

The complaint

Mrs J complains that Aviva Insurance Limited have declined her claim relating to subsidence damage to her property.

What happened

Mrs J had household buildings cover for her property with Aviva. In October 2022 she submitted a claim for subsidence damage to her property advising Aviva that the damage was recent, she'd noticed it on her return from holiday, and notified them of the claim immediately.

Aviva instructed loss adjusters who first contacted Mrs J in December 2022. They arranged for photographs of the damage to her property to be taken and based on a review of these wrote to her on 6 December 2022 stated that they believed there was evidence of subsidence damage. But this was subject to further investigation before her insurers liability could be confirmed. They said that a site visit would be arranged.

A subsidence specialist from the loss adjusters visited the property on 27 January 2023. Mrs J has told us there was then a long delay before she heard anything further. In August 2023 the loss adjusters contacted her apologising for the delay and saying it was due to a surge in claims following the hot summer in 2022.

On 15 July 2024 Mrs J was advised that her claim had been declined. She was sent a copy of the loss adjuster's report dated 14 July 2024, based on the site visit in January 2023. The report states that Mrs J's property had suffered severe distortions, structural cracks, diagonal cracks and bulges in many areas over many decades as a minimum.

They said there was evidence that the apparent longstanding cracks had been repaired, they thought decades ago, using cement based fillers and mortar pointing, which didn't resolve the cause of the cracking, weren't an adequate repair solution and weren't disclosed to Aviva at renewal of Mrs J's policy in January 2022.

Had the condition of her property been disclosed Aviva said that wouldn't have offered Mrs J cover. They said she'd made a qualifying misrepresentation when applying for cover which meant they could revise the terms and conditions of her policy from inception, to exclude cover for subsidence. Aviva didn't void Mrs J's policy but agreed to continue to provide cover, excluding subsidence until renewal.

Unhappy with Aviva's decline of her claim Mrs J obtained her own structural engineers report dated 25 September 2024. Aviva considered this but it didn't change their decision to decline her claim.

Mrs J raised a complaint and Aviva issued their final response on 28 March 2025. They confirmed that the decline of her claim was maintained. But they said their loss adjusters hadn't provided accurate information about the decline of her claim. On reviewing all the evidence Aviva said the cracks to Mrs J's property appeared to be long standing and would have existed before her policy started. They weren't consistent with her account that they

appeared during the course of her holiday in 2022.

Had they been aware of the cracks when she applied for cover Aviva said they wouldn't have offered subsidence cover. So her claim was declined as had they been aware of the cracking there would have been no cover in place.

Aviva said they'd reviewed Mrs J's engineer's report but it hadn't changed their decision. They said the report notes cracking in different areas of the property to that which occurred during her previous subsidence claim, and possible subsidence. But said they hadn't declined the claim because there was a dispute about there being active subsidence.

Aviva apologised for their loss adjuster's advising Mrs J on 15 July 2024 that her claim had been declined 18 months earlier following a virtual review of the property. They said this wasn't correct and her claim had remained under consideration until it was declined in July 2024.

Aviva explained that while the questions the loss adjuster's had asked about the land the property is on and the use of outbuildings might not seem relevant to a subsidence claim, they were relevant to the policy and validating her claim.

They acknowledged that the loss adjuster's had continued to refer to a subsidence claim in 2010, when she'd told them that claim was ongoing between 2003 and 2009. This information was taken from her Statement of Fact. But Aviva apologised that the loss adjusters hadn't cleared up how the confusion had arisen. They also confirmed that disclosure of an earlier claim had no effect on their decision to decline her claim.

Having reviewed the claim file Aviva said the loss adjuster's hadn't handled or progressed the claim as they'd have expected. And Mrs J should have been advised of the decision to decline her claim far sooner. As an apology for the poor handling of her claim and the distress and inconvenience this had caused they said they were sending her a £500 compensation payment by cheque.

Mrs J remained unhappy with the decline of her claim and referred her complaint to our service. Our investigator considered the case and said that Aviva had considered the damage to Mrs J's property and believed the cracks to be long standing and to have existed before she took out her policy.

Had they known about the cracks they'd wouldn't have offered Mrs J cover so they said she'd made a qualifying misrepresentation under The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). Our investigator said that CIDRA says a consumer needs to take reasonable care not to make a misrepresentation when taking out an insurance policy. And if they didn't the insurer can take certain actions if the misrepresentation is a "qualifying" one.

Aviva had said that Mrs J hadn't taken reasonable care as the cracks seen after she made her claim weren't consistent with damage occurring while she was on holiday, as she'd told them. Had had they been advised of the cracks they wouldn't have provided subsidence cover.

The Statement of Fact prepared on the basis of the information Mrs J provided when taking out her policy records no damage to her property. Our investigator reviewed the subsidence specialist's report which noted longstanding damage to Mrs J's property. And she considered the photographs of the damage to the property, and said these were consistent with the loss adjuster's findings.

Our investigator then considering whether Mrs J had made a “qualifying” misrepresentation. She said Aviva had provided their underwriting criteria which showed that if Mrs J had provided the correct information about the condition of her property they wouldn’t have offered her cover. So our investigator thought that it was reasonable for Aviva to say she’d made a “qualifying” misrepresentation.

CIDRA sets out the actions insurers can take if there’s been a “qualifying” misrepresentation. Our investigator said the Aviva could have voided or cancelled Mrs J’s policy, but they allowed it to run until it lapsed at renewal. This was more than they needed to do, so our investigator didn’t ask them to take any further action.

Aviv accepted our investigator’s opinion. Mrs J didn’t as she maintains that the damage to her property occurred after the long hot summer in 2022. She says she’s provided expert evidence to confirm her property has been damaged by subsidence and she wants Aviva to repair it.

The case has come to me for a 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 considering this complaint it’s important that I make it clear that Aviva don’t dispute that Mrs J’s property has been affected by subsidence. That’s not the issue here as what I need to consider is whether Mrs J provided accurate information about the condition of her property when she took out her policy with Aviva. As if she didn’t Aviva were entitled to decline her claim.

Aviva say she didn’t and had she declared the condition of her property, and the damage and cracking they say she must have been aware of, then they wouldn’t have offered her cover.

Mrs J says that the cracking and damage to her property occurred while she was on holiday in 2022. She discovered the damage on her return and notified her claim to Aviva immediately. And she says she’s provided expert evidence to Aviva, her structural engineer’s report, confirming the presence of subsidence, which Aviva have just ignored.

Aviva’s loss adjuster’s report states the Mrs J’s property is poor condition, that there’s evidence of earlier sub-standard repairs, and damage and cracking that appears historic, possibly decades old. They say that this is not damage that would have happened over a short period as a result of the hot summer in 2022. Having considered the photographs of the very substantial damage to Mrs J’s property I’m persuaded that their findings appear consistent with the overall condition of the property.

I’ve considered the report from Mrs J’s structural engineer, which confirms that her property appears to have suffered subsidence damage. As I’ve said above this isn’t disputed by Aviva.

We’re not subsidence experts and consider cases based on the expert evidence provided by the parties. In this case I’m persuaded by the evidence of Aviva’s loss adjuster’s that there was historic and longstanding damage to Mrs J’s property which should have been declared when she took out her policy. And I accept that had the condition of her property been declared Aviva wouldn’t have offered her cover.

In this situation I need to look at CIDRA to see what action the insurers can take. CIDRA section 2 (1) says that a consumer has a duty when taking out a contract of insurance to take reasonable care not to make a misrepresentation. Where there has been a misrepresentation, and incorrect information has been provided, and the insurer shows that but for that information, they wouldn't have offered cover, or would only have done so on different terms, then that is a "qualifying" misrepresentation and CIDRA sets out the remedies available to the insurers.

The remedies available to the insurers depend on whether the "qualifying" misrepresentation is considered deliberate or reckless, or careless. Aviva have treated the misrepresentation as deliberate or reckless, so CIDRA allowed them to decline Mrs J's claim and avoid the contract. While then declining the claim, they chose not to void her policy, which CIDRA would have allowed them to do, and the policy continued until it lapsed at renewal.

Aviva have accepted that their loss adjuster's didn't deal with Mrs J's claim as they should have done. There were delays and confusion about an earlier subsidence claim relating to her property, and Aviva say that she should have been advised that her claim was declined far earlier.

While I understand the Mrs J is very unhappy with the decline of her claim, based on the evidence I've seen, I think Aviva acted fairly and in line with the provisions of CIDRA. And reviewing how the claim was dealt with by their loss adjuster's I think the £500 compensation Aviva paid Mrs J was appropriate the delays and confusion that arose, so I'm not asking them to do any more.

My final decision

For the reasons set out above my final decision is that I don't uphold Mrs J's complaint about Aviva Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 30 April 2026.

Patricia O'Leary
Ombudsman