

The complaint

Mr and Mrs P are unhappy Accredited Insurance (Europe) Limited (AIL) declined a claim they made under their home insurance policy for subsidence.

Mr P has dealt with the complaint, so I'll refer to him only. Reference to AIL includes its agents and representatives.

What happened

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- Mr P bought a house in 2020 and took out insurance for it with AIL at the same time.
- Later that year he noticed new cracks developing and got in touch with AIL.
- It initially said the claim was declined because, when taking out the policy, Mr P hadn't made it aware of previous structural problems. Mr P provided information to show he had declared these problems when taking out the policy.
- AIL then said the claim was declined because the policy doesn't cover any pre-existing or maintenance related defects. It said the homebuyer's survey report showed the property needed several areas attending to, including some cracks.
- Mr P explained why he thought the property was generally in a good state of repair. AIL maintained the claim was declined, so Mr P referred his complaint to this service.
- AIL stood by its position and told us it also thought the cost of the work was below the excess of £2,500. So, it wouldn't cover the claim in any case.
- Our investigator thought AIL had fairly declined the claim because it had provided a schedule of work valued below the excess.
- Mr P didn't agree. He thought the value of the claim was likely to be greater than the excess. He also questioned why this point hadn't been mentioned by AIL when it dealt with his claim and complaint.
- As an agreement couldn't be reached, the complaint has been passed to me.

My provisional decision

I recently issued a provisional decision in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

AIL has clarified that the main reason it declined the claim was because it thought the damage was pre-existing or maintenance related. But it had also made the point about the excess as it could have an impact on the claim.

I can't see it raised the latter point with Mr P prior to the complaint being referred to our service. I would usually expect to see all relevant points raised with the consumer as part of the business' response to the complaint. So it's disappointing to see this point raised later. However, I think it's relevant to the dispute, so I'll consider it as part of this complaint.

The policy says Mr P must pay the first £2,500 towards each subsidence claim. This is the policy excess.

AIL has provided a schedule of work valued at around £1,900. Mr P has questioned how accurate it is. It contains measurements for several rooms and is broken down into numerous individual items of work. So it appears to have been thoroughly considered. And I haven't seen any alternative quotes for the work. Because of this, I'm satisfied it's fair to consider £1,900 a fair estimate of the cost of the work, based on the available information.

However, the excess applies not just to the cost of the work but to the value of the claim overall. AIL has identified the cause of damage as subsidence brought about by trees. Following its initial inspection, it said tree investigation and crack monitoring was required. In my experience the cost of these of these activities is likely to exceed £600. That means the overall claim value is likely to exceed the £2,500 excess.

Because of this, I'm not persuaded the claim can be declined based on its value.

I'll turn now to AIL's main reason for declining the claim. The policy covers damage caused by subsidence – but not any damage 'occurring or arising from an event before cover by this policy commences'.

AIL seems to accept the damage has been caused by subsidence. As AIL is relying on an exclusion to cover, the onus is on it to show that it applies. That means showing the subsidence problem began prior to the policy starting in January 2020.

AIL has provided the report from its inspection in August 2020. It says Mr P discovered the damage earlier in August 2020. It doesn't comment on when the subsidence problem may have started or the timing of the crack damage.

Mr P has said he discovered 'new cracks' in August 2020. He's aware there was a previous subsidence claim around ten years earlier, which had been put right by an insurer.

AIL has pointed to the homebuyer's survey Mr P arranged prior to buying the house. The survey report noted the property had suffered subsidence previously. It said there weren't any significant defects that needed structural intervention. In the section titled 'structural movement' it said the property wasn't actively moving.

The inspection report from AIL shows a number of internal cracks. The photos aren't annotated, so it's not entirely clear where they are or what they're intended to show. But I assume they're examples of the subsidence damage. The survey contains numerous photos, but none show internal cracking. It noted some internal cracking to ceilings in the written report, but it didn't think they indicated structural movement.

Overall, I haven't seen any expert opinion or other evidence to show the current subsidence problem existed prior to the policy starting. So I'm not satisfied AIL has shown that the policy term for pre-existing damage applies to the subsidence damage.

AIL also said it didn't cover any maintenance related damage. There's a policy term which says it doesn't cover wear and tear or gradual deterioration.

The survey report noted neglect by the previous owners and said some parts of the property required repair and maintenance. It lists a number of areas for attention. Since this damage existed prior to the current subsidence problem, I don't think the wear and tear policy term can be relied upon to decline the claim. The subsidence problem is recent and not the result of maintenance related defects.

However, when it comes to carrying out repairs, consideration will have to be given to which damage is maintenance related and which is subsidence related.

I've taken into account the reasons AIL has put forward for declining the claim. Having done so, I'm not persuaded by them for the reasons above. That means I think AIL unfairly declined the claim. To put that right, it should now accept the claim for subsidence damage.

When an insurer accepts a subsidence claim, it usually has a duty to continue to provide subsidence cover. In part that's because it can be difficult for consumers to access subsidence cover as a 'new customer' when they have recent or ongoing subsidence claims to declare. I understand Mr P's policy was due to renew in early 2021 but, because it had declined the claim, AIL didn't offer to renew it. As a result, Mr P says he's been unable to obtain subsidence cover and has faced increased premiums.

Had AIL accepted the claim, it would have been obliged to continue renewing the policy. It didn't do that, and Mr P may have lost out as a result. To put that right, AIL should offer cover, including subsidence, from the next renewal. It should also confirm for Mr P that it will provide subsidence cover for the time he's been, and will be, without it. I understand that to be January 2021 to January 2023. Mr P may not need to make a claim for subsidence during that time, but it's fair he should have the cover in place in case he does.

Lastly, in response to this provisional decision, Mr P should provide us with his policy schedules for January 2021 and 2022 to show what cover he took out and at what cost. AIL should let us know what it would likely have charged for providing a policy, including subsidence cover, for these renewals. I then expect AIL to pay Mr P the difference between what he paid and what he would have paid, *if* he has paid more as a result of having to seek cover elsewhere.

As a result of AIL declining the claim, things haven't moved forward. That's meant Mr P suffering the distress and inconvenience of seeing the damage to his home, with the uncertainty of how it would be resolved, for a prolonged period of time. To put that right, I think AIL should pay £500 compensation.

Responses to my provisional decision

AIL responded to say it accepted my provisional decision.

Mr P responded to provide further information, in summary:

- Policy schedules for January 2021 and 2022
- Evidence of costs incurred progressing the claim, including legal and arboricultural advice, and tree surgery. Mr P asked if these costs could be refunded by AIL or offset against the excess.

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 understand both parties accept my provisional decision in principle. So I won't comment further on the reasons for upholding it – I'll focus on the outstanding points and next steps.

I found AIL should accept the claim. As part of accepting the claim, AIL should consider any costs Mr P submits, such as those he has recently provided. I would expect it to take into account that Mr P has proactively taken steps to progress the claim after it was unfairly declined. And he's unlikely to have access to the same expert advice that AIL might.

AIL should let Mr P know which costs it agrees to, whether they will be refunded or offset against the excess – and if the latter, what excess remains to pay. For any costs it doesn't agree to pay, it should let Mr P know why that is.

I also found AIL should pay for Mr P's increased insurance costs. Mr P provided policy schedules from the relevant times. They show the new policies are broadly like-for-like, aside from the absence of subsidence cover. Despite that, they're roughly twice as expensive as the premium he'd paid AIL in 2020.

AIL hasn't shown what it would likely have charged for the policy, including subsidence, in 2021 and 2022. And given the significant increase in the amount Mr P has paid, it seems likely he's lost out as a result of AIL not renewing the policy.

I still think AIL is entitled to estimate what it would likely have charged for the policy and pay Mr P the difference between this and what he actually paid, in 2021 and 2022. If AIL is unable to estimate the premiums, it should use the 2020 premium for 2021 and 2022.

Neither party has commented further on the second or fourth bullet points of the remedy I set out – offering subsidence from January 2021 and paying compensation. I remain satisfied they're fair, so I see no reason to change or comment on them further.

My final decision

I uphold this complaint and require Accredited Insurance (Europe) Limited to:

- Accept the subsidence claim
- Offer cover, including subsidence, from the next renewal and confirm it will provide subsidence cover from January 2021 to January 2023
- Pay the difference between what Mr P paid and what he would have paid if he had remained insured with AIL
- Pay £500 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 17 May 2022.

James Neville
Ombudsman