has impacted Mr M and his ability to move forward with his life and he feels this should be recognised.

## **What happened**

Mr M is a leaseholder with a flat within a building converted to 5 individual flats. The insurance in place provides cover for the insured perils set out and Mr M has the benefit of this insurance as a leaseholder.

In January 2020, Mr M contacted Aviva to raise concerns about damage noticed within his flat and to the outside of the property. Aviva inspected the property and declined to provide cover for the damage. It didn't think the cause of the damage was subsidence and felt it related to the previous structural alterations to the property, poor workmanship in places and thermal movement.

Mr M completed internal repairs to his property at his own expense in the summer of 2020 but internal cracking re-appeared as well as the worsening of external cracking. Mr M appointed his own structural engineer to comment on the damage to the property and at the end of 2022, a claim for subsidence was made with Aviva again.

Aviva inspected the property and accepted the damage now noted was caused by subsidence. The claim was progressed as subsidence from this point but Mr M feels he's needed to chase for updates. He has also shown he needed to highlight to Aviva and its agents that the monitoring put in place at the property was not capturing the flank party wall where concerns about damage had been raised.

Towards the end of 2024, Mr M complained to Aviva about the progress of the claim. He didn't think it was fair the damage was not accepted as subsidence damage in 2020 when cracking was first reported. He felt there was errors with the monitoring and parts of the property not being monitored as he it they should be. And there was delays to the mitigation and repair works being completed at the property which was having a direct impact on Mr M and other tenants.

Aviva apologised for the experience Mr M has had with the claim journey. It didn't agree the claim should have been accepted as subsidence in 2020 but identified failings with the handling of the claim after it had been accepted. To recognise the impact of these failings on Mr M, it offered a compensatory payment of £850.

Mr M didn't accept the outcome proposed by Aviva and brought his complaint to this Service.

Our investigator wasn't persuaded that Aviva acted unfairly when it declined the claim for subsidence damage in 2020. They said the information provided by Mr M and his engineer conflicted with what was said by Aviva and its agent. They said they were more persuaded by the opinion of Aviva's expert as they had the opportunity to visit the property in 2020 and the report and findings are based on the physical inspection during this visit. And the opinion of Mr M's engineer was based on damage becoming worse between 2020 and 2022 instead of setting out clearly the damage was the result of subsidence in 2020. And they couldn't be satisfied the visible cracking in 2020 was the result of subsidence.

They didn't think there was a conflict of interest between Aviva and its appointed loss adjusters. Insurers often have a network they work with on a regular basis and this ongoing relationship does not mean it can be said there is a bias. The loss adjuster is there to investigate and provide opinion on the claim event and whether there is an insured peril. The advice from the loss adjuster in 2020 was that the site inspection and damage observed didn't show this was the case. But in 2022, it felt there was now signs of damage consistent with subsidence and a recommendation was made to accept the claim.

Our investigator thought about the claim handling and whether overall, it had progressed as it should have done. They set out this included the timeline up until the date of the final response issued by Aviva and they couldn't comment on anything after this as Aviva would need to consider this as a new issue. They also explained that although Mr M has the benefit of the policy as a leaseholder within the block of flats, they could only consider the actions of Aviva and the handling of the claim in relation to his flat. Anything which impacted the whole property would require the consent of the other beneficiaries of the policy.

Overall, they said they felt there had been avoidable delays added with the handling of the claim and this will have added to the distress experienced. It was also clear what impact this was having on Mr M with the time he had needed to spend on dealing with the claim and correspondence with Aviva, looking for updates and raising concerns about the process.

They didn't think the offer made by Aviva to recognise the impact of the claim handling was fair and they recommended this be increased from £850 to £1250. Aviva accepted the recommendation but Mr M didn't think this went far enough.

Mr M provided further information from his structural engineer and referenced his home buyers report which was completed in 2016 when he moved into the property. He felt this supported that the claim for damage made in 2020 should have been accepted as a subsidence claim. He felt the investigator had accepted statements made by Aviva without demonstrating why the statement was accepted and supported by evidence. Aviva has said it cannot access the neighbouring property to conduct its monitoring investigations and Mr M doesn't think it is doing enough.

Our investigator looked at the comments made by Mr M and asked for Aviva's opinion on the structural engineers comments provided by Mr M. They maintained that they didn't think the claim in 2020 had been shown to be subsidence. So, they were not persuaded the claim decision at this point was unreasonable.

Mr M still felt the evidence he had provided supported the claim should have been accepted in 2020 and he asked that the complaint be referred for 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.

I've decided to uphold this complaint, for much the same reasons as our investigator. I appreciate Mr M will be disappointed as this doesn't go as far as he would like, but I'll explain why I think there has been delays with the handling of this claim. However, I think the recommendation made by our investigator to recognise these is fair.

The crux of this complaint is whether, in 2020 when first notified of damage to the property, Aviva made a fair claim decision. And following this, whether the subsidence claim has been progressed as it should have after being accepted in 2022. I appreciate Mr M, in raising his concerns about both these issues, has raised a number of things surrounding the primary concern. While I may not comment on everything said, with the nature of my role and this Service being an informal option to the courts, I can assure Mr M that everything has been considered.

As our investigator has explained, I am also only commenting on the actions of Aviva up until the point of its final response on 12 December 2024. And while Mr M is an eligible complainant in his own right, being a beneficiary of the policy, he isn't the policy holder or sole beneficiary. Anything which could impact the other beneficiaries or policy holder can only be considered if all are joined to the complaint and I've needed to keep this in mind when considering the complaint Mr M has made and the impact of Aviva's claim handling on him.

#### *Did Aviva fairly decline the subsidence claim in 2020*

Mr M feels the damage reported to Aviva in early 2020 should have been accepted as being caused by subsidence. He feels the opinion of his engineer provided on the report and photos, taken of the property at the time, together with the pre-purchase report evidence and list of works required to be put right, from the quotation dated 6 January 2020, demonstrates this is the case. The property was previously in a good state of repair and the opinion of a qualified expert should be sufficient to show it is more likely than not, that the damage noticed in 2020 was subsidence related.

Looking at the pre-purchase survey conducted, this was a non-invasive inspection of the property and the limitations of the inspection are set out from the outset.

The survey gave opinion on the condition of the property throughout and highlighted there had been signs of previous movement.

*“Evidence of movement was observed in the form of minor distortions to the main walls and misalignment of the window and door openings. Slight sloping of internal door frames and floor finishes was also detected. This movement is reasonably attributable to a combination of the general aging of the building fabric and historic building settlement, and is not considered significant as it appears longstanding and non-progressive.”*

And although there was a few recommendations made about different areas of the property where some repair was needed, nothing was considered to be structural in terms of the damage.

*“Limited cracking is apparent to stonework, which is not considered to be of particular structural significance, although will need to be raked out and repointed prior to decoration.”*

In 2022, Mr M asked his engineer to provide comments on the property and its condition from 2020 based on the photos provided. They have said, when compared to the inspection of the property from 2022, the damage appears to be essentially the same damage, but less severe. And *“there can be no doubt that the damage then had been caused by the same mechanism of movement i.e. a downward movement of the front of the righthand flank wall*

*and general monolithic movement away from the lefthand party wall. The fact the damage worsened between 2020 and 2022 is relevant because this confirms the same causes were at play.”*

Mr M's engineer also highlighted the summer event of 2022 and how this was a drought summer. He had concerns that if repeated, further damage could be caused to the property and it was key that repairs were completed as soon as possible with it being sensible to proceed with a scheme of underpinning.

Aviva did have an inspection of the property completed in 2020, after it was notified of damage. It was noted that there was damage to the walls with areas of vertical, horizontal and diagonal cracking and sloping floors. This was moderate damage and classified as category 3 in accordance with the BRE Digest 251. And it considered the damage and distortion to be historic – with the pre purchase survey findings being referenced and this having sighting damage and distortion being evident in the property when purchased.

Aviva's report concluded the damage to the property was the result of damage occurring pre the commencement of its policy cover, in 2018. It also felt some of the damage was caused by the structural alterations completed in the property around 2004. Overall, it didn't agree it was caused by subsidence movement in 2019/2020 (with the notification of loss being made in early 2020).

Mr M has said he feels the opinion of his engineer is more valid than that of Aviva's report and specialist. And with the photos taken previously of the property in 2020 and the opinion of his expert, that this shows a continuation of damage in 2022, it is fair the claim is accepted as subsidence from 2020. Having considered everything, with some of the main points highlighted above, I am not persuaded that it can be said it is more likely than not, that the damage noted in 2020 was caused by the same event as the damage later noted in 2022.

The pre purchase survey shows the property had signs of damage which was related to historic settlement and maintenance issues when purchased in 2016. It doesn't support the opinion of Aviva that the alteration works were poorly completed, but does show there was signs of movement in the past and work was needed to put some things right.

Mr M's engineer didn't visit the property in 2020 and didn't have the benefit of a physical inspection. And while he has highlighted his concerns of the damage being progressive, it is also very clear that the impact of the weather in 2022 is something which is noted as a strong aggravating factor.

Aviva's site investigation report from March 2020 shows a consistency of opinion with some of the damage at the property – following that of the pre-purchase report and it being believed there has been historic settlement. So, while I appreciate the opinion of Mr M's expert and their assessment of the photos after the summer of 2022, I am not persuaded that this can be taken to show Aviva made an unfair claim decision in 2020.

Aviva has later accepted movement to the property and the damage resulting is subsidence related. But with weather events taking place after this, as noted by Mr M's expert and how this can impact the ground and movement, I cannot reach the point of being satisfied, this was not the cause of the later damage.

Overall, I am not making a recommendation for Aviva to revisit the claim decision from 2020.

#### *Delays to claim handling*

It has not been disputed by Aviva that errors have been made with the handling of this claim.

With this, it is also clear Mr M has spent a great deal of time and effort in working with Aviva and chasing it and its agents for updates on the progress and clarity on why certain areas of the property have not been monitored as he feels they should.

Mr M feels Aviva has failed to install monitoring as it should have and it is missing the part of the property where he feels the risk of movement is greatest. Aviva has explained why it is unable to gain access here but, following Mr M's intervention, has added additional monitoring. I understand the frustration Mr M has with the actions of Aviva and its agents. This claim has been ongoing for a number of years and the nature of subsidence and impact this has on properties means claimants are reliant on action to move on.

However, I think Aviva has explained why it couldn't monitor all of the property because of access but has made adjustments to ensure it understands the properties movement. And it has shown it has listened to the concerns of Mr M when taking this action.

Although this claim is not yet settled, I can only consider the impact of this claim up until the date of the final response in December 2024 and naturally, things will have moved on from this point. Mr M has asked whether, based on ongoing concerns about the progress of the claim, he could instruct expert opinion on what is needed to put things right and whether the cost of any reports produced could be covered by Aviva. I can't make a direction on this, but would expect that anything produced, which shows something should have happened which hasn't and changes the position of Aviva, that it would be fair for Aviva to consider the cost incurred by Mr M when obtaining these.

Our investigator recommended that in total, Aviva pay Mr M £1250 to recognise the impact of the claim handling on him. I appreciate during this time Mr M has highlighted how he has not been able to move on with his life and the property is not something he feels he could sell without a loss. As I've said, the nature of these claims and impact, even without issues in the handling of the claim is significant. What I am considering is the added distress and inconvenience and when doing this, I agree an award of £1250 is fair and reasonable.

It is not intended to compensate Mr M for all of the distress of this claim and some of this will be unavoidable and I am sorry this is the case. But it recognises there has been some serious failings here with its progress which has meant this has been added to and it is this distress the award recognises.

I hope that Aviva, as well as recognising the errors here with the payment, takes steps to work with Mr M and the other property owners to progress this claim as quickly as possible as the continuing delays will simply add to the disruption.

### **Putting things right**

Aviva should pay Mr M £1250 in recognition of the impact of its claim handling delays since this claim for subsidence has been accepted.

If it has already paid the £850 offered in its final response of December 2024, it need now only pay the additional £400.

### **My final decision**

For the reasons I've set out above, I uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 February 2026.

Thomas Brissenden  
**Ombudsman**