

The complaint

Mr B complains Aviva Insurance Limited (Aviva) completed ineffective repairs when he made a subsidence claim under his buildings insurance policy. He says this led to his property suffering from subsidence for a second time. And the reappearance of crack damage to his property led to a mortgage application being refused.

Any reference to Aviva includes the actions of its agents.

What happened

The circumstances of this complaint are well known to both parties, so I've summarised events.

Mr B has a buildings insurance policy which is underwritten by Aviva. He made a claim on the policy when cracks appeared in his home. The claim was accepted and following a period of monitoring, a hydration channel and root barrier was installed across his property's rear garden. The following year, internal remedial repairs were carried out over a period of several months.

In December 2021, Mr B was given a Certificate of Structural Adequacy, but eight months later, crack damaged reappeared in the same places.

Aviva attended and agreed further works were required. Mr B says he was told by Aviva that more robust above ground strengthening repairs should have taken place when the damage was first repaired. And so, he considers the inconvenience and distress he and his family experienced for a second time to have been avoidable.

The month before the damage reappeared, Mr B had applied for an equity release loan. But his application was later declined because of the reappearing crack damage to his property. He complained to Aviva saying due to its failure to complete effective repairs the first time, his financial situation had been negatively impacted - saying he'd missed out on lower interest rates, he hadn't had the benefit of the equity release, and had been required to pay a broker fee for an equity release loan which had solely failed because of the crack damage to his property.

Aviva said the declination of his loan application was too remote for it to be held responsible for any resulting financial detriment. And in doing so refused to cover the broker fee Mr B had paid. It said its expert had said the secondary subsidence wasn't foreseeable, and so, whilst it recognised Mr B had been inconvenienced and distressed by the situation, it didn't consider it to be at fault. It however, said it would pay £1,000 to recognise the difficulties Mr B had experienced, though it said doing so was not an admission of liability.

Mr B didn't accept Aviva's offer and brought a complaint to this Service. An Investigator considered it and upheld it. He was satisfied Aviva hadn't completed a lasting and effective repair when it carried out repairs to Mr B's property during his first subsidence claim, and so, was satisfied the distress and inconvenience he experienced for a second time was avoidable.

He said Mr B had also lost out on the opportunity of his equity release loan. He said Aviva should reimburse the broker fee Mr B paid following his failed application as the declinature was attributable to the crack damage – which he considered Aviva to be accountable for. He was, however, satisfied Aviva's offer of £1,000 compensation to be in line with awards this Service would make in the circumstances.

In response Mr B stressed his main concern was that he didn't consider the compensation to reasonably reflect the impact the situation had on him and his family. And how this had come at a time when he was experiencing health concerns himself. As Aviva didn't reply to the Investigator's view, and Mr B disagreed with the outcome, the complaint has been passed to me for an Ombudsman's 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.

Having done so, I agree with the outcome our Investigator reached – I'll explain why. Before I do, it's worth clarifying that I'm only considering those issues addressed in Aviva's final response letter. I'm aware Mr B has concerns about how the latest remedial works have been carried out, but as our Investigator explained, before we can consider these issues, he'd need to raise them with Aviva in the first instance.

Did Aviva carry out a lasting and effective repair?

The key issue here is whether Aviva completed a lasting and effective repair when it carried out repairs to Mr B's property following his first claim for subsidence damage. I'm not persuaded Aviva did and I'll explain why.

It's not in dispute the damage reoccurred a short while after the repairs were completed – Aviva refers to the damage reappearing eight months after the repairs were carried out. It's evident from this that steps Aviva took to stop the subsidence wasn't successful. So, on its face, it appears Aviva's repairs were not effective and lasting, as we'd expect.

Aviva has said the damage that reoccurred wasn't foreseeable. And there are occasions where this may be the case, but here, I'm not persuaded Aviva has evidenced this. I say this because when the latest crack damage was surveyed, Aviva identified that substantial repairs would be required to deal with the *"inherent weakness"* of the property. And that there was a need to *"tie the building together"* to address this. Aviva hasn't shown that the *"inherent weakness"* was a new issue or one which occurred between the first repairs being completed and the reappearance of the crack damage. And given the weakness was *"inherent"* – which to me suggests it relates to the core structure of the building - I'm more persuaded Aviva ought to have identified this – and the necessary repairs to deal with it – when it first carried out repairs to Mr B's property. So, I'm satisfied this was a failing on Aviva's part.

I also note the equity loan provider's surveyor said the *"the current cracking results from the choice of superstructure repair adopted."* This suggests it was Aviva's choice of repair that led to the cracking occurring/reoccurring. And Aviva hasn't provided evidence to counter this beyond saying the damage wasn't foreseeable.

So, for these reasons, I'm satisfied the damage reoccurred because a lasting and effective repair hadn't been carried out by Aviva in the first instance.

Distress and inconvenience

As I'm not persuaded Aviva carried out a lasting and effective repair, I'm satisfied the distress and inconvenience Mr B experienced as a result of having repairs completed for a second time was avoidable. And no doubt, the weeks of preventable upheaval, stress and inconvenience was felt more greatly by Mr B owing to his personal circumstances.

This, coupled with the disappointment and frustration he would have felt at having had his equity release loan declined, satisfies me compensation is warranted here. Having reviewed the circumstances of this complaint, I am satisfied Aviva's offer of £1,000 is in line with awards this Service makes. Whilst I appreciate Mr B doesn't consider this to be sufficient, I am only considering events relating to the reappearance of the crack damage following Aviva's repairs in 2020/2021 – which is the complaint that was brought to this Service.

Equity release loan

I agree with our Investigator's position that it wouldn't be reasonable to hold Aviva responsible for increased interest rates Mr B *may* be subject to should he make another application for an equity release loan. I say this because the general rise in interest rates is outside of Aviva's control, there's the possibility rates may fall in the future, Mr B might take out a loan on different terms, or with another provider. Simply, there are too many variables for me to conclude Aviva should be held accountable for this.

But I have seen evidence which satisfies me Mr B's equity release loan was declined solely because of the crack damage to his property – which reappeared *after* his loan application had been made and was in the process of being reviewed. Because I'm persuaded the damage reoccurred because Aviva hadn't carried out a lasting and effective repair, I consider it reasonable to direct Aviva to reimburse Mr B the cost of his broker fee (subject to proof of payment) because were it not for the crack damage, it appears his loan application would have been approved – and this broker fee would've resulted in the receipt of the loan.

My final decision

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

- reimburse Mr B the broker fee he paid following the declinature of his equity release loan (subject to proof of payment). Aviva must pay simple interest at 8% a year from the date Mr B made the payment to the date it is refunded.
- Pay Mr B £1,000 compensation. Aviva must pay the compensation within 28 days of the date on which we tell it Mr B 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 Mr B to accept or reject my decision before 11 January 2024.

Nicola Beakhust
Ombudsman