

The complaint

Mr and Mrs H are unhappy AA Underwriting Insurance Company Limited (AA Underwriting) says they need to make a new subsidence claim before it will investigate cracking damage at their home.

What happened

There have been several businesses involved in this claim and complaint acting as agents or representatives of AA Underwriting. Any reference I make to AA Underwriting in this decision also includes the actions or representations of its agents.

Mr and Mrs H first raised a claim for cracking damage to their home in the summer of 2020. AA Underwriting carried out drainage investigations and completed a repair to a downpipe. It also carried out ground investigations. AA Underwriting suggested the likely cause of movement was a shrub growing on the side wall of Mr and Mrs H's house. These investigations took until mid-2021.

AA Underwriting told Mr and Mrs H to remove the shrub and then monitor the damage for a period of three months, to see if the issue had been resolved. When Mr and Mrs H reported no worsening, or additional, damage AA Underwriting concluded the cause of movement had been addressed. But it advised Mr and Mrs H that the cost to repair the cracking damage fell below the relevant policy excess of £1,000.

Mr and Mrs H noticed further cracking damage, and a dropped patio slab in the vicinity of the previous area of drain access in the summer of 2022. They reported these issues to AA Underwriting, but it says the issues are separate to the previous claim and so a new claim will need to be raised before it will undertake any investigations into possible subsidence.

Unhappy with AA Underwriting's decision, Mr and Mrs H brought their complaint to our service where it was considered by one of our investigators. She said AA Underwriting hadn't persuaded her that the cause of the earlier subsidence had been properly identified or remedied. She said AA Underwriting should carry out further investigations into both areas of damage, including a period of level monitoring, before reaching a decision on whether the new damage is linked to the previous claim or is separate.

Mr and Mrs H accepted our investigator's assessment, but AA Underwriting didn't. So, as no agreement has been reached, their complaint has been passed to me to decide.

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.

Having done so, I agree with the outcome reached by our investigator. I'll explain why.

AA Underwriting says the shrub it advised Mr and Mrs H to remove was the likely cause of the damage in 2020/2021 and that the new damage is on an entirely separate part of the property. It says its site investigations at the time showed no further potential issues. It also says that further movement or damage linked to the initial cause would likely have been evident during the three-month monitoring period.

I've seen the surveyor's report and photos as well as the drainage and geotechnical investigation reports. But none of these contain any explanation or reasoning to support the conclusion that the sole cause of ground movement in 2020/2021 was the damaged drain which was repaired and/or the one shrub Mr and Mrs H were told to remove. So, based on the evidence I've been provided with, I'm unclear as to how this conclusion was reached.

In addition, following the drainage repair and shrub removal, it seems Mr and Mrs H were told to visually monitor the area of damage for new or worsening cracking over a three-month period. But I don't think such limited monitoring is sufficient to provide a persuasive conclusion of stability.

I say this for two reasons. Firstly, a visual inspection carried out by laymen cannot, in my view, be relied upon to support, even on balance, that the movement had most likely stopped. And secondly, this visual monitoring was carried out for a short period of time, during the wet season, when swelling or heave (which, if anything, would probably reduce the size of open cracks) would be more likely than any subsidence movement. I don't find it entirely surprising that it took until the following dry season (summer) before further cracking became evident. So, I don't think it was reasonable for AA Underwriting to rely on Mr and Mrs H's short period of visual monitoring to conclude that the cause of any new damage is separate to the previous.

In addition to the above, AA Underwriting has pointed to the fact that there are areas of damage which are remote from the original cause. However, it also seems there are areas of damage in the same location that was damaged previously as well as the dropping of the floor slab in the locality of the drains. So, I don't think AA Underwriting can fairly rely on the fact that some damage is remote to conclude that there is most likely a completely separate cause either.

As it stands, I don't think there is sufficient evidence either way to confirm the damage from 2022 is separate, or linked, to the earlier claim. So, in these circumstances, I think the fairest solution is for AA Underwriting to investigate the new issues under the previous claim. But should these investigations subsequently prove that the new issues are completely separate, AA Underwriting can, at that stage, insist that Mr and Mrs H raise a new claim with the appropriate insurer.

Should Mr and Mrs H be unhappy with AA Underwriting's decision following the new investigations, they can raise any new concerns as a new complaint.

My final decision

For the reasons I've explained above, I uphold Mr and Mrs H's complaint.

AA Underwriting Insurance Company Limited must carry out suitable, and more detailed, investigations into the new areas of damage before providing a decision on whether the issues should be covered under the previous claim or not.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 27 November 2023.

Adam Golding
Ombudsman