

The complaint

Mrs S complains that Aviva Insurance Limited declined a claim she made under home insurance policy for subsidence.

What happened

As the circumstances of this complaint aren't in dispute, I'll summarise what's happened.

- Mrs S got in touch with Aviva after noticing damage to the front of her home. Aviva appointed a loss adjuster who inspected it.
- The loss adjuster said the nature of the damage suggested the cause was subsidence, most likely as a result of a water leak. They also said they thought the damage had been ongoing since 2008, based on photos.
- Aviva declined the claim because it said the damage began before the policy did.
- Our investigator didn't think Aviva had acted fairly. He said the policy term relating to pre-existing subsidence damage only applied if Mrs S knew about it – and there was no evidence to suggest she did. And since the problem was ongoing, he thought Aviva should reconsider the claim.
- Mrs S agreed with this but Aviva didn't, so the complaint has been passed to me.

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.

- Having done so, I agree with the position reached by the investigator. I'll explain why.
- The policy covers damage to the building caused by subsidence, subject to a number of policy terms. It seems to be accepted the damage has been caused by subsidence.
- It's not clear what policy term Aviva has relied on to decline the claim, which is disappointing. All it's said is that the damage is 'pre-existing'. There's a policy term which says subsidence isn't covered if Mrs S "knew when this policy started that any part of the buildings had already been damaged by subsidence".
- For Aviva to rely on this policy term, it would need to show the following:
 1. Subsidence damage began before the policy did, *and*
 2. Mrs S knew about it, *and*
 3. It would be fair and reasonable in the circumstances to rely on it.

- Aviva accepts it hasn't carried out full investigations. For example, it hasn't surveyed the drains its loss adjuster thinks may be leaking. And whilst it says the damage has 'potentially' been ongoing since 2008, it hasn't provided a professional report to clearly articulate its reasoning for this. It's provided a few photos which I'm not satisfied support its position. Again, this is disappointing.
- So Aviva hasn't identified the cause of the problem – or established that it has likely been ongoing prior to the start of the policy. Nor has it shown Mrs S was aware of the problem before the start of the policy.
- So I'm not satisfied Aviva has shown point 1 or point 2 apply here. That means it can't rely on the policy term to decline the claim outright.
- Even if it had shown this, I would go on to consider whether relying on the policy term would treat Mrs S fairly and reasonably in the circumstances.
- Bearing in mind the problem is ongoing, and the approach set out in the Association of British Insurers Domestic Subsidence Agreement, unless Aviva could show Mrs S had clearly been aware of the subsidence problem prior to the policy beginning, it's unlikely I'd find it had acted fairly and reasonably. Aviva ought to be aware of this agreement and it ought to have taken it into account when considering the claim.
- Overall, I'm very disappointed with the way Aviva has handled this claim. It hasn't shown any of the things it needed to show in order to decline the claim and doesn't seem to have considered a longstanding industry-wide approach.
- As a result, it's caused a significant delay investigating the claim – and that's left Mrs S to live with the damage and the uncertainty of how and when it'll be resolved for longer than they should have been.
- I'm satisfied that's caused Mrs S avoidable distress. I consider Aviva should pay £500 compensation to put that right. To be clear, this amount is solely to recognise the non-financial impact on Mrs S – it's not a payment towards the damage.
- The next steps are for Aviva to reconsider the claim, subject to the terms and conditions of the policy, to decide whether it's covered or not.

My final decision

I uphold this complaint.

I require Aviva Insurance Limited to:

- Reconsider the claim
- Pay £500 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 11 January 2024.

James Neville
Ombudsman