

The complaint

Mr M and Ms R have complained that Argo Direct Limited ('ADL') refused to renew their buildings insurance policy and continue to provide cover for the risk of damage being caused to their property by subsidence. They've also complained that ADL haven't acted in line with the Association of British Insurers ('ABI's') guidance on the continuation of cover in subsidence claims, by finding them another insurer who would offer that cover.

What happened

On 16 February 2022, I issued my provisional decision explaining why I was intending to uphold this complaint in part. Here's what I said:

What happened

Mr M and Ms R purchased a buildings insurance policy from a broker who I'll call, P, which appeared to be underwritten by ADL and was effective from 14 September 2019. In October 2019, Mr M and Ms R noticed cracking had appeared in the new plaster in their kitchen. They also noticed some external cracking.

After removing some of the internal plaster, cracking in the masonry became apparent, and Mr M submitted a claim for subsidence. After investigations were carried out it was established that the cracking was due to clay shrinkage exacerbated by the moisture extraction influence of the surrounding vegetation, including a pear tree, which was removed in February 2021.

Shortly before Mr M and Ms R's policy was due to renew, in September 2020, they were told that ADL would not be able to continue providing cover for their property. Since that time, they've been unable to obtain insurance for their property that includes subsidence cover.

I've issued a decision on Mr M and Ms R's complaint about a different business who I'll refer to as G, in relation to their concerns regarding the renewal, on the same date as this provisional decision. I therefore won't be addressing their concerns about G's actions, in this decision.

Mr M and Ms R brought their complaint to our service in November 2020. Our investigator looked into their concerns and issued a view upholding the complaint on 12 February 2021. In summary, our investigator said that good industry practice would require ADL, despite not being a member of the ABI, to provide continuous subsidence cover to Mr M and Ms R, as subsidence occurred at their property while it was insured by ADL. She concluded that ADL needed to continue to provide Mr M and Ms R's property with cover for damage caused by subsidence, and in addition should pay them £100 compensation for the distress and inconvenience they'd caused.

ADL responded in detail to the view. In summary, they said:

- *At the end of May 2020, they'd taken the decision to no longer underwrite insurance for this type of household insurance in the UK.*
- *At the end of December 2020, the platform they'd used to underwrite all UK business ceased to underwrite any business.*
- *Consequently, it wasn't possible for ADL to provide Mr M and Ms R with subsidence cover for their property.*
- *However, they were willing to pay Mr M and Ms R compensation of £250, in recognition that ADL's decision to no longer underwrite household insurance in the UK has caused them some prejudice, through no fault of their own.*
- *They felt that although Mr M and Ms R weren't offered a policy by the new insurer that included subsidence cover, due to the existing subsidence claim, household cover with subsidence is available in the Market with other insurance companies.*
- *Although they can't comment on what the premium would have been for the subsidence cover, as they no longer offer it, from their general searches they believe certain insurers provide such cover and the annual premium might have been in the region of £250, which is why they have suggested that figure as increased compensation to Mr M.*

A second view was issued by our investigator on 29 March 2021 in which she explained that because ADL had stopped offering this type of policy and no longer write business in the UK it wouldn't have been fair to ask them to place Mr M and Ms R back on cover. She also said that she thought that when the renewal came up Mr M and Ms R would have been able to seek alternative cover elsewhere. She concluded that Argo's offer of £250 compensation was fair in the circumstances.

Mr M and Ms R didn't agree with our investigator's view. In response they said:

- *The broker who sold them a new policy on renewal advised them that the new insurer hadn't included cover for subsidence in part because there was a subsidence claim at the property.*
- *They're concerned that they've been left in a very difficult situation, because, in the event a further subsidence event happened they wouldn't be covered.*
- *Despite contacting several different insurance brokers they've been unable to secure cover for subsidence and have been told it could be 10-15 years after the current claim has been settled, before they can get cover for subsidence.*
- *ADL have failed to provide continuous cover as required by the ABI.*
- *The sum of £250 offered, doesn't make up for the failure to insure, although it goes some way towards recognising the stress this has caused them.*
- *They've been inconvenienced and are still being inconvenienced by ADL as they can't get subsidence cover. In failing to pass them to a new insurer, that provided a like for like policy, ADL has caused them significant stress.*
- *They're therefore asking for a realistic compensation for the inconvenience they've suffered, and are likely to continue to suffer, as each month quotes*

have to be requested.

In considering my provisional decision on this complaint, I requested additional information from the parties. I asked ADL to provide some additional information on their decision to leave the UK market. And I asked Mr M to provide some additional information about the likely increase in premium he'd be required to pay, in order to obtain subsidence cover for the property.

ADL then clarified that they are not the insurer who'd underwritten Mr M and Ms R's policy. They provided a copy of an agreement to show they act as a coverholder for a parent company who I'll refer to as AG. That means they are able to commit their parent company (which is based outside of the UK) to provide insurance cover in specific circumstances, as set out in the agreement between them.

Mr M confirmed that while repair works on the property remain outstanding, the subsidence claim was settled on 16 January 2022, and the certificate of structural adequacy was issued on 25 January 2022. However, after approaching a further four brokers, he said he was still unable to obtain a quote for insurance that included subsidence cover and was informed that the certificate of structural adequacy would need to have been issued for at least 12 months before any such quote could be provided.

What I've provisionally 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.

Mr M and Ms R have suffered damage to their property which has been caused by subsidence. As is commonly the case, they have found it difficult to get insurance for subsidence, particularly given that their original insurer has withdrawn from the UK market.

The ABI has issued guidance on 'Continuation of Cover' to ensure that consumers with previous or current subsidence claims can continue accessing subsidence cover on reasonable terms. The guidance was issued to assist consumers in similar circumstances to those that Mr M and Ms R currently face.

However, Mr M and Ms R's insurer was not a member of the ABI and therefore wasn't bound to adhere to the ABI guidance. In addition, their insurer said that even if it were possible for them to renew Mr M and Ms R's cover (in the event that they'd not decided to exit the UK market) it would have been with subsidence excluded. They said that any subsidence cover offered would be at a higher premium and would likely affect the policy excess.

While I appreciate the reasons for their insurer's position, that position is not consistent with the approach this service takes when considering continuation of cover where subsidence claims are ongoing. I'll explain why.

Even where an insurer hasn't signed up to the ABI guidance, we think the guidance is indicative of good industry practice, so would usually conclude it was fair and reasonable for the insurer to follow the guidance on that basis.

We accept that insurers are entitled to withdraw from the market. However, it's our role to consider whether affected consumers, such as Mr M and Ms R have been treated fairly. Their insurer's decision to withdraw from the UK market and to not offer

subsidence cover has clearly made it difficult for Mr M and Ms R to find cover with another insurer given the subsidence claim. Although their insurer was no longer in a position to continue to insure Mr M and Ms R, they could have taken steps to try and arrange with another insurer to take over the policy and price the policy as a renewal rather than a new customer. Or, if that wasn't possible, they could have offered to pay for any additional cost between the existing policy and a policy provided elsewhere by a specialist insurer which allows Mr M and Ms R to get continued subsidence cover on reasonable terms.

ADL have accepted that their decision to leave the UK market has caused Mr M and Ms R prejudice. They've offered Mr M and Ms R £250 to compensate them for that. However, Mr M feels significantly more compensation is due to them.

I've considered ADL's offer of compensation, and the situation that Mr M and Ms R find themselves in. As our investigator explained, the fact that ADL no longer operate in the UK does limit the actions I can require them to take, to place Mr M and Ms R in the position they'd have been in if the ABI guidance had been followed, as our investigator has already explained.

In addition, a further complexity has arisen which makes it more difficult for this service to provide Mr M and Ms R with a satisfactory resolution to their complaint. In response to our request for additional information about their exit from the UK market, it has come to light that ADL are in fact not the insurer of Mr M and Ms R's policy. Their parent company, AG, based outside of the UK, is in fact the insurer.

The agreement between ADL and AG that I've seen sets out their respective roles and responsibilities. In brief, AG as the insurer, takes on the risk and provides the cover for the insurance policies that ADL, as the coverholder and agent of AG, enters into on its behalf. This means that ADL is an insurance intermediary, and in this case the insurer's agent. So, AG will be responsible for any actions ADL have taken on its behalf. Unfortunately, though, as AG are based outside of the UK, this service doesn't have any power to require it to take any steps in relation to Mr M and Ms R's complaint.

Insurers are free to delegate their authority to intermediaries and permit them to bind the insurer to cover certain risks. However, once an intermediary becomes involved in the sale and administration of a policy of insurance, they will owe a number of duties to the policyholders. The Financial Conduct Authority's Insurance Conduct of Business Sourcebook (ICOBS) details the responsibilities of insurance intermediaries, which includes a responsibility to provide the customer with information about its identity and whether it is an intermediary or an insurer. I've only been provided with limited documentation from the time of the sale of the buildings insurance policy to Mr M and Ms R in 2019. But from the evidence I have seen, I think clearer information could have been provided to Mr M and Ms R about ADL's role in relation to insuring their property.

The policy terms and conditions define "We/Our/Us" as the "insurer specified in your insurance schedule". The insurance schedule issued by the broker, P, says: "If you've selected Buildings.....cover.....The insurance for these covers areunderwritten by Argo Direct Limited". So, Mr M and Ms R have been under the impression that ADL is the insurer who'd underwritten their policy, and as a result they would be able to obtain a resolution to their complaint about not being able to renew their buildings policy and obtain continued cover for subsidence, from this service.

Mr M and Ms R have suffered a significant level of distress and inconvenience as a result of AG's decision to withdraw from the UK Market. But I'm unable to hold ADL responsible for the actions of AG.

That having been said, I think that if Mr M and Ms R had been given clearer information about ADL's role and responsibilities, the level of distress and inconvenience they've suffered, as a result of all of the issues, wouldn't have been as substantial. The complexities of this complaint have made it a difficult case to decide, particularly as I'm restricted to only being able to consider the impact ADL's actions have had on Mr M and Ms R.

I concluded by saying that as ADL is authorised in its own right to carry out acts as an insurance intermediary, it is against ADL in that capacity, that I was intending to partially uphold this complaint and make an award of compensation. Taking everything into account I said I was minded to uphold this complaint in part and require ADL to pay Mr M and Ms R £500 to compensate them for the distress and inconvenience they've suffered as a result of ADL's actions.

Mr M and Ms R made the following two points in response to the provisional decision:

- It's very disappointing for them that ADL and AG (the underwriter) have not been very clear on their terms and conditions and effectively disempowered their ability to seek a meaningful resolution of their complaint from this service. They feel that ADL haven't been honest with them and were hoping to receive a complete resolution to their complaint, by bringing it to our service, which they now realise won't be possible.
- Mr M clarified that the dates he'd provided, regarding the settlement of the claim and a certificate of structural adequacy being issued, were hypothetical dates that he provided to various brokers to try and obtain quotations for buildings insurance for the property, which included subsidence cover. In fact, the works have not yet started, and no confirmation has been received from Argo Direct, as to whether a certificate of structural adequacy will be provided at the conclusion of the repair works.

After receiving that clarification from Mr M, I contacted ADL to explain the error in the provisional decision and ask for confirmation of when the works will start and whether a certificate of structural adequacy will be provided on conclusion of the works.

ADL confirmed their earlier advice that AG had withdrawn from the UK property insurance market. They said that, in any case, there is no duty on an insurer to renew a policy, in the absence of an undertaking to do so. Also, as AG, the underwriter, is situated in Malta, it is the Office of the Arbiter for Financial Services who are able to consider a complaint against AG.

With regard to Mr M and Ms R's open subsidence claim, although this service doesn't have jurisdiction over the underwriter, ADL said they will ensure their obligations are fully completed under the policy, in relation to getting the damage repaired. ADL, having made some independent enquiries of a broker, also remained of the view that once the repairs had been completed, Mr M and Ms R would be able to again obtain subsidence cover for their property.

I've taken account of these further comments in making my final decision on this complaint.

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.

I'd first like to apologise to Mr M for misunderstanding the information he'd provided, regarding the hypothetical settlement of his claim.

I've considered the additional points Mr M and Ms R have made, and while I have sympathy for the situation they find themselves in, the additional points made haven't led me to come to a different decision on the complaint. In addition, as ADL haven't provided any comments which challenge the findings included in the provisional decision, I see no reason to depart from the conclusions set out in my provisional decision.

I therefore uphold this complaint and require ADL to pay the compensation detailed below.

Putting things right

I require Argo Direct Limited to pay Mr M and Ms R £500 to compensate them for the distress and inconvenience they've suffered as a result of Argo Direct Limited's actions.

I make no other award against Argo Direct Limited.

My final decision

My final decision is that I uphold this complaint in part and require Argo Direct Limited to pay the award detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Ms R to accept or reject my decision before 8 April 2022.

Carolyn Harwood
Ombudsman