

The complaint

Mrs and Ms K are unhappy with the way St Andrew's Insurance Plc has handled a claim they made under their home insurance policy for subsidence.

Reference to St Andrew's includes its agents and representatives.

Mrs K lives at the home and has been represented by her children, Ms K and Mr K. The claim and complaint have primarily been dealt with by Mr K. Reference to Mr K includes anything said and done by Mrs K and Ms K unless otherwise stated.

What happened

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

- Mr K got in touch with St Andrew's in 2017 after noticing cracking to Mrs K's home.
- St Andrew's initially said the damage wasn't caused by subsidence or anything else covered by the policy. It declined the claim.
- Mr K provided a report from an engineer, R, to challenge St Andrew's position. It accepted some of the damage was caused by subsidence and insured and paid for R's report.
- St Andrew's thought leaking drains had caused the subsidence problem and repaired them. Mr K accepted a cash settlement for the building repairs. He provided a second report from R about the extent of subsidence damage and asked St Andrew's to increase the cash settlement. It disagreed.
- Whilst the claim has been ongoing, Mr K has made a number of complaints as concerns have arisen. He referred all of his complaints to this Service in June 2021.
- Another ombudsman made a decision about what we could and couldn't consider. In summary, they found we *couldn't* consider the following complaints:
 - May 2017: initial complaint about claim not being covered under policy.
 - June 2019: delays to claim up to this time.
 - October 2019: service and delays to claim between June and October 2019.
 - January 2020: damage being connected to previous claim in 1998.
 - July 2020: lack of reports or images from inspections over previous two years.
 - August 2020: incorrect information that Mrs K and Mr K were liable for drainage repair costs; using a sole contractor; excess to be paid.
 - November 2020: further delays to claim between August and October 2020.
- The ombudsman found we *could* consider the following complaints:
 - February 2021: poor service; incorrect information; washing machine and toilet to be refitted; £400 compensation paid.

- April 2021: health and safety concerns; garden items left outdoors; damage to grass; storage cost of items; cost of R's second report; patio repairs; amount of the cash settlement for the claim.
- And St Andrew's decision not to pay for damage to the chimney and windows.
- Our investigator looked into the points we could consider. She was satisfied £400 was reasonable for the poor service. She said St Andrew's should pay £550 compensation for the health and safety concerns and damage to grass. She didn't think any other points should be upheld.
- St Andrew's agreed with this. Mr K didn't and provided further comments. An agreement wasn't reached, so it's been passed to me for an Ombudsman's decision.

My provisional decision

I 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.

A decision has already been made about our jurisdiction to consider the complaints Mr K has made. I can't reconsider that decision so I won't be considering everything Mr K is unhappy about – only those points within our jurisdiction.

As there are a number of points to consider, I'll look at each separately.

Health and safety concerns

St Andrew's contractors had been carrying out drainage work at Mrs K's home. I understand they had dug a trench in the downstairs bathroom. In the evening, Mrs K went to check the windows were shut. She fell into the trench and suffered grazing and bruising, felt shaken and was in a state of shock for some time after.

St Andrew's said this was a matter for its contractor. Our investigator thought St Andrew's was responsible for this part of the complaint. She said it should pay £500 compensation because its contractor should have done more to prevent such an accident.

St Andrew's was clear that it didn't accept liability for any injury Mrs K may have suffered. And it maintained any liability claim should be directed to the contractor. But it agreed to pay £500 compensation for its contractor's 'service issues'. Mr K said this amount was insufficient and asked us to reconsider it.

St Andrew's is responsible for the claim. It appointed contractors to carry out drainage work on its behalf. This part of the complaint is about the way the contractor carried out the work, including the way they left the bathroom overnight. The contractor was acting as St Andrew's agent. So we can consider this aspect of the complaint against St Andrew's. Whilst Mrs K may be entitled to make a claim directly against the contractor, I'm satisfied that doesn't prevent her from asking this Service to consider the matter against St Andrew's.

It's not my role to make any findings about whether the contractor adhered to or breached health and safety rules and regulations. I must consider whether it acted fairly and reasonably in the circumstances.

Whilst liability hasn't been accepted, I haven't seen anything to suggest the circumstances as described by Mrs K have been challenged by St Andrew's. After the incident, the contractor promptly took steps to make the bathroom more secure and cover the trench. Given Mrs K's circumstances, I think it would have been reasonable for the contractors to take these kinds of precautions whenever they weren't on site, throughout the work – and if they had done so, it's unlikely Mrs K would have had the same experience. So I'm persuaded it would be fair for St Andrew's to compensate Mrs K in these circumstances.

I've taken into account Mrs K's age, physical condition and noted she was living alone, which would likely have made things more concerning for her. I can only consider what did happen, not what may have happened. And my award isn't intended to punish St Andrew's – it's intended to reflect the distress and inconvenience it caused to Mrs K only.

Bearing in mind the injuries Mrs K suffered and the distress the incident would have caused her, I'm satisfied St Andrew's agreement to pay £500 compensation for its contractor's poor service is reasonable in the circumstances.

Damage to chimney, windows and patio

St Andrew's didn't think the damage to the chimney, windows, and patio had been caused by subsidence – so they weren't covered as part of the claim. Mr K didn't agree and provided a second engineer's report from R to challenge what St Andrew's had said.

Our investigator found the evidence provided by St Andrew's more persuasive than that of R. She thought it was fair for St Andrew's to decline these parts of the claim.

I've carefully considered R's report and St Andrew's comments about it. Both are provided by appropriately qualified members of relevant professional bodies. In summary I'm faced with two experts who have differing professional opinions. Whilst St Andrew's accepted R's opinion in the first report that some of the damage was caused by subsidence, I don't think that means it's bound to accept everything the engineer subsequently said. Each part of the claim can fairly be considered on its own merits.

It's my role to decide which opinion I find more persuasive, based on the evidence put to me. I do that by taking into account a number of things – including the detail and clarity of reasoning to support the conclusions reached. I also bear in mind that in any claim the onus to show damage is insured falls to the policyholder. So it's for Mr K to show the damage is likely caused by subsidence more than for St Andrew's to show it's not.

R said the house had suffered from 'cracking and other issues due to subsidence of the foundations' and 'all the issues are directly attributable to soil settlement'. St Andrew's said cracking in houses can happen for a number of reasons – many of which are not indicative of subsidence. I agree, I don't think it would be reasonable to conclude that all cracking is automatically caused by subsidence. It might, but a direct link between the damage and subsidence should be made.

R also said there was no movement to the chimney stack and it had 'pointing falling out with voids'. It's not clear from the report why R thinks this shows the chimney was damaged by subsidence. Similarly, whilst cracking around a window was identified, R doesn't directly link it to the subsidence problem.

St Andrew's thought the damage to the chimney pointing was wear and tear and R's comment about a lack of movement to it supported the view it hadn't been caused by subsidence. It noted the cracking around the window wasn't 'stepped' as it usually expected in subsidence related damage.

At the time of the report, the drains hadn't been repaired. R said they should be and, following that, the patio reinstated with a firm and level surface. St Andrew's agreed it would relevel the area affected by the drainage work. I haven't seen any further expert opinion to show this didn't happen and a problem remains.

Taking all of this into account, I'm not persuaded the evidence shows the damage to the chimney, windows or patio has been caused by subsidence or should otherwise be included as part of the claim. So I'm satisfied it was reasonable for St Andrew's not to include them in its schedule of work or cash settlement offer.

Cost of R's second report

Mr K asked for the cost of R's second report to be met by St Andrew's. It said it wouldn't pay for the report because it hadn't changed the outcome of the claim. And whilst Mr K had been told he was entitled to provide a report, he was told the cost wouldn't be covered.

As our investigator hadn't been persuaded by R's report, she didn't think St Andrew's should pay for it.

I haven't seen any evidence to show St Andrew's committed to funding the report. Where a policyholder doesn't agree with a position taken by an insurer, it's open to them to take their own expert advice to challenge the insurer's position. I think it's reasonable for insurers to let policyholders know they're entitled to do that. The policyholder bears the cost of the report. But it's general good industry practice for the insurer to reimburse the cost if the report has a material impact on the claim – for example, if the insurer agrees to change its position.

Based on my findings above, I'm satisfied it was reasonable for St Andrew's to maintain its position after considering R's report. That means it had no material impact on the claim. It follows that in these circumstances, I wouldn't expect St Andrew's to pay for the report.

Settlement amount

St Andrew's made a cash settlement offer which it said reflected its cost of carrying out the building work caused by subsidence, less the remaining excess. That came to around £13,000. I understand Mr K has quotes for a significantly higher value than this. He's provided one for over £150,000. He doesn't think St Andrew's rates reflect the costs he can access on the open market – what he's described as 'commercial rates'.

Our investigator thought it was fair for St Andrew's to pay what it would have cost it to carry out the work because it had been prepared to carry out the work and Mr K had asked for the cash settlement.

Mr K felt the way St Andrew's had handled the claim up to that point meant that he was effectively forced to take a cash settlement. He said, 'after three and a half years trying to get these works done, I've had enough'. I understand having to take advice

to overturn the initial decision to decline the claim and the health and safety concerns noted above played key roles in Mr K's decision to ask for a cash settlement – alongside the time taken to reach that stage and other problems that had arisen during the claim.

The policy contains a section about how it settles claims for buildings insurance. It doesn't specify which costs should be used when settling the claim by cash payment. This means the policy doesn't give St Andrew's the automatic right to settle at its own costs. So I must consider whether it would be fair for it to do so.

This Service generally considers that where an insurer offers to do the work but a policyholder would prefer to take a cash settlement, it wouldn't be fair to expect the insurer to pay more than it would have spent on the work itself. That's because when it offered to carry out the work, it offered to indemnify the policyholder – to put them back in the position they were in prior to the damage. That's a reasonable position to offer to put a policyholder in, so it wouldn't be fair for the insurer to pay increased costs over and above the fair position.

I've thought about whether it would be fair to deviate from our usual approach given the way St Andrew's has handled this claim.

Whilst I can't consider the merits of what happened in the earlier complaints, I can take into account the fact that repairs hadn't taken place earlier in the claim. The complaints were broadly about the time taken to reach the repair stage. I can understand the frustration, disappointment, and distress that may have been caused during the claim. And I note St Andrew's paid compensation for the way the claim was handled at those times, suggesting there had been significant delays and avoidable distress caused. But I don't think delays reaching the repair stage necessarily means the repairs themselves wouldn't be carried out to a reasonable standard in a reasonable period of time. And the remedy to those claim delays is to pay compensation, which St Andrew's has already done.

I recognise Mr K was particularly concerned about health and safety. When the incident was reported, St Andrew's contractor acted promptly to improve things. I think that showed it cared about Mrs K's health and safety. And it's likely that would have made St Andrew's more careful and attentive of Mrs K's needs if it had carried out the building work.

St Andrew's emailed its offer and asked Mr K whether he wanted to accept the offer. It didn't suggest its costs were indicative of rates he may be able to obtain elsewhere – 'commercial rates' – they were simply the costs St Andrew's would be charged by its own contractor if that contractor carried out the work.

St Andrew's has considered the quote provided by Mr K. It says much of the work included isn't necessary to repair the subsidence damage. For example, a new foundation, renewed roofing, two new bathrooms, and repainting the entire house externally. I haven't seen any evidence to show why these things would be required to put right the subsidence problem. So I don't think it would be reasonable for me to require St Andrew's to pay for them.

All things considered, I'm not persuaded Mr K was effectively forced into taking a cash settlement. He was given the option of having the work carried out by St Andrew's or accepting a cash offer. Because of this, I'm satisfied St Andrew's could fairly rely on its own costs when cash settling the claim.

Storage costs

Mr K asked St Andrew's to pay the cost of storing items whilst the building repairs are carried out. St Andrew's said its contractors would have been able to move the items around the house during repairs, so it wouldn't have paid for storage if it had carried out the work. Our investigator thought this was reasonable.

Following the principle established above, I'm satisfied St Andrew's is only obliged to pay what it would have cost it to carry out the work. That includes any costs necessary to facilitate the repairs, such as moving and/or storing furniture.

The St Andrew's schedule of work includes an allowance of labour time to move furniture and belongings to facilitate the work. Mr K hasn't challenged the amount of time allowed or suggested more is needed. So I'm satisfied St Andrew's has included a reasonable allowance and the cost of moving items has been factored into the cash settlement.

Delays and service between October 2020 and May 2021

St Andrew's accepted there had been delays and poor service whilst its contractors carried out the drain work. This included a lack of communication from its contractor, incorrect information about how long work would take, and a delay refitting the washing machine and downstairs toilet. Both units have since been refitted but in the meantime Mrs K suffered avoidable inconvenience. St Andrew's offered £400 to compensate for this.

Our investigator noted the failings in the service provided by St Andrew's, particularly given the length and complexity of the claim. She thought £400 was reasonable.

It seems to be agreed by all parties that St Andrew's let Mrs K down on this point, so I won't go into detail about it. Taking into account the impact of this delay alone, I'm satisfied £400 for this point is reasonable in the circumstances.

Damage to tools, equipment and grass

St Andrew's moved items belonging to Mrs K, including tools and garden equipment, from her garage to the garden. I understand this was so the contractor could access the garden through the garage to carry out the drain repairs. The items were covered by a tarpaulin.

Mr K agreed to this on the basis it was during the summer and would be for a short period of time only. But delays followed and the items were left outside over autumn and winter. Mr K says the items, and the grass they were resting on, became damaged.

After the drainage work was completed, the items remained outside for some time and were eventually disposed of. Mr K says by the time the work was complete the items were already damaged beyond repair. So leaving them outside longer made no difference to their condition. He also notes neither he nor Mrs K could have moved the items back into the garage until the work was complete, as it would have blocked the contractor's access.

Our investigator didn't ask St Andrew's to pay for the items. She thought the grass would have been damaged as a result of the delays carrying out the work. She said the grass would grow back over time, so there was no need for St Andrew's to pay to

put it right, but it should pay £50 compensation for the inconvenience. St Andrew's accepted this.

Mr K has provided photos which show some items partially covered by a tarpaulin in the garden. In my view, this was an unsatisfactory way for St Andrew's to store the items. That may not have caused a problem had the work been completed promptly during the summer. But with the significant delay to the drainage work noted above, and moving into the wetter months, I think St Andrew's should have taken steps to store the items more appropriately.

St Andrew's didn't do so and that left the items partially uncovered, outside, over a prolonged period of time, including during the winter months. I think it's likely the items would have suffered damage during that time.

I can see why Mr K didn't move the items back into the garage, as that would have prevented the contractor's access to the garden to carry out the overdue repairs. And the items were in the garden because there was nowhere else more suitable on the property to store them. So I don't think he had a reasonable alternative to leaving them in the garden.

After the drain repairs had been completed, the items could have been moved back to the garage. They remained outside until they were disposed of. Mr K says they were already beyond repair by the time the drain work was completed, so there was no benefit to moving them into the garage. It's possible the items became more damaged after the drain repairs were complete. Mr K says that isn't the case and I haven't seen any evidence to persuade me otherwise.

Overall St Andrew's didn't store the items appropriately and they became damaged. I'm satisfied that means St Andrew's should pay for their replacement. It's not entirely clear what all of the items are but the photos show electronic items and home furniture. Mr K has suggested a figure of £500 to cover the cost of replacing them. St Andrew's hasn't suggested any other figure. I'm satisfied this amount appears reasonable and is a pragmatic resolution to this part of the complaint.

Based on the photos, I'm satisfied it's likely the grass was damaged. Ordinarily it would grow back and from the photos I don't see any other garden features that would have been impacted. St Andrew's has agreed to pay £50 compensation for the damage to the grass and I'm satisfied that's reasonable in the circumstances.

Other points

Mr K had raised other points during our investigation, which have been answered. He hasn't challenged or commented on them further, so I don't think they're in dispute any longer. As a result, I won't include them here.

Overall

St Andrew's has already offered £400 compensation. If it hasn't paid that, it should do so now. In addition, I'm satisfied it should pay £1,050 compensation for the reasons above.

Responses to my provisional decision

St Andrew's said it accepted my provisional decision. It noted it had already paid the £400 it had offered in the February 2021 complaint response, so there was £1,050 further to pay.

Mr K made a number of comments in response to my provisional decision. In summary, they were about two main points: the cost of the building work and the patio.

Mr K said some of the work in his quote wasn't subsidence related, so he wasn't expecting all of the quote to be paid. But for the work that was subsidence related, he asked for the claim to be settled at the commercial rates he paid on the open market, rather than St Andrews' own contractor rates.

And Mr K asked me to look again at the patio. He said the patio had been dug up to allow for the drains to be repaired but they hadn't been relaid or replaced. As a result, he said the patio was left in an unfinished and unsafe condition, with gaps and broken slabs.

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 St Andrew's accepted my provisional decision in full. And as Mr K questioned two points only, I assume all other points have been accepted. As a result, I won't repeat what I've said above, I'll focus on the two outstanding points Mr K has raised.

Settlement amount

Mr K would like me to ask St Andrew's to settle the claim based on the cost he faced for the subsidence related repairs. He accepts that much of the work in his quote isn't subsidence related. But he asks that the settlement for the subsidence related work reflects the commercial rates he paid, rather than the contractor rates St Andrew's benefitted from.

In my provisional decision, I set out the general position that it wouldn't be fair to ask an insurer to pay more than its own contractor rates when its offered to carry out the work and indemnify its policyholder. I noted St Andrew's had offered to carry out the work. And I explained why I wasn't persuaded Mr K had been effectively forced to take a cash settlement, which meant I considered it fair to apply our general position and allow St Andrew's to settle the claim at its own rates.

Mr K hasn't challenged these points. So I see no reason to change them or comment further.

Whilst I commented on the work included in Mr K's quote, that wasn't the primary reason for my finding. So accepting that Mr K isn't asking for the quote to be paid in full doesn't change the outcome I reached before.

All things considered, I remain satisfied St Andrew's settled the claim fairly.

Patio repair

In the April 2021 complaint response, St Andrew's was satisfied no further work was required to the patio to ensure it was level and in a reasonable condition after the drainage work had been carried out.

I haven't seen any evidence to show this position was unreasonable. Whilst I know Mr K considers the patio needed further work, and I understand he had this carried out, I haven't seen anything to show the patio had been left in an unreasonable condition by St Andrew's or its agents.

For that reason, I'm not satisfied it would be fair to ask St Andrew's to pay for patio repairs. But if Mr K is able to provide St Andrew's with evidence to show the patio was in an unreasonable condition and needed further work, I would expect it to consider whether there's more it should do.

My final decision

I uphold this complaint.

I require St Andrew's Insurance Plc to pay a total of £1,450 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K and Mrs K to accept or reject my decision before 19 December 2022.

James Neville
Ombudsman