

The complaint

Ms C, Ms M and Mr M complain that The New India Assurance Company Limited (“NIA”) hasn’t accepted their claim for subsidence which occurred when they were on cover with it.

While the complaint has been brought by three beneficiaries of the policy, as Mr M has been the main point of contact, and for ease of reading, I will refer to him throughout.

What happened

Ms C is the freeholder of a block of flats and leaseholder of one of the flats. Mr and Mrs M are the leaseholders of another flat. The whole building is covered by an insurance policy for which they are all listed as beneficiaries. Between April 2015 and April 2021 the policy was provided by NIA. After this date, the policy was moved to a different insurer that I will refer to as “A”.

In October 2021 Mr M made a claim on his insurance with A after tenants at the property noticed cracks in the walls. A inspected the damage and concluded that it had developed before the policy with it had began. It therefore contacted NIA as the previous insurer for the building.

Over the months that followed there was a dispute between the two insurers and the broker about who was responsible for the claim. It was eventually agreed that monitoring should be undertaken to determine if the subsidence was still ongoing or if the property was stable.

During this time Mr M made a complaint to NIA, as well as separate complaints to A and his broker. He was unhappy with how long it had taken them to decide who was responsible for the claim, which had meant no progress had been made to repair the building. NIA didn’t uphold his complaint so he brought it to this service.

Our investigator considered the issues and recommended the complaint against NIA be upheld. She said that the damage clearly pre-dated the policy inception with A and had happened during the time they were on cover with NIA. So she said it should accept the claim and could claim back any costs for damage during A’s policy with it directly.

Mr M accepted our investigator’s outcome. However NIA didn’t. It said that her position departed from this service’s usual approach for complaints of this nature. And said that while this claim wasn’t bound by the rules of the Association of British Insurers (ABI) domestic subsidence agreement, the principles would still apply, and therefore it thought A should accept the claim. It asked for the matter to be reviewed by an ombudsman.

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.

Where a claim is for damage that has happened over a period of time, and across different policy periods provided by different insurers, it's usual that one insurer will take ownership of the claim. It may then claim any costs back from other insurers for damage that occurred during their policy cover periods.

The Association of British Insurers (ABI) created a domestic subsidence agreement to help determine which insurer should be responsible for a claim such as this. However this only applies to domestic insurance policies, as this claim relates to a landlord insurance policy the agreement wouldn't apply. It's also of note that neither NIA or A are signed up to the agreement.

However, this service still takes the agreement into account when considering cases like this, as it outlines best practice. If I were to apply the agreement to this case I agree with NIA that I would conclude that A should accept the claim. This is because the claim was made more than eight weeks after the policy inception and the agreement says that when this is the case, the current insurer should deal with the claim primarily.

However in this case, I don't think it's fair to apply these principals. I've looked at the evidence provided by Mr M and I can see that the tenant first made him aware of the cracks in September 2020. However at this time he was unable to attend the property due to Covid-19 restrictions, which explains why the claim wasn't made until much later. However, as the issue was notified in September 2020 I'm persuaded that the damage happened almost entirely during the cover with NIA. As it's likely the cracks would have developed over a period of time before they were noticed by the tenant, and the policy was in place from 2015 until 2021.

So while the damage has continued into the policy term with A, I think it's fair and reasonable that NIA take ownership of the claim. Because the bulk of the claim cost is likely to sit with it. If NIA incurs any costs for damage that developed under the policy term with A, then it can seek to claim these costs back with A directly. But this shouldn't impact Mr M or the progression of the claim.

My final decision

For the reasons I've given, I uphold Ms C, Ms M and Mr M's complaint and direct NIA to accept the claim and settle it in line with the policy terms and conditions that was in place when they were on cover with it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C, Ms M and Mr M to accept or reject my decision before 28 October 2022.

Sophie Goodyear
Ombudsman