

The complaint

Miss K complains that Aviva Insurance Limited hasn't accepted her claim for subsidence damage under her buildings insurance policy.

Any reference to Aviva includes the actions of its agents.

What happened

In November 2021, Miss K took out buildings insurance cover with Aviva. She made a claim in May 2022 after noticing cracks in the property and movement to her front door.

Aviva turned down the claim. It said there was no evidence that the damage was caused by subsidence. Its agent thought the damage was likely caused by thermal movement. Miss K brought a complaint to the Financial Ombudsman Service.

On 31 January 2023, my ombudsman colleague issued a final decision on the matter. He said Aviva hadn't shown what inspections or testing it had carried out at the property. As Miss K thought a possible cause of the damage was standing water underneath the property, he thought Aviva should address this in its investigation. He concluded that Aviva should reconsider the subsidence claim and carry out further investigations to establish the cause of damage.

Aviva then carried out further investigations. Miss K complained to Aviva about the lack of progression. Aviva issued a final response on the complaint on 7 November 2023. It said it had completed monitoring at the property and its agent would be in contact with her to discuss the results. Unhappy with this, Miss K brought a second complaint to us.

Our investigator recommended the complaint be upheld. He looked at images of the property in 2022 which showed cracking above the front door, and a tilting door frame. He said earlier images from 2015 didn't show this damage, and so he thought it was more likely than not that the damage had happened after Miss K had taken out the policy. He recommended Aviva carry out repairs, and also pay Miss K £600 compensation for its handling of the claim.

I issued a provisional decision on 23 April 2024. Here's what I said:

'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.'

Miss K's complaint to Aviva was about the progression of her claim in 2023. When Aviva issued its final response on the complaint, it hadn't made a claims decision following its further investigations. However, I see from Aviva's correspondence with our investigator that it remains of the view that the claim isn't payable. Aviva didn't raise any concerns with our investigator considering this point, and therefore I've considered the same.

The policy covers subsidence damage. Subsidence is defined as the downward movement of the ground beneath the buildings other than by settlement. The policy explains it doesn't cover the bedding down of new structures, settlement, movement of made-up ground,

shrinkage or expansion.

Aviva's agent initially visited the property in May 2022. They said there was no evidence of current or progressive subsidence, as there was no rotational movement of the property, or signs of tapering cracks. They thought the damage was due to thermal/moisture movement which had been aggravated by warm summer months.

The agent revisited the property in May 2023. They said there was significant distortion to the front bay with the right-hand side out of level by around 40-50mm. They thought this was historic damage because Miss K had had external insulation and render installed to the front of the property around ten years previously, and there was no cracking to this. They noted similar distortions to other bay windows in the street. The agent also said there was some internal cracking. They said they would arrange site investigations to try and determine the cause of the damage.

Aviva arranged for a CCTV survey of the drains, but this found no issues.

Aviva also arranged for a trial pit to be excavated. This confirmed there was silty clay soil beneath the property. Groundwater was found, but no vegetation roots. The report said that groundwater levels would be subject to both seasonal and weather induced variations.

When a property is built on clay soil, this can lead to subsidence when the soil shrinks during dry weather. Aviva has provided crack monitoring reports with data between 30 May 2023 and 8 September 2023. It arranged this monitoring to see if there was ongoing movement at the property (which could indicate subsidence).

Aviva hasn't provided its findings on the crack monitoring reports, though I can see there was some movement recorded (though not significant). However, although Aviva says it carried out monitoring for six months, it has only provided just over three months of monitoring data. This isn't enough to show the movement a property may experience over the different seasons.

Our investigator thought it was more likely than not that the damage had occurred at the property after Miss K had taken out the policy in 2021. He said images taken of the property in 2022 show the damage, whereas images taken in 2015 do not.

Whilst the images indicate the damage to the exterior happened between 2015 and 2022, we don't know that it happened after the policy started in 2021. Though in any event, it hasn't been shown that the damage was caused by subsidence. Although cracking in a property can be a sign of subsidence, that isn't always the case. There can be other reasons for cracking and movement to a property.

As the available evidence doesn't show that damage has been caused by subsidence, I can't reasonably require Aviva to accept the claim. However, as I've said, I don't think Aviva has carried out sufficient monitoring at the property. Taking into account that there is clay soil present, I intend to require Aviva to carry out a further six-month period of monitoring. It can then compare the new readings to the ones taken in 2023 and make a decision on the likely cause of damage.

I think Aviva's handling of this claim has caused Miss K unnecessary inconvenience and upset. If it had carried out a sufficient period of monitoring in the first place, it wouldn't need to carry out another period of monitoring now. Also, I see that Miss K was anxious for the claim to progress, yet Aviva took three months to arrange for its agent to carry out a second inspection. And Aviva took its final monitoring reading on 8 September 2023, but still hadn't provided Miss K with its findings by 7 November 2023. I intend to require Aviva to pay

Miss K £400 compensation for the inconvenience its handling of the claim has caused her.

Miss K has told our investigator that Aviva has decided not to renew her cover, and she's unhappy about this. Miss K should raise her concerns directly with Aviva in the first instance. If she's unhappy with its response, she may be able to bring a new complaint to us.'

I asked both parties for any further points or evidence they wanted to provide before I made a final decision.

Miss K didn't accept my provisional findings, and responded with the following main points:

- She doesn't think a further six months of monitoring will help, and she wants Aviva to repair the property.
- She contacted the water company on 6 June 2022 to tell them about the cracks in her property, and they called her back to say they had found a defect on the main sewer. The water company attended soon after and carried out some work. She says the water company told her to make a subsidence claim.
- After she made a subsidence claim, she says Aviva's agent told her the property had subsidence, and arranged some investigations. When the trial pit test took place, the contractors said the drains were leaking. When the crack monitoring took place, the readings for two locations had been inserted the wrong way around.
- She explained the impact the matter has had on her, and says the doors and windows have all collapsed and this has prevented her from obtaining a government grant for home improvements.
- She strongly believes the damage was caused by the water company's leaking drains, and she thinks that because repairs have taken place, monitoring won't show subsidence.
- She provided some photos of her home, and said more cracks have recently appeared to the property's exterior.

Miss K also provided a copy of the water company's report, a letter from Aviva's agent, an audio recording of the contractor who placed the readings, and some video recordings.

Aviva accepted my provisional 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.

Miss K is concerned that further monitoring won't show subsidence, because the water company has already carried out a repair.

I've looked at the report Miss K has provided from the water company. It's undated, but it explains that their engineers visited the property on four occasions in early June 2022.

On 6 June 2022, the engineers noted there were cracks on an interior wall in the property which were on the other side of the property from the sewer - they carried out CCTV from the closest manhole and found no defects on their assets. Then on 8 June 2022 they carried out a CCTV cleanse from the manhole in front of the property upstream to a manhole at the rear of the property. A defect was found on the connection to the main sewer which they said could have been causing recurring blockages. They returned on 10 June 2022 to complete the follow-on work required to remove an interceptor trap located in the manhole, then again on 15 June 2022 to install a liner on a drain.

Subsidence can be caused by leaking drains (as the soil can be washed away from the foundations, causing downward movement of the ground). There was a defect found on the connection to the main sewer and some work was carried out as a result, and the water company thought this might have caused blockages. But that doesn't necessarily mean there was an escape of water or waste to the area of soil surrounding the pipe connection to the sewer.

It's also the case that Aviva's agent visited the property on 30 May 2022, which was a few weeks before the water company carried out the repairs. At that time, Aviva's agent said there was minor damage to the property. However, when they revisited in May 2023, they noticed significant distortion to the front bay, and internal cracks, as well as gaps around the windows. This suggests that damage happened after the water company carried out their repairs. Miss K also recently told us that further damage is still happening to the property. If the cause of the damage had been the defect found on the sewer pipe, then I wouldn't expect any further damage to have occurred after this was addressed by the water company.

Miss K says that Aviva's agent told her that the property had subsidence before they arranged the further investigations. I've again read Aviva's agent's report of May 2023. This says the claim was being deferred pending further investigation to determine if there had been subsidence. The agent said they planned to arrange site investigations and crack monitoring to establish the cause of the movement. This supports that Aviva's agent hadn't made any finding on the cause of the damage at that point.

Miss K has provided me with some video recordings (from the CCTV outside her home). Unfortunately, I'm not able to view these. However, Miss K has explained that the recordings show the contractors that attended for the trial pit test. She says that when she asked them what they'd found, they said there was still a lot of water with a bad smell. And also said "*that explains the bad smell, drains were leaking*". Although I haven't been able to view the recordings, I have no reason to doubt Miss K's explanation of what was said.

So I've again looked at the site investigations carried out by Aviva. It had arranged a CCTV survey of the drains, but this found no problems. I'm therefore satisfied the drains weren't leaking. Although the contractors said the drains were leaking, I assume this was speculation on their part, as a CCTV survey of the drains would have confirmed if this was the case. The trial pit investigations confirmed that a water strike was encountered with standing water. It seems this was groundwater, and the report says that groundwater levels are subject to both seasonal and weather induced variations.

Whilst there was groundwater present, that doesn't mean that there is downward movement of the ground because of this. So although Miss K wants me to require Aviva to carry out repairs, it wouldn't be appropriate for me to do so until the cause of the damage has been confirmed to be subsidence. At the moment, there isn't enough evidence to support this.

I therefore remain satisfied that an appropriate way forward is for Aviva to carry out a six-month period of monitoring.

It seems there was some confusion over the previous monitoring that took place. Aviva's agent told Miss K in August 2023 that the monitoring up to that point hadn't indicated any significant movement, but it appeared the reading for two locations had been inserted the wrong way round and showed movement. They said that when the readings were put back, there was no movement.

Miss K has provided an audio recording from the contractor who placed the reading. When she told him what Aviva's agent had advised about the reading being inserted the wrong way round, he said there was only one way round to take the reading. So it's not clear to me what happened here, but when further monitoring takes place, this should show whether or not there is progressive movement at the property.

My final decision

My final decision is that I partly uphold this complaint. I require Aviva Insurance Limited to do the following:

- Carry out a further six-month period of crack monitoring, and then make a claims decision.
- Pay Miss K £400 compensation.*

*Aviva must pay the compensation within 28 days of the date on which we tell it Miss K accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 17 June 2024.

Chantelle Hurn-Ryan
Ombudsman