

## **The complaint**

Mr P is unhappy Red Sands Insurance Company (Europe) Limited declined a claim he made for subsidence under his home insurance policy.

## **What happened**

The background to this complaint isn't in dispute, so I'll summarise the key points:

- Mr P took out a home insurance policy in 2020. It was underwritten by Red Sands.
- Later that year, he discovered a possible subsidence problem and got in touch with Red Sands. It appointed a loss adjuster to inspect the damage.
- Red Sands declined the claim. It said when Mr P took out the policy, he said there had been a previous subsidence problem at the property – and he had certain evidence to show it had been dealt with properly. Whilst Mr P had some evidence, it wasn't the specific documentation Red Sands had asked for.
- Red Sands said it wouldn't have offered a policy including subsidence cover if it had known Mr P didn't have the specific documents it had asked for. Because of that, it said subsidence cover had been removed and his claim was declined.
- Mr P thought this was unfair. He said he'd openly disclosed the history of subsidence to Red Sands. And as he had evidence to show the repairs had been completed, he honestly believed he'd answered the questions correctly to the best of his ability. He noted he wasn't a builder and considered himself a 'layman' in this subject matter.
- Our investigator thought the complaint should be upheld. She said the relevant law required Mr P to take reasonable care not to make a misrepresentation. And, overall, he'd fulfilled that by showing the previous subsidence problem had been dealt with. She asked Red Sands to reinstate the subsidence cover and consider the claim.
- Red Sands disagreed. It made a number of points, which I'll summarise:
  - It requires specific documentation to manage the risk it takes on.
  - If Mr P had any doubt about the information he was providing when taking out the policy, he could have used email or the chat function to check.
  - Mr P should know more than a 'layman' given his experience buying a property with a previous subsidence problem. He should have mitigated the risk of buying such a property, including getting a structural report, carrying out research and ensuring all documentation is in place.
  - The damage may be linked to previous problems and/or existed prior to the policy starting.
- An agreement couldn't be reached, 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.

This dispute has arisen because Red Sands considers Mr P misrepresented his circumstances when he took out the policy in 2020.

The relevant law for this situation is the Consumer Insurance (Disclosure and Representations) Act 2012 (or "CIDRA"). In summary, under CIDRA, Mr P was required to take reasonable care not to make a misrepresentation. If he fulfilled that duty, Red Sands has no remedy and must continue with the policy as it is. If he didn't, Red Sands may have remedies available – such as retrospectively removing subsidence cover.

The first step is to consider the relevant question asked. It's in two parts. In the first, Mr P told Red Sands the property had previously had subsidence, so I don't think that part is in dispute. In the second, Mr P is asked to complete a sentence by selecting an option. The sentence says:

I [*select option*] able to provide a certificate of adequacy or chartered surveyor's report to evidence that previous subsidence was adequately rectified and there are no ongoing issues or further movement.

Mr P was asked to select between two options: *am* or *am not*. He selected *am*.

Red Sands says Mr P should have selected *am not*. And had he done so, it would not have offered subsidence cover on the policy. I'm satisfied from the evidence provided by Red Sands that selecting *am not* would have led to it offering a policy without subsidence cover.

Under CIDRA, Mr P is required to take reasonable care not to make a misrepresentation. Amongst other things, this means he must answer questions to the best of his knowledge and belief – based on what he ought reasonably to have known at that point in time.

The sentence asks Mr P to confirm he's able to provide specific documentation. It also explains the broader purpose of this documentation – to show the problem was dealt with properly and to show there are no further problems.

Mr P accepts he doesn't have the specific documents Red Sands asked for. So I think it's fair to say his answer wasn't correct – he wasn't able to provide those things. But under CIDRA, the test is whether Mr P took reasonable care not to make a misrepresentation – not whether he was strictly correct.

Mr P says he answered to the best of his knowledge and honestly thought the information he had would fulfil the Red Sands' requirements. I understand that's why he didn't feel the need to ask Red Sands for clarification. I've considered the information he's provided.

When Mr P bought the property in 2014, I understand he was provided information by the seller about the previous subsidence claim from 2010. This included:

- Confirmation the subsidence claim had been accepted by the then insurer
- A loss adjuster explaining the cause of the problem was leaking drains
- Evidence to show the location and extent of the drainage work required and confirmation it was completed
- Evidence to show significant building work was carried out shortly after

Mr P also provided a mortgage valuation from when he bought the property in 2014. It said there was no evidence of structural movement and didn't recommend a specialist report. It described the property as being 'in good condition both internally and externally'. The report was written by a member of a recognised surveying professional body. So I think Mr P was entitled to consider it a reliable source of information about the property.

I don't agree that Mr P should be considered more experienced in this subject matter than a 'layman'. I'm not aware he has previous experience with buildings, subsidence or insurance claims for these things. He bought a house with a subsidence history and relied on a survey carried out by an expert which didn't identify any problems. Whilst he could have gone further and taken more advice, I don't think he was required to.

In my experience, a certificate of adequacy is usually issued by an insurer at the end of a subsidence claim. It tends to confirm what caused the subsidence, that the movement was stopped, and repairs were carried out. It isn't a guarantee against future movement or further subsidence claims – related to the previous problem or otherwise. It simply shows the problem was dealt with properly at the time.

In my view, the evidence Mr P has provided achieves broadly the same as the certificate would do. It shows the subsidence problem was dealt with in the usual way by an insurer – but it can't rule out the possibility of further subsidence problems. So I don't think Red Sands has been disadvantaged in this case because the information from the previous claim hasn't been provided in a certificate format. And Mr P has shown that no concerns were identified when he bought the property, which goes beyond what a certificate would show.

I recognise Red Sands' main point – it asked for a certificate or report and hasn't received either. But I think the nature of the question asked makes clear what the overall purpose of these documents are. And in these circumstances, as the other documentation Mr P has provided serves the same purpose, I'm satisfied that overall Mr P has fulfilled what Red Sands asked for. I'm not persuaded Red Sands has shown that Mr P failed to take reasonable care not to make a misrepresentation. That means Red Sands has no remedy and must continue with the policy as it is.

To put things right, Red Sands should reinstate the subsidence cover. It should also consider the claim.

Red Sands had begun doing that. I know it had concerns about the timing of the damage, and the loss adjuster suggested monitoring to see how the damage developed before deciding on the next steps. So I don't think a conclusion about the subsidence problem was reached before the claim was declined when subsidence cover was removed. That means the claim hasn't been fully investigated or considered yet.

Because of that, I don't think it would be fair on either party for me to make a finding on the outcome of the claim at this stage. It will need further consideration and investigation by Red Sands.

## **My final decision**

I uphold this complaint and require Red Sands Insurance Company (Europe) Limited to:

- Reinstate subsidence cover to the policy
- Consider the claim, subject to the terms and conditions of the policy

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or

reject my decision before 2 June 2022.

James Neville  
**Ombudsman**