

The complaint

A company, which I'll refer to as H, complains that UK Insurance Limited, trading as NIG, declined a claim made on its commercial property insurance policy.

Mr P, who is a director of H, brings the complaint on H's behalf.

What happened

A claim was made in 2018 as a result of crack damage at H's property, in two main areas – the rear right corner of the extension and the nearby retaining wall. NIG appointed a loss adjuster, who inspected the damage. They didn't think it was covered by the policy.

H arranged for ground investigations and a structural engineer inspection to be carried out, both of which produced reports which were shared with the loss adjuster. They reconsidered the claim but maintained the damage wasn't covered by the policy. H complained.

NIG's final response said, in summary:

- The extension was suffering from subsidence as a result of being built on made ground – which is excluded from policy cover.
- The retaining wall was failing due to inadequate construction and water pressure – neither of which is covered by the policy.

H didn't think NIG had considered the cause of the damage thoroughly. It said that, for example, the loss adjuster's inspection had lasted no more than 30 minutes, NIG hadn't helped to find the source of the water, and the made ground samples were taken from outside the building rather than underneath it.

H then arranged for further investigations into the ground conditions. NIG considered the results but said the claim was still declined for the same reasons as before. And it didn't think the water problem amounted to a flood or anything else insured by the policy.

Our investigator considered the complaint and thought NIG had acted fairly. H disagreed, 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.

As this complaint concerns two areas of damage, I'll consider each separately.

Extension

The loss adjuster's initial report noted cracking to the external wall and the internal blockwork encasing the steel columns supporting the building. They thought it was caused by a combination of thermal expansion, corrosion of the steel columns, or movement of the

steel frame due to poor bracing or overloading with extraction equipment. They didn't think this damage had been caused by subsidence or anything else insured by the policy.

H received advice from a structural engineer, L. They said that some of the internal cracking indicated subsidence had occurred, although they noted that some of the cracking was caused in other ways – such as shrinkage. They thought the ground beneath the foundation was soft, wet and likely to be 'made up ground'.

H arranged for an investigation into the ground conditions to be carried out by Y. They found made ground to a depth of 3m near the building. They also found significant amounts of water, which they thought was flowing under the building.

The loss adjuster reconsidered the damage, including the findings of Y and L. It accepted the damage may have been caused by subsidence, which is insured, but said the policy didn't cover subsidence caused by the settlement of made ground or by defective design.

Later ground investigations were carried out by G. They found significant deposits of made ground underneath the building and said it may be 'engineered fill' designed to provide an 'engineered platform'. I understand that to mean it would be a superior composition, strength and suitability of material to that generally referred to as 'made ground'. But whilst G has noted it's a possibility, it hasn't gone so far as to say it's likely. And it's not something mentioned by the other experts. So I'm not persuaded I should consider the material substantially different to made ground based on the evidence available.

H has pointed out that Y took ground samples outside the extension – not underneath it – so that didn't confirm the building was founded on made ground. I agree with that. Their diagram shows the holes were dug near to the extension but not within it.

Y's report said it's "*likely significant amounts of water flowing under the building are causing collapse compression within the underlying soils, thus exacerbating settlement*". It was written by a geotechnical engineer. It's detailed and thorough. It's also consistent with the view set out by L, a structural engineer. So I think at this point the weight of expert evidence showed the extension was likely to be built on made ground.

G's report was written after H expressed its concerns about the location of Y's samples. I understand one of the holes G dug was through the concrete floor of the extension and showed made ground to a significant depth. So whilst I understand H's earlier concerns, I think the evidence has shown the extension is built on made ground.

Overall, it seems to be accepted that some of the crack damage to the rear of the extension has been caused by subsidence. The experts broadly agree this is likely to be a result of the made ground compressing, softening or settling – something which is likely to have been exacerbated by the presence of water.

The policy covers damage caused by subsidence – but not "*the settlement or movement of made-up ground*". Given the opinions of the experts, I'm persuaded the subsidence has been caused by movement of the made ground. Because of that, I'm satisfied it was fair for NIG to decline the claim for this damage.

The experts have noted other damage in this area likely to be caused by shrinkage and thermal expansion. I don't consider these causes to be covered by the policy.

Retaining wall

The extension has a small wall around the rear right corner. It's at a lower level than the extension floor and I understand it retains the material the extension is built on.

The loss adjuster's initial report said the wall had failed as a result of inadequate design and construction because it doesn't have any weep holes to release pressure from water build-up. It said the wall was being pushed over by the water pressure and loading from the material behind it.

L also observed a lack of weep holes in the retaining wall and considered water may be getting trapped under the building. It indicated the material was applying pressure to the wall and said it had no vertical reinforcement.

Similarly, Y thought groundwater was flowing under the building and behind the retaining wall, increasing the pressure on it significantly as there was no observable drainage.

The loss adjuster considered the findings of Y and L supported its opinion about the cause of damage to the wall. In addition to its earlier findings, it said the damage was also caused by excessive groundwater and was failing gradually. It didn't think any of the causes contributing to the failure of the wall were insured under the policy.

G found groundwater at the front of the property – but not the rear. It noted water moving along the side of the building, down a slope, toward the rear. This is consistent with the loss adjuster's photos, which identified water and moss growth along the side of the building.

None of the experts have described the retaining wall as subsiding, or moving downwards, so I don't think that's what's happened to it. Instead they describe it moving laterally, or outwards, as a result of pressure building behind it. There's broad agreement this is a result of water building up and not being able to drain away.

The policy covers damage caused by water escaping from tanks, apparatus or pipes. Whilst it's unclear exactly where it's coming from, none of the experts have suggested it's from a leaking pipe or similar. Instead it appears to be groundwater entering the property.

The policy also covers damage caused by flood. NIG doesn't think there's evidence of a flood. It considers a 'flood' is a one-off event. It says H's wall has been damaged by a gradual excessive build-up of water over time, unable to escape due to the construction of the wall, and this isn't a 'flood'.

The policy doesn't define the word 'flood'. So it should be considered according to its ordinary, everyday meaning. In my view, a flood can be sudden, but it doesn't have to be. A slow leak that gradually builds up a significant body of water could be considered a flood.

I've thought about the circumstances at H's property and taken into account the way the experts have described the problem. There is clearly water moving around the property. But rather than a body of water collecting and causing the damage directly, it seems to have seeped into the material, the material has then expanded, and the pressure of the material on the wall has increased. Because of that, I'm not persuaded the cracking in the wall can fairly be said to have been caused by a build-up of a body of water, or a flood.

The policy covers 'any accident cause'. This phrase isn't defined. I understand it to mean damage caused accidentally, which I would usually consider to be something unintended and unexpected by the policyholder. I'm satisfied that's the case for the wall damage. There are a number of exclusions to this section of cover. NIG has mentioned gradual damage, defective workmanship and changes in the water table. Based on the findings of the experts, I'm satisfied those exclusions apply to H's claim.

Overall, I'm satisfied it was fair for NIG to decline the claim for this damage.

Summary

I know H feels strongly that NIG ought to have done more to help during a difficult time for the business. For example, by helping to find the source of the water problem, more or longer inspections, and carrying out more investigation. H points out that it's provided most of the expert evidence and investigations.

NIG's policy provides cover for damage caused in certain ways. Unless the evidence shows or indicates the damage is likely to have been caused in one of those ways, NIG isn't obliged to offer any further support or carry out more investigations. Whilst it's clear that H would have appreciated more support and assistance from NIG, NIG wasn't required to provide it.

For the reasons above, I think NIG acted fairly when it declined H's claim for the crack damage. I recognise this leaves H with a significant problem that may be expensive to put right – and which is impacting its ability to operate and trade as it would usually do.

H has mentioned seeking further advice on the problem. If it does receive further information, it's entitled to share this with NIG – and I'd expect NIG to consider it.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 27 July 2021.

James Neville
Ombudsman