

Complaint

Mrs M is unhappy with the lack of progress on a subsidence claim raised with Aviva Insurance Limited under her home insurance policy.

All references to Aviva include their agents.

Mrs M is being represented in this complaint by her husband, Mr M. So I'll refer to him directly in my decision.

Background

Mrs M has an ongoing subsidence claim with Aviva. The background to the claim and subsequent developments are extensive. So I will set out below the key events which are relevant to my decision. However, I want to reassure both parties that I have read and carefully considered everything that has been provided.

Mr and Mrs M's property first experienced subsidence in 2007. Aviva accepted the claim and its contractor recommended the removal of trees and vegetation to solve the reasons for the movement.

Mr and Mrs M weren't sure this would solve the problem, so they got advice from an independent structural engineer. The engineer advised the work recommended by Aviva wouldn't be enough to resolve the movement of the property and thought it would reoccur unless further investigations were done.

Aviva told Mr and Mrs M that once the trees were removed there would likely be a period where the property settled, and this would cause some minor movement to the property. Over time, Mr and Mrs M noticed some cracking to the plaster but didn't tell Aviva as they thought it was due to the property settling.

In January 2017, Mr and Mrs M noticed larger structural movements in their property. They told Aviva and it accepted the claim.

Aviva provided Mr and Mrs M with a proposal for the work required. This included addressing the cause of the movement with site investigations, tree management works, and further monitoring to confirm the property stability. Mr and Mrs M had some concerns with the plan and got advice from an independent structural engineer in June 2017. The engineer recommended further technical investigations were needed, but Mr and Mrs M say Aviva didn't take this advice into account until later in the claim.

As a result of the movement in the property Mr and Mrs M say that water now comes up through the floor of the kitchen, and also enters through the walls. They say this has led to damp issues and the unevenness of the floor is a trip hazard. Mr and Mrs M say they've asked for temporary repairs to be done to the kitchen a number of times but so far nothing has happened.

Mr and Mrs M are unhappy because they say that up to this point, Aviva hasn't completed the investigations necessary to determine the cause of movement to their property. They are also unhappy that none of the proposed temporary or remedial work has been carried out. Mr and Mrs M understand that subsidence claims can be complex and did not expect the issue to be resolved immediately. But they say the overall issue has now gone on for more

than 10 years, with the most recent movement evident since January 2017.

Worried with the progress of their claim, Mr and Mrs M set out a list of concerns to Aviva's contractor in July 2017. These included asking for a review to determine the underlying cause of the movement and proposed solutions, commencement of temporary repairs, and a plan and timeline for the remaining works. Unable to get a substantial response, they referred their concerns as a complaint to Aviva in January 2018.

In March 2018, Aviva responded to Mr and Mrs M. It said the present position of the claim is to proceed with level monitoring to establish the correct way to progress the claim. It said there had been problems with the progression of the claim and offered £500 compensation for the delays. It also offered to replace the contractors. Mr and Mrs M said that Aviva's response didn't address many of the issues they raised. Mr and Mrs M attempted to engage with Aviva further for answers to their questions but said they didn't get a proper response. During this time they were contacted by Aviva's contractor who confirmed further investigations would be needed. Mr and Mrs M agreed to the further investigations but said they heard nothing after that, so they referred the complaint to our service in July 2018.

Mr M, on behalf of Mrs M, asked our service to look into a number of issues. In summary he wanted us to consider:

- Getting a clear plan from Aviva which detailed what monitoring and investigations were still needed to inform the repairs required. In particular Mr and Mrs M were keen for the plan to have specific dates and timeframes for the repairs to be completed;
- The lack of temporary repairs in the kitchen, and remedial repair work to the drains;
- The link between the previous claim in 2007 and the current movements. In particular, whether the proposed removal of trees from the hillside above the property would lead to further issues. And if the current claim was found to be linked to the previous movement, he felt the £1,000 excess paid for the further claim in January 2018 should be refunded;
- Asking Aviva how it proposes to mitigate the risk of destabilising the slope above the property if it proceeds to remove a large number of trees from the area;
- Aviva's overall level of communication throughout the claim.

Our investigator looked at everything and recommended the complaint be upheld. He found there were failings in the way Aviva had communicated during the claim, and there were avoidable delays to the investigations and repair work. He also found that there had been insufficient investigations to determine the cause of the present movement or whether it was linked to the claim in 2007.

In order to put things right, our investigator said that within four weeks of both parties accepting his recommendations Aviva should, in summary:

- Investigate whether the present movement is linked to the previous movement in 2007 as a consequence of the tree removal, and review whether the excess of £1,000 is still payable;
- Provide a clear schedule and letter to Mr and Mrs M including all of the monitoring

and results data so far, what investigations are still required, and dates for a decision to be made about the repairs;

- Arrange and ensure repairs are undertaken to the drains and kitchen;
- Arrange for a geotechnical survey to be carried out. The survey should include; reports on whether the surrounding areas will be destabilised by the removal of a number of trees; the sub-surface water flows and changing groundwater evidenced so far; how the removal of trees has affected the properties of nearby neighbours; and if tree removal is deemed necessary, what measures should be put in place to mitigate the risk of destabilisation;
- Pay Mrs M £1,500 for the distress and inconvenience caused so far.

Mrs M broadly accepted our investigators findings. Mr M responded on behalf of Mrs M and said he wanted a meaningful point of contact at Aviva to be kept in the loop with the claim. He said he had concerns over the ambiguity of the monitoring period required and wanted a mechanism put in place to avoid further delays in the claim. Mr M also requested a copy of all information held on the claim by Aviva.

Aviva accepted our investigators findings in full in April 2019 and said it had forwarded them to its contractor to implement.

In June 2019, Mr M contacted Aviva and said its contractor hadn't been in touch for two months to discuss the recommendations. Mr M said he had agreed to a site meeting with the contractor to set out some proposed repairs to the kitchen and drains but hadn't heard anything back. Mr M has provided our service with a timeline of correspondence he sent to Aviva to try and progress the claim and follow up the investigator's recommendations.

Mr M said he was frustrated at Aviva's lack of response and was concerned he hadn't received all of the information he asked for. He said this was in order to inform his own engineer ahead of a site meeting. Mr M was also frustrated that the only contact he had from Aviva's contractor was an attempt to book a site meeting to review the claim at a few days' notice. Mr M explained he would be happy to accommodate future site meetings, once he had the necessary information and notice to do so. But he said that overall there had been no progress made on the claim.

Our investigator wrote to Aviva again to try and get things moving. Aviva replied and said the previous engineers on the claim were no longer working for them, so it would be practical for the new engineer on the claim to do a site visit and produce a report on the way forward. It said it could provide a report to Mr and Mrs M following this meeting. And that the kitchen and drainage repairs would be covered at the same meeting.

Aviva also said it had provided all the information to Mr M in relation to the claim. But it said it didn't currently have a schedule of works to provide, and it queried the necessity of the geotechnical survey.

Frustrated by a lack of progress following our investigators recommendations, Mrs M asked for an ombudsman's decision. Mr M, on behalf of Mrs M would like the ombudsman to consider:

- Making a decision which sets out a clearly defined path for Aviva leading to a

physical solution for the property – to be confirmed as acceptable by a third party and with sufficient financial disincentives applying to Aviva to dissuade them from further delays;

- A permanent solution to the structural movements from the house, this includes (but is not an exhaustive list):
 - the clear identification of the causes of the structural movements of the house;
 - the determination and agreement to the appropriate solutions and remedies which provide the best likelihood of resolving the movements permanently;
 - quick and effective repairs to the property;
 - clear information to his neighbours including the impact on their own properties and clear, reasoned responses to the concerns raised;
- The impact of the lack of temporary repairs to the kitchen, and that a replacement kitchen can't be installed as water still comes through the floor;
- The impact of not being able to sell the property and the impact on their family life due to the delays in the claim;
- Additional compensation for the delays and failures to date and for on-going delays following any subsequent findings;
- Providing a decision as to the connection between structural movements experienced in 2007 and those noted in 2017. If there is found to be a connection with the tree removal in 2007, Aviva should refund the £1000 excess;
- Requiring Aviva to employ a competent third party to carry out investigations and repairs as he has lost faith with Aviva and its agents. Mr M also wants Aviva to pay for the appointment of an independent structural engineer with the remit to monitor and advise on the appropriateness of investigations. The engineer should be provided with all of the information relevant to the claim to date including a schedule of works and timetable;
- Requiring Aviva to agree relocation (alternative accommodation) if required;
- Requiring Aviva to implement the findings within two weeks including payment of compensation, temporary works in the kitchen, geotechnical investigations, and investigation/repair of drainage issues. And within four weeks completing an investigation into the source and cause of water flows into the area;
- Requiring Aviva to make and maintain proper records of all information relevant to the claim, and make timely responses for information such as results of investigations and proposed actions;
- Compensation of an additional £100 per week and pro rata for parts thereof for the delays from the end of April 2018 to the date of the final decision;

- Compensation for any ongoing delay between the final decision and completion of repairs, either in the form of provision for alternative accommodation at £1,000 per month, or £1,000 per month for the disturbance.

Aviva said it had been trying to arrange a site visit for some time to begin implementing the findings, but that our adjudicator initially refused the visit.

In September 2019 Mr M told Aviva and our investigator the floor of the kitchen had now collapsed in an area where water rises through the floor. Mr M said the floor was a large trip hazard and had collapsed in a concave fashion, which suggested a void or space had likely developed underneath. Mr M said this latest event demonstrated the increasing risk to his family's health and physical safety.

The complaint was referred to me and on 18 February 2020 I set out in my provisional decision what I thought Aviva needed to do to progress Mrs M's claim. I've repeated an extract below:

When making a decision on a complaint I usually consider matters as they stood at the time the financial business issued its final response to the complaint. However, occasionally it's impractical to do so – for instance because the situation has moved on or further evidence/information has come to light. On these occasions I need to consider things as they currently stand. In this case I will be considering Mrs M's original complaint and include the developments since our investigator made his recommendations to Aviva, in order to arrive at a relevant, and fair answer.

The Insurance: Conduct of Business Sourcebook (ICOBS) sets out the rules which insurers must follow when handling a claim. The relevant sections of ICOBS 8.1 state an insurer must:

- (1) handle claims promptly and fairly;*
- (2) provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;*
- (4) settle claims promptly once settlement terms are agreed.*

Having looked at all the information provided I don't think Aviva has acted fairly in this respect. I can see delays in the claim on a large number of occasions because Aviva hasn't provided Mrs M with the information or guidance necessary to progress the claim. It is not acceptable for Aviva to say the complaint is with our service and for the claim to stall during this time. Nor should our service be used as a proxy to manage the claim between Mr and Mrs M, Aviva, and its agents – which is what appears to have happened for a number of months here. Ultimately, Aviva is the insurer as set out by ICOBS and it needs to act accordingly.

There are a number of issues which I think Mr and Mrs M have reasonably raised with Aviva since the complaint has been brought to our service. And I would have expected Aviva to provide better clarity about the direction of the claim here. Instead, I can see Mr M has chased Aviva a number of times for a meaningful response without getting one, or on other occasions he has repeatedly been referred back to a contractor who he has had difficulty in communicating with previously.

As Aviva has already said it accepts our investigators findings in full, I will focus more on what's happened since then, and consider the additional points raised by Mr M. Having

reviewed everything I see no reason to depart significantly from what our investigator has recommended so far. But I will provide my thoughts on the additional issues raised by Mr and Mrs M where I have the evidence to do so. And I will set out what I think is a fair and reasonable way to move the claim forward below.

Link between 2007 and 2017 claim

I've compared the engineer's reports from the 2007 claim to the current claim to see if there's sufficient evidence to draw a link between the two. I've also taken into account that due to the time that has lapsed, it will be difficult to get any further evidence about the 2007 claim now.

I've considered the report completed by Aviva's contractor in February 2007. The report says the subsidence was caused by clay shrinkage due to "moisture abstraction by roots altering the moisture content of the clay subsoil resulting in volume changes, which in turn have affected the foundations." The report goes on to say that ongoing monitoring and investigations aren't required.

I've next considered the certificate of structural adequacy provided to Mrs M in December 2007. This was done on completion of the repairs and states "we have appraised the property as regards to the above damage which in our professional opinion has been caused by clay shrinkage subsidence". The issuing of this certificate is done to confirm the repair work was sufficient and I've no reason to doubt the reasons stated for the movement.

The most recent report from Aviva in February 2017 considers the present damage to the property and says, "The diagonal aspect of the cracks...is indicative of subsidence as a result of shrinkage of the clay subsoil due to the moisture extracting influence of vegetation located around the boundary of the risk address". It goes on to say, "the cause of the movement needs to be addressed, with site investigations being required".

Aviva hasn't said what it now considers to be the cause of the movement. And it appears from emails I've seen that none of the contractors who worked on the claim either in 2007 or 2017 are still present to offer their insight. Mr M says he's provided Aviva with details of the engineers who worked on the claim in 2007 if it wants to get further information, but to date it hasn't spoken to them.

I accept that some years have passed between claims. But both claims indicate clay soil shrinkage as an underlying problem. And there isn't anything to show the damage to the property was as a result of two different causes – i.e. different vegetation. Had Aviva completed further monitoring after remedial works were completed in 2007, this would have provided a good indication of whether the work it did at the time stabilised the property. But, Aviva hasn't provided anything to show this was the case. So unless Aviva is able to show there are two distinctly different causes to the subsidence here, I think it should refund the £1,000 excess to Mrs M and treat the claim as a continuation of the one raised in 2007.

I'm not going to comment on whether the proposed removal of trees from the hillside above the property will lead to further issues – this would be a matter for the contractors appointed to the claim to address. But I think from the evidence I have seen this is a reasonable concern for Mr M to raise and which Aviva must consider.

Moving the claim forward

Mr and Mrs M have said they no longer wish to use the current contractor as there is still not a resolution in place, and the cause of movement is in dispute. When Aviva accepted our investigators findings, it was reasonable that its contractor was given the opportunity to put things right. But it hasn't progressed the claim as it should have. So I think Mr and Mrs M's request to use a different contractor is reasonable.

Given Mr and Mrs M's experience on this claim to date, I think it would be appropriate to appoint an independent engineer jointly with a remit to carry out sufficient investigations to determine the cause of movement and paid for by Aviva. Aviva should offer Mrs M a choice of three different independent engineers and she should choose from one of those three. The independent engineer can review any information either party would like them to. Aviva must pay for any investigations the engineer considers necessary, and the costs of the contractors required. Once the cause of movement is determined, the engineer should produce a report recommending the next steps in the claim.

I won't be providing a direction on how the claim should progress, but if Mrs M has concerns about the next steps it can be raised as a separate complaint with Aviva.

Mr M has requested a copy of all the information Aviva holds on the claim. Aviva says it has provided this, but Mr M says what he's got isn't enough to inform an independent engineer. I think it would be reasonable to assume that an appointed independent engineer will know what information they need and can ask Aviva for this themselves. But if Aviva doesn't or can't provide the information requested then this will likely lead to new investigations which Aviva should fund as part of the claim.

Temporary repairs to kitchen and drains

Aviva agreed with our investigators findings to undertake repairs to the kitchen and drains in April 2019. Mr M has confirmed no repairs have taken place to date. Mr M has also provided evidence that the kitchen still suffers from damp, and the floor has now collapsed.

Mr M has added the impact of not having full use of the kitchen has been significant. He says there are hygiene issues with the kitchen area, and as such they don't entertain or hold family gatherings. Mr M says the general conditions of damp, slugs, and water in the kitchen have been much the same for the last 3 years. He says the damp had caused the kitchen cabinets to start rotting, algae to grow on the walls, and the ingress of water is unpredictable. This means they can't make a plan for dealing with it long-term.

Based on the information I've seen, Mrs M has been significantly impacted by the delay to the temporary kitchen repairs. And I've not seen anything from Aviva to explain the delays to either the kitchen or the drains. So as part of this decision Aviva must arrange for repairs to take place to the kitchen and drains without further avoidable delay.

Aviva implementing the findings

To date, Aviva has shown limited progress in implementing the findings of our investigator. And I think it's been responsible for a number of avoidable delays to Mrs M's claim. So Aviva should implement the findings I intend to set out in my final decision within four weeks of Mrs M saying she accepts my decision. If this isn't possible for any reason Aviva must tell Mrs M and explain why there is a delay. Aviva should also work with the independent engineer to set out a detailed schedule of works for Mrs M to show when planned investigations and works are taking place as soon as is reasonably possible.

Alternative Accommodation

*Aviva hasn't made any comments about whether or not alternative accommodation is required. Mr and Mrs M haven't said the property is currently uninhabitable either. Mrs M's policy terms state "If the **home** is damaged by any cause covered under **The Buildings** cover...and as a result it cannot be lived in...**We** will also pay... b. any reasonable accommodation expenses for **you** and **your** domestic animals up to the limit shown on **your** **schedule** until the **home** is ready to be lived in."*

So I am satisfied that Mrs M's policy includes cover for alternative accommodation, and I would expect Aviva to provide this up to the limit on Mrs M's policy schedule should the property become uninhabitable.

Compensation

I've considered that subsidence claims can be complex and will often incur delays whilst the parties determine the best way to proceed with the claim. But on this occasion I do think Aviva has contributed to a significant portion of the overall delays. I find its communication with Mr and Mrs M lacking in detail, and it often ignored letters sent by Mr M asking for an update. I think Aviva could have managed Mr and Mrs M's expectations much better in terms of the scope and schedule of investigations required. And I find little evidence to support why the repairs to the kitchen and drains haven't been done since they were first proposed in 2017.

Aviva has indicated that both Mr M and our investigator have been obstructive in preventing site visits, but I haven't seen any evidence of this. Instead, I've seen emails from Mr M which indicate he is happy to accommodate site visits, provided he is given sufficient time and reasons for the visit. So I don't think Mr M's actions have been unreasonable here.

In making an award I've considered the impact to Mrs M, the policyholder. Mr M has provided testimony explaining the impact to him and Mrs M which I am persuaded by. This includes the disruption to their home and family life, and time spent dealing with the claim. I think Mrs M has been reasonable in accepting there can be an element of delay in subsidence claims but shouldn't have expected things to be delayed as much as they have. And it appears that our service has had to intervene on a number of occasions to try and get things moving for her. Overall I think the impact to Mrs M from the delays has been significant. She has been unable to host family and friends in the property since the cracking got worse. And she has had to cook in a kitchen which amongst other things needs repairing and contains slip and trip hazards from the ongoing water ingress.

Mr M has added that one of the bedrooms in the house is out of use, as the floor of the room had to be removed for investigations. In addition he's said the utility room cannot be fitted

out as the walls continue to move and any fittings will need to be removed for repairs. So I think Mrs M should be compensated for not having the full use of these rooms also.

Since 2017, Mrs M is no closer to understanding why her property is subsiding, this has caused her a great deal of distress in the 3 years since. And I think Mrs M would reasonably expect the claim to be a lot further forward than it is now.

Taking into account all of the above, the further delays since our investigator's recommendations, and overall lack of progress to the claim, I think a payment of £4,500 would better reflect the distress and inconvenience caused to Mrs M. This payment covers the period from when the claim was made in January 2017, to the date Mrs M says she accepts my final decision.

I won't be considering compensation for any ongoing delays, I am making a finding on what's happened so far. Should Mrs M have reason to complain about any further delays to the claim, then our service would consider this as a separate matter.

Developments

Aviva didn't have anything further to add in response to my provisional findings. Mr M, on behalf of Mrs M responded and broadly accepted my findings. Mr M asked me to consider the following points before issuing my final decision:

- That there had been no contact from Aviva or it's contractor since the last site visit in January 2020;
- That unless Aviva provide a meaningful contact with the authority and responsibility to implement the recommendations, the suggested actions will not result in a resolution. Mr M reiterated some of the challenges in contacting Aviva to date in some detail, and said it was essential to have a named contact at Aviva from whom they can be sure of a response, and upon whose statements and actions they can rely on;
- Similarly, Mr M asked that Aviva sets out specifically who will have the authority to enable the engineer to have the work they consider necessary commissioned and subsequently their findings implemented;
- Mr M said the wording with regard to the role and responsibility of the engineer is ambiguous, and requested it be clarified to confirm that the engineer is to work independently of Aviva, and that the engineer has a responsibility to both parties in the claim. Mr M also requested clarification that any investigations, findings, results and reports provided to the engineer by Aviva would be provided to both parties;
- Mr M also requested the responsibilities of the engineer to specifically include the provision and updating of a timeline for the investigations, the decisions to be made from them and the resulting works.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'll be upholding this complaint.

Based on both parties' responses I see no reason to depart from my provisional findings. But I will address the additional comments raised by Mr M on behalf of Mrs M below for the sake of clarity.

I understand from Mr M's response that he is concerned with getting the claim moving again and having a firm timeframe to rely on for any proposed investigations and repairs. I also understand his concerns regarding ongoing communication with Aviva and its lack of progress in implementing the recommendations to date.

Given these issues, I think it would be reasonable for Aviva to provide Mr M on behalf of Mrs M with a named contact as he has requested. Ideally, this contact will have the authority or seniority to implement all of my requirements, and also to authorise and pay for an independent engineer to carry out the necessary investigations. But if this requires different persons, I will require Aviva to give Mr M on behalf of Mrs M the details of all relevant individuals so he can be kept up to date with the progress of the claim.

I've considered Mr M's comments about the wording in regard to the independent engineer being ambiguous. By appointing an independent engineer jointly, this will ensure the engineer has a responsibility to both parties in this claim. And whilst the engineer will be paid for by Aviva, they will work independently of Aviva and make any recommendations to both parties. I won't be making a further direction on the role and responsibilities of the independent engineer, as they would be the expert in this claim. And I would expect to see such things as timelines and decisions provided in their reports as a matter of course.

I therefore require Aviva to put things right for Mrs M as set out below.

My final decision

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

- Appoint an independent engineer jointly with a remit to carry out sufficient investigations to determine the cause of movement and paid for by Aviva. Aviva should offer Mrs M a choice of three different independent engineers and she should choose from one of those three. The independent engineer can review any information either party would like them to. Aviva must pay for any investigations the engineer considers necessary, and the costs of the contractors required. Once the cause of movement is determined, the engineer should produce a report recommending the next steps in the claim, and provide this to both parties;
- Provide Mrs M with all of the information it has on file for the claim to date, if it hasn't done so already. Aviva must also provide Mrs M with copies of any information it provides to the independent engineer;
- Provide Mrs M with named contacts responsible for implementing this decision and for authorising and paying for works done by the independent engineer;
- Arrange and ensure repairs are undertaken to the drains and kitchen;
- Refund Mrs M the £1,000 excess payment for the claim;
- Pay Mrs M £4,500 for the distress and inconvenience caused.

Aviva Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mrs M accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 25 April 2020

Dan Prevett
Ombudsman