

The complaint

Mr M and Miss M complain about Aviva Insurance Limited's handling of their home insurance claim for accidental damage to underground drains.

What happened

In May 2017, when Mr M was in the process of installing a new staircase to the cellar, he discovered that the bottom of it had rotted as a result of coming into contact with water. He made a claim to Aviva. It sent out some specialist companies to inspect the damage who advised that it was being caused by leaking pipes. Aviva arranged for estimates for repair and the work started in August 2017.

The repairs to the drains were completed but Mr M was unhappy with the contractors' method of work. It was agreed through the loss adjuster that new contractors would be brought in to carry out the reinstatement work, which included refitting the staircase and the downstairs toilet.

It took some time for Aviva to review the new quotes for the job. The toilet was reinstated first but the other reinstatement works didn't get under way until March 2018. Mr M was unhappy that a built in cupboard and shed were destroyed in the course of doing the work. He was also unhappy that he carried out some work to replace these but that Aviva hadn't paid him for his time in doing so.

Aviva agreed that the service provided had been poor in some respects. It offered to appoint a new loss adjuster and to pay Mr M and Miss M £400 as compensation. Mr M and Miss M weren't happy with Aviva's response to their complaint so they referred it to this service. One of my ombudsman colleagues considered it and issued a final decision in August 2019 covering the period up to the point when Aviva had issued its first final response letter. My ombudsman colleague thought Aviva had treated Mr M and Miss M fairly and reasonably so he didn't recommend that their complaint was upheld.

Mr M and Miss M didn't think all their complaints had been addressed but we explained that we could only consider complaints referred to, and addressed by, Aviva in its final response of 27 April 2018. We said that, under our rules, other issues raised by Mr M and Miss M and not yet referred to Aviva would need to form the basis of a new complaint which Aviva must then have the opportunity to investigate before being referred to ourselves. We referred Mr M and Miss M's further complaints to Aviva on their behalf.

Mr M and Miss M's further complaints were that:

- there were issues with the removal of the downstairs toilet
- there were problems with Aviva paying contractors
- there are on-going problems with damp in the cellar
- there are on-going issues with the downstairs toilet
- there was poor communication between Aviva and its appointed loss adjusters
- there were problems with items missing from the schedule of works.

Aviva looked into Mr M and Miss M's complaint and issued its second final response letter in October 2020. It said it was willing to appoint an independent loss adjuster to scope for the works still required at the property. It also said it would cash settle the remainder of the claim because Mr M and Miss M had said they didn't want anyone appointed by Aviva to deal with the works. As this was the case, it also suggested they arrange for the works to be scoped themselves. It said it would then review their scope and cash settle the outstanding items.

With regard to Mr M and Miss M's complaint about poor communication, Aviva said that when its loss adjuster had visited the property in April 2018 they had told him to put the claim on hold whilst they had the house rewired. Aviva said it then heard nothing further from Mr M and Miss M until their second complaint was made in July 2020. So, it said, it didn't accept it was responsible for the delays with the claim.

Aviva said Mr M and Miss M's complaints about the quality of its contractor's works, and the way the claim was dealt with, had formed part of their previous complaint to this service. It said it was sorry that one of its sub-contractors has told them it wasn't being paid properly for the job. Aviva said this was unprofessional and wasn't something that should've been relayed to them at all. Aviva said it was sorry for the issues they'd experienced and offered them £250 in compensation.

Mr M and Miss M disagreed with Aviva's response to their complaint. They said Aviva's final response had failed to address certain elements of their complaint and they said the following works remained outstanding:

- an investigation into the leaking drain in the cellar
- painting and decorating of the hallway and the replacement of the floor covering
- a repair to the downstairs toilet along with the painting and decorating in the same room and the replacing of the floor covering
- rebuilding of the garden shed

Mr M and Miss M told Aviva they had now started investigations into the damp patches on the cellar floor and possible leaking drains. They also said that Aviva's offer of compensation was inadequate.

Our investigator looked into Mr M and Miss M's second complaint and issued his findings in February 2021. He said that the issue with the removal of the downstairs toilet (namely that it took too long to refit and that Miss M was having trouble accessing the upstairs toilet because of a disability) hadn't been conveyed to Aviva at the point the difficulties were being experienced.

From Aviva's file notes he noted that there had been a problem with paying contractors in around March 2018 which Aviva had endeavoured to address. He said he'd not seen enough evidence to allow him to reasonably conclude that the damp in the cellar was the result of a poor repair by Aviva. He said he thought Aviva's offer to appoint a new loss adjuster would allow an inspection to ascertain the cause of the problem. Our investigator thought this was a reasonable solution. Similarly he said he had seen no evidence that the problems Mr M and Miss M had reported with the toilet were the result of a failed repair by Aviva but he thought the offer for a new loss adjuster to inspect the issue was fair.

With regard to Mr M and Miss M's complaint about experiencing poor communication, our investigator didn't think, from the available evidence, that Aviva was responsible for any issues since April 2018.

Finally, our investigator noted that he could see that there'd been a meeting at the house in March 2018 when it was agreed that contractors would attend to re-decorate the stairs and landing and a further meeting in April 2018 where it was agreed that woodwork in the hallways and on the stairs would also be included in the redecoration. He thought the omission of these items from the schedule of works caused a delay in the completion of the redecoration but, as Mr M and Miss M were having the house rewired anyway, their omission hadn't caused them significant inconvenience.

Overall, our investigator thought Aviva had handled Mr M and Miss M's complaint fairly and reasonably by offering to appoint another loss adjuster and by paying them compensation of £250, so he didn't recommend that their complaint was upheld.

Mr M and Miss M replied to our investigator to say that they disagreed with his findings setting out in some detail why that was. In short they said:

- Aviva's notes on their claim are unreliable and not a true account of events
- That they had previously told us about the problems with the downstairs toilet
- That they had now arranged for an inspection of the downstairs toilet, and that a replacement toilet was recommended. Two quotes were provided
- The loss adjuster's review of the CCTV footage of the drain was incorrect
- It was untrue that they put the claim on hold in April 2018; it had been stopped by Aviva in March 2018
- We can't limit which actions of Aviva's we are looking at because of the previous complaint we've looked at
- That they'd said previously their investigations into the cause of the damp in the cellar were ongoing and they'd recently been informed that their drains were leaking and had caused damage to a party wall. They said they were arranging for a building survey to assess the damage but in the meantime sent in a CCTV of a drain survey they'd had done
- Mr M and Miss M said the only reasons there were still ongoing issues with their toilet and the drains was as a result of the poor workmanship by Aviva.

Our investigator looked at everything again and issued a second view but wasn't persuaded to change his mind. He said his view about the removal of the downstairs toilet and any issues caused by the delay in its replacement was unchanged; if there was an issue with Miss M being able to access the toilet, then he would've expected this to have been raised with Aviva at the time. With regards to the problems with the replaced downstairs toilet, he said he'd passed the quotes to Aviva and it had said they provided no comment on what the cause of the problem with the downstairs toilet was so, based on the information to hand, he remained of the view that Aviva's offer to appoint a new loss adjuster to inspect the toilet was fair and reasonable.

He said Aviva needed to review the CCTV of the drains after which it would respond to their claim. If they were unhappy with that response then Mr M and Miss M could raise a further complaint. He said his view about the poor communication and putting the claim on hold remained unchanged as there was no new evidence about this issue. Our investigator also said to Mr M and Miss M that once an ombudsman has made a final decision on a complaint the issues can't be re-visited or looked at again. He said that meant our service was unable to consider how Aviva handled their claim before 27 April 2018.

Mr M and Miss M replied to our investigator to say they didn't think he'd listened to what they'd said and that there were errors in his findings that he'd failed to correct. They repeated many of the points they'd made previously. They said they'd raised the issue about the removal of the downstairs toilet with Aviva's loss adjuster in August 2017. If he failed to

pass their views on to Aviva then that demonstrated there was poor communication. Mr M and Miss M said it was inappropriate for our investigator to comment about the ongoing issues with the downstairs toilet because they had agreed with Aviva that the remainder their claim would be cash settled so the issue of the cost to replace the downstairs toilet is one to be resolved between them and Aviva directly. They said they had sent a cause of damage report to Aviva regarding the toilet. They also said their first complaint hadn't been the subject of a full and proper investigation by my ombudsman colleague. They said they had successfully challenged his investigation (through making a service complaint) and received an apology. So, Mr and Miss M said this current complaint could include those issues that hadn't been included in the first ombudsman's investigation. Mr M and Miss M asked for their complaint to be referred for an ombudsman's decision.

Prior to the complaint being looked at by me, Mr M and Miss M sent our investigator a report prepared on their behalf in June 2021 by a chartered surveyor. Specifically he looked into the adequacy of the underground drain repairs carried out by Aviva's contractors in August 2017 concluding that there was a significant shortcoming in the drain repair work. He commented that a replaced section of underground drainpipe had been inadequately joined to an existing drainpipe. He thought this shortcoming would result in constant drain leakage and could only be resolved with further invasive works.

Our investigator sent the report to Aviva for comment. He also issued a third view addressing the issue of the ongoing damp in the cellar about which he thought that Mr M and Miss M's expert had been able to show that the repairs carried out by Aviva in 2017 were inadequate and had consequently caused the ongoing moisture issues in the cellar. He said that if the repair had been carried out properly in the first place then there'd have been no need for Mr M and Miss M to arrange and pay for a CCTV inspection or a survey by a chartered surveyor.

Our investigator said that because Aviva had entered into a contract of repair it must complete it to the proper standard. Because of the breakdown in the relationship between Mr M and Miss M and the previous contractor, our investigator thought that Aviva should appoint a different contractor to complete the works. He said too that Aviva should reimburse Mr M and Miss M the cost of their surveyor's report and their CCTV survey and pay them interest at this service's usual rate. Finally, for the additional inconvenience Mr M and Miss M had been put to he recommended that Aviva pay them a further £250 in compensation.

Mr M and Miss M replied to say that our investigator's recommendations were inappropriate because they had previously accepted Aviva's offer to cash settle their claim so the appointment of any new contractors was for them to make, not Aviva. They said too that they had already provided estimates for repairs to the drains to us and to Aviva and that the damage was worsening. And they said that a party wall agreement needed to be put in place between them and their neighbours before the repairs could begin which Aviva would have to pay for. They said their surveyor's fee was £2,142.22.

Aviva replied to say it had asked its drainage team to appoint different contractors and had paid the recommended additional compensation to Mr M and Miss M.

Our investigator asked Aviva about cash settling the claim, as preferred by Mr M and Miss M. He also asked it about the costs of the worsening damage and the costs of obtaining the party wall agreement. Our investigator forwarded the surveyor's invoices to Aviva and proof of payment for the CCTV survey. He also said there was an outstanding reimbursement due to them for the cost of rebuilding their hallway cupboard (for £840.45) which he asked Aviva to consider.

Aviva replied and said it was happy to cash settle for the drains repairs and had asked its own contractor to provide it with a costing. It said Mr M and Miss M's quote for the repairs was from a contractor that was known for being expensive. It said it didn't accept that it was responsible for all the additional damage given it took nearly two and a half years for Mr M and Miss M to raise the issues with it so it should've been sorted out much sooner. It said it would consider and revert on the party wall issue. And finally Aviva said it'd paid Mr M and Miss M already (in April 2021) for the cost to rebuilding the hallway cupboard and that it would now reimburse the surveyor and CCTV fees.

Mr M and Miss M then wrote again to our investigator to say that he wasn't up to date with what was happening with the claim. They said he'd made no mention of the outstanding reinstatement works – namely for the replacement of the downstairs toilet, painting and decorating the hall and downstairs toilet, replacement of the hall and downstairs toilet flooring and payment for the cost of materials to rebuild the shed. They also said Aviva had already reimbursed them for the cost of the CCTV survey (with interest) so this was no longer outstanding.

Aviva told our investigator that its original survey made no mention of the need for a party wall agreement.

Our investigator then issued a fourth view on this complaint. He recommended that Aviva pay for the costs associated with obtaining a party wall agreement as it was clearly something Mr M and Miss M's surveyor had identified as being necessary. He said he didn't think he could make Aviva reasonably pay for any additional damage caused by the ongoing leaking drains during delays that were outside of its control (he reiterated that he had previously stated that he didn't think Aviva could be said to be responsible for any delays in the claim after April 2018).

Mr M and Miss M replied to say they disagreed with our investigator's recommendations. They restated that Aviva's cash settlement offer (in respect of the drains) failed to include the other reinstatement works still needed. They said our investigator and Aviva had ignored the settlement for these works. They said Aviva should be responsible for the cost of repairing any future additional damage caused when the excavation works were carried out and for the cost of the party wall agreement.

Aviva replied to say it was happy to accept our investigators' recommendations.

The complaint was passed 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.

This complaint relates to 6 separate issues Mr M and Miss M raised with Aviva after my ombudsman colleague issued his final decision on their first complaint in August 2017. To be clear, I won't be reconsidering any of the issues that formed part of that previous complaint. And, in any event, Mr M and Miss M set out the nature of their second complaint (as listed by me on the first page of this decision) so this decision is confined to considering them alone.

I appreciate that the detail of their complaint is well known to Mr M and Miss M. I have set out quite a lengthy chronology of events in the '*what happened*' section above. But I don't need to set out every comment or point made in order to reach a fair and reasonable decision about their complaint. I have taken all the information material to Mr M and Miss M's

complaint into account in order to reach a fair and reasonable decision about it. If I haven't referred to something specifically that doesn't mean I haven't given it my consideration.

I will consider each aspect of Mr M and Miss M's complaint under a separate heading.

Issues with the removal of the downstairs toilet

The issues relating to the removal, replacement and reinstatement of the downstairs toilet by Aviva relate to a short delay in the works being carried out during which time the upstairs toilet had to be used. Mr M and Miss M say that Miss M had difficulty accessing the toilet because of a disability.

The toilet was removed in August 2017 and reinstated three weeks later in September 2017. Mr M and Miss M raised their first complaint with Aviva in April 2018 and with this service shortly thereafter within which no mention was made of any issue with the downstairs toilet. Mr M says that in a letter to this service in August 2018 (presumably in connection with the first complaint) he told us that he'd rung the loss adjuster numerous times about the refitting of the toilet and the difficulties Miss M was experiencing. He says he expected this service to have passed that information on to Aviva.

I've checked the loss adjuster's case notes and I can't see any that there were any calls where this issue was discussed. I appreciate Mr M's strength of feeling about his issue and his view about the reliability of Aviva's record keeping. But I have no reason to doubt that Aviva/its loss adjuster logged the calls it received. And unfortunately there's no evidence that Mr M drew the issue of the inconvenience this was causing Miss M to Aviva's attention before the second complaint was made in July 2020.

That being the case, Aviva hadn't been given the opportunity to address the issue at the time it was going on. So I can't reasonably hold it responsible for adding to the inconvenience Miss M endured, when it knew nothing about there being a problem until over two years later.

Problems with Aviva paying contractors

Mr M and Miss M say that in March 2018 the contractors told them they didn't have enough money to complete the works. Mr M says he then spent time trying to contact the loss adjuster to discuss this, but didn't hear back and didn't know what was happening with the claim for 10 days.

Aviva accepts the conversation with the contractor about the payment happened, was unprofessional and shouldn't have taken place. It says that is an issue between it/the loss adjuster and the contractor.

It's not our role to investigate the specific payments that were, or weren't, made by Aviva to contractors. We're here to look at the handling of the insurance claim as a whole and consider any avoidable delays that have been caused by Aviva or their contractors.

Whilst there does seem to have been a problem that was caused by Aviva and its contractors that could have been avoided, I can see that Aviva has apologised to Mr M and Miss M. I think Aviva's apology is a fair and reasonable response to this aspect of Mr M and Miss M's complaint and I'm not minded to make it do any more.

There are on-going issues with the downstairs toilet

In its final response letter Aviva said that whilst it was happy to appoint an independent loss adjuster to scope for the works still needed at Mr M and Miss M's property, it also acknowledged that they didn't want anyone appointed by it to be involved in the repairs. So, as an alternative, Aviva suggested that Mr M and Miss M provide their own scope of works which it was then willing to review in order to cash settle the claim. It's reasonable to assume this offer extends to scoping to rectify any issues that remain with the downstairs toilet. Our investigator said that, in the absence of any cause of damage report, Aviva's offer was reasonable.

I can see that Mr M and Miss M instructed their own contractor to inspect the downstairs toilet and provide a quote to repair it. That inspection took place in mid-December 2020. Photographs were also provided. I note that all this information was sent to Aviva in early February 2021. The report from Mr M and Miss M's contractor says: '*Downstairs toilet was taken out and not refitted properly and is loose (moves from side to side) this needs to be refitted on [sic] a new toilet needs to be fitted need to make good around new waste pipe*'.

Mr M says this report proves that the toilet needs to be replaced; I don't agree. I think this report shows that the toilet is loose and can be *either* refitted or replaced. There is no suggestion that there is any fault with the toilet itself therefore I can't see any reasonable need for it to be replaced. As the problem is with the fitting rather than the toilet itself, any cash settlement need only be confined to the cost of doing so.

The issue with the removal of the downstairs toilet seemed to me to have been overlooked (and unresolved) in the latter stages of Mr M and Miss M's complaint. I asked our investigator to contact Aviva and to ask if it would agree an amount could be included within the cash settlement for the refitting the downstairs toilet. As Mr M and Miss M are now aware, Aviva has agreed to do so. But, as it is Mr M and Miss M that have elected to cash settle then Aviva need only do so based on what it would cost its contractors to do the work. Under the policy terms Aviva is not required to base its cash settlement in such circumstances on the policyholder's quotes.

Mr M and Mrs M have also submitted a quote from a flooring contractor for a replacement vinyl floor in their downstairs toilet. Unfortunately there's no mention on the quote that the existing vinyl flooring has been damaged by Aviva's contractors. In the absence of such evidence, Aviva's offer to appoint a new loss adjuster to inspect any outstanding issue (or for Mr M and Miss M to scope/provide a cause of damage report) which still stands, is reasonable position to take. I'm not going to make Aviva do any more in respect of the vinyl floor covering.

There are on-going problems with damp in the cellar

Mr M and Miss M's chartered surveyor produced a report that demonstrated that the ongoing damp issues in the cellar were a result of a poor repair by Aviva. Aviva has accepted the conclusions reached in the report and has agreed to Mr M and Miss M's request to cash settle for the required repairs based on a costing prepared by its own contractor. That seems reasonable to me.

Mr M and Miss M have said that Aviva should be responsible for any additional damage that's been caused as a result of the leaking drains. But I don't think I can fairly make Aviva pay for any expansion of the damage caused whilst the claim was delayed for reasons outside of its control. Aviva is responsible for the damage caused as a result of its failed repair.

Aviva has paid for the CCTV survey together with interest at this service's usual rate of 8% simple per year. It has also said it will pay the costs Mr M and Miss M incurred in instructing their own surveyor, also with interest. This seems reasonable to me.

Mr M and Miss M's surveyor has said that a party wall agreement is necessary before excavation works can commence. Aviva accepts this and has said it will meet the cost of obtaining such an agreement. I think it is only fair that it does.

Mr M and Miss M have also said that Aviva should also be responsible for the cost of repairing any future additional damage caused when the excavation works are carried out. I'm afraid I can't agree. I can't make Aviva liable for something that hasn't yet happened. And, if they accept a cash settlement for the remainder of the claim (rather than allowing Aviva to complete the additional works needed), Mr M and Miss M should be aware that Aviva won't retain responsibility for the standard or quality of the work of any contractor they themselves appoint.

Poor communication

I don't think, from the available evidence, that Aviva was responsible for any communication issues since April 2018. I can see from the claim notes that in mid-April 2018 Mr M and Miss M asked Aviva to put the works on hold because they were having the house rewired. Aviva agreed to do so. Aviva didn't hear from Mr M and Miss M again until July 2020 when this, their second complaint, was made. The notes suggest that it was agreed that Mr M and Miss M would let Aviva know when the re-wiring was completed. So I don't think, given this was what was agreed, that it was unreasonable for Aviva not to have contacted them.

There were problems with items missing from the schedule of works.

I can see that there was a meeting at the house in March 2018 when it was agreed that contractors would attend to re-decorate the stairs and landing and a further meeting in April 2018 where it was agreed that woodwork in the hallway and on the stairs would also be included in the redecoration. These items appear to have been omitted from the schedule of works but as Aviva has agreed that these redecoration works are necessary, if its contractors never returned to do them, they should be now be included in the cash settlement to be paid to Mr M and Miss M.

I understand the cost of rebuilding the hallway cupboard (£840.45) was paid to Mr M and Miss M by Aviva in April 2021.

Compensation

Aviva paid Mr M and Miss M compensation of £250 for the issues they'd experienced and our investigator recommended a further £250 was paid to them for the inconvenience they were put to in proving that the ongoing damp issues were caused by Aviva's poor workmanship. I understand Aviva has already paid this to them.

So overall Mr M and Miss M have received total compensation of £500. All insurance claims attract a certain level of inconvenience; that's to be expected. But where an insurer, through its words or deeds causes avoidable additional distress and inconvenience, above and beyond that which is normally associated with an insurance claim, this service can require it to pay compensation. I've thought about the avoidable distress and inconvenience Aviva caused Mr M and Miss M and I think that compensation of £500 is a fair and reasonable amount in all the circumstances. It is in line with awards made by this service in similar complaints and if the matter had passed across my desk without any such award having already been made, it's unlikely I'd have awarded any more than this.

Putting things right

To put matters right for Mr M and Miss M I think that Aviva needs to do the following:

- Include within any cash settlement of the claim made an amount, based on its own contractor's rates, to properly refit the downstairs toilet.
- If it's not already done so, to pay Mr M and Miss M the cost they incurred (£2,142.22), subject to them providing the necessary invoices, in engaging their own chartered surveyor to inspect the drains.
 - It should pay interest on this amount at this service's usual rate of 8% simple per year from the date the invoices were paid until the date it settles my award.
- If it's not already done so, to pay Mr M and Miss M the cost they incurred in instructing their own contractor to carry out a CCTV survey of their drains.
 - It should pay interest on this amount at this service's usual rate of 8% simple per year from the date the invoices were paid until the date it settles my award.
- Meet the cost of Mr M and Miss M obtaining a party wall agreement.
- Pay Mr M and Miss M cash for the required repairs to their drains based on a costing prepared by its own contractor.
- If cash settlement for the redecoration of the stairs and landing and the woodwork on the stairs and in the hall is yet to be made then it should be paid as agreed at the site meetings in March and April 2018.
- Consider Mr M and Miss M's other reinstatement work requests as presented namely for the redecoration of the downstairs toilet, replacement of the hallway flooring and the material costs associated with rebuilding the garden shed.
- If income tax is to be deducted from the interest, appropriate documentation should be provided by Aviva to Mr M and Miss M for HMRC purposes.

Our investigator asked Aviva to pay Mr M and Miss M further compensation of £250, which for the reasons I gave above, I think was fair in all the circumstances. Providing it has paid this additional sum to them already – as stated – it need not pay anything further.

My final decision

My final decision is that I uphold this complaint and require Aviva Insurance Limited to take the steps I've set out in the '*putting things right*' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Miss M to accept or reject my decision before 18 February 2022.

Claire Woollerson
Ombudsman