

## **The complaint**

Mrs S was unhappy that Aviva Insurance Limited (Aviva) declined her claim for a damaged drain and didn't repair the trench it created when trying to identify the cause.

## **What happened**

In summary, Mrs S had plumbing and drainage insurance underwritten by Aviva. She claimed under the policy after noticing a bad smell in her kitchen. Aviva attended and dug a trench in the kitchen and hall floor to locate the area of the drain it believed to be the problem. Aviva stopped work suddenly because it was concerned about causing structural damage to the house if it continued into the floor void. It advised Mrs S to raise a claim under her home insurance (a different business) and effected a temporary repair to the floor.

The home insurer identified where the damage was, and its expert report concluded that the drain had suffered damage as a result of an ongoing cause. Previous structural work had caused the drain to belly and develop holes. The insurer declined Mrs S's claim because her policy didn't provide cover for ongoing causes. The expert report also concluded that Aviva had dug the trench in the wrong area of the kitchen.

Mrs S went back to Aviva and asked it to repair both the kitchen floor and the drain. Aviva said its policy didn't provide cover for ongoing causes, so it also declined the claim. It offered Mrs S £100 by way of apology for digging the trench in the wrong part of her floor and reimbursed the £400 home insurance policy excess that she'd paid.

Unhappy with Aviva's final response, she brought her complaint to us.

Our investigator said Aviva had fairly declined the claim for the reasons given, but she said it should repair the damaged floor. On further consideration, our investigator didn't think Aviva could rely on an exclusion which wasn't specified in the policy. She said Aviva should also reconsider the claim for the damaged drain.

Aviva didn't agree that it needed to reconsider the claim.

I issued a provisional decision in July 2023 explaining that I was intending to uphold Mrs S's complaint. Here's what I said:

## **provisional findings**

*To begin with, I'll address the issue of the damaged kitchen floor. It seems there's no dispute that Aviva dug the trench in the wrong place, leaving Mrs S with a floor that needed a permanent repair.*

*Aviva offered £100 by way of apology for digging up the wrong area of her home to fix the drain. However, I don't think that's enough. Although Aviva did leave Mrs S's home with a temporary repair, I'm satisfied that Aviva should've paid for, or completed the work to restore the kitchen to its condition prior to the excavation.*

*Moving on, the key issue of complaint here is that Mrs S thinks Aviva failed to carry out the work she could reasonably have expected under her plumbing and drainage insurance. The policy provided for repairs and temporary reinstatement in the event of a leak from the drainage pipes. But, because Aviva thought the property would suffer structural issues if it continued trying to access the drain, it directed Mrs S to her home insurer for a permanent repair.*

*I've already addressed the fact that Aviva excavated in the wrong place. So, I've thought carefully about whether directing Mrs S to her home insurer was reasonable in the circumstances. Aviva believed the problem was outside the cover it provided for Mrs S, so I don't think it was wrong to recommend that she seek assistance from her home insurer.*

*The home insurer identified where the damage was, and its expert report concluded that the drain had suffered damage as a result of an ongoing cause. Its report said previous structural work had caused the drain to belly and develop holes. The insurer declined Mrs S's claim because her policy didn't provide cover for ongoing causes. The expert report also concluded that Aviva had dug the trench in the wrong area of the kitchen.*

*If Mrs S's home insurer had accepted the claim, Aviva's liability would've been limited to making a permanent repair to the trench it dug in error. But, because the insurer declined the claim, Mrs S thought Aviva should pay for the work needed. However, the home insurer provided a copy of the survey it completed to assess the damage, and the expert opinion is that the damage was gradual due to bedding down of structures.*

*Mrs S's policy with Aviva also excluded cover for gradual damage, so it declined the claim.*

*I understand Mrs S doesn't think Aviva should rely on the home insurer's report, but I don't agree. I think it's reasonable for Aviva to rely on the report provided by the home insurer's expert setting out the cause of the damage. Therefore, it's reasonable for Aviva to decline cover for the same reason. Aviva is simply relying on an expert report, regardless of who it was originally prepared for.*

*Under the heading of General Exclusions, the policy sets out that it doesn't cover "bedding down of new structures". So, I think Aviva declined the claim fairly and in line with the policy exclusion.*

*Finally, I've thought about the compensation Aviva offered along with its payment of her £400 home insurance policy excess. I haven't seen anything in the evidence to indicate that Aviva inappropriately directed Mrs S to her home insurer, so I wouldn't have required Aviva to pay the excess. Therefore, I think it's decision to pay her £400 policy excess was fair and reasonable in the circumstances.*

*To put matters right, I think Aviva should either complete a permanent repair to the kitchen floor, or cash settle the reasonable, evidenced costs of repair provided by Mrs S.*

I said I was intending to require Aviva Insurance Limited to:

- either complete or pay for the reasonable costs of a permanent repair to Mrs S's kitchen floor.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Mrs S confirmed that she'd had the repair done and provided a copy of the invoice. Because the repair was completed, Aviva agreed to pay the reasonable cost.

### **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.

As both Mrs S and Aviva agreed to resolve the complaint in the way I proposed, there's no further evidence to consider. Therefore, my final decision is that I uphold Mrs S's complaint.

Mrs S confirmed that the repairs are complete, and she provided evidence of the costs. Aviva acknowledged receipt of the invoice. For completeness, I've removed the option for Aviva to complete repairs. But, as this doesn't make a material difference to the outcome – it simply provides clarification - my final decision amounts to the same as my provisional decision and for the same reasons.

### **My final decision**

For the reasons I've explained above, and in my provisional decision, I uphold Mrs S's complaint and Aviva Insurance Limited must:

- pay for the reasonable costs of a permanent repair to Mrs S's kitchen floor.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 12 September 2023.

Debra Vaughan  
**Ombudsman**