

## **The complaint**

Mrs B has complained about her property insurer AA Underwriting Insurance Company Limited (AAU) regarding a subsidence claim.

## **What happened**

Mrs B's daughter noticed cracking in 2019 and a claim was made to AAU. An engineer's report was completed in December 2019 which said the property, at the rear corner, had suffered subsidence movement. Reference was made to clay sub-soil likely being influenced by surrounding vegetation but with a leaking gutter and likely failed underground pipes also having an impact. Further investigations were recommended before a "full report" could be completed.

In February 2020 some soil investigations and drain repairs were completed. It was then February 2021 when an arboriculture report was completed – this said a neighbour's hedge was likely influencing the soil conditions. AAU wrote to the neighbour, enclosing a copy of the arborist's report, formally asking them to take the hedge down. The hedge was subsequently reduced but was never removed. In April 2022 AAU completed a further scope of repair for the property (the first having been done in early 2021). The scope said expected repairs would cost less than the £1,000 policy excess. In May 2022 AAU wrote to Mrs B. It said it felt the damage had not been caused by subsidence, and even if it had been the repair cost was below the policy excess. AAU said there was nothing more it would do on the claim. Mrs B wasn't happy and, in August 2022 AAU sought an external expert's review. The expert, referring to himself as a chartered surveyor and loss adjuster, said he didn't think there was any recent movement, that there was likely an issue with the walls of the property not being tied.

Also in 2022 Mrs B was told that AAU would not renew her cover. Then, shortly before the current policy was due to expire, AAU did agree to offered renewal and Mrs B was told there'd be a loading on the premium to account for the subsidence claim. She was unhappy about renewal initially being refused and about the premium being loaded.

Given Mrs B's concerns she complained to the Financial Ombudsman Service. Our Investigator felt the surveyor's report was not persuasive, certainly not in light of the wealth of other expert opinion which said this was subsidence damage. He felt AAU should settle the claim and pay Mrs B £300 compensation.

Mrs B wasn't happy with the compensation. AAU said it felt its expert's report from August 2022 could and should reasonably be relied upon – so it wasn't prepared to the recommendation to settle the claim under the policy. The complaint was passed to me for an Ombudsman's consideration.

I was minded to uphold it. But my reasons for doing so went further than those expressed by our Investigator, and I felt slightly different redress was due. I also needed to answer Mrs B's concerns about the 2022 policy renewal. So I issued a provisional decision, giving both parties a chance to comment on my findings and suggested redress before making a final decision on the complaint. My provisional findings were:

### "The claim"

*I think AAU failed Mrs B initially in 2019. As I understand it, she had contacted it in the autumn, in the first instance, to make a claim under the policy for cracking but it told her she had to go and get an expert report to show it was likely subsidence. That is not in line with good industry practice. Subsidence is a highly technical area. As such good practice is for insurers to appoint a suitably qualified party to carry out an initial assessment. AAU left Mrs B, a vulnerable lady, to do this herself, I don't doubt it was difficult for her to arrange that. Mrs B was though able to instruct a suitably qualified person to provide a view on the cracking at her home. She appointed a firm of consultant structural and civil engineers and an appropriately qualified civil engineer completed the report. And I note it was December 2019 before the report was produced. That could likely have been done sooner if AAU had acted appropriately to arrange the assessment. I'll keep all that in mind when I consider compensation. Further, if she had a cost for that, then AAU should, subject to proof of payment, reimburse her outlay plus interest\* from the date she paid for the engineer until settlement is made.*

*I've briefly detailed the engineer's findings in my background above. And I find his report persuasive. Seemingly AAU did too because on the basis of that report it effectively accepted Mrs B's claim.*

*The engineer did recommend other tests and investigations though. And AAU went ahead with those. There were soil tests and an arboriculture report. All of which pointed to the property suffering subsidence as had been reported by the engineer. At no time did AAU feel or suggest that there was no movement occurring at the property or that there had not been any subsidence damage. And AAU's file shows that it was constantly referring the results of the various investigations to its in-house subsidence engineers, surveyors and specialists, all reviewing the claim. So it had ample opportunity, expert consultation and chance to review all of the pertinent evidence in a contemporaneous fashion as the situation was evolving. And none of AAU's experts said it was likely that Mrs B's home was not suffering subsidence. Not until 2022 – three years later and after mitigation works were done – did AAU have any concern. I think this alone shows that AAU accepted this claim.*

*Further all of AAU's other actions show that it had accepted this claim under the policy cover for subsidence. I say that because AAU completed drain works at the property – following drain investigation works recommended by the engineer. It also embarked on action against the neighbour whose hedge was implicated by the engineer and arborist as causing Mrs B's home to subside. Everything AAU did, once having received the report it unfairly made Mrs B obtain herself, until it did an about turn in 2022, was as an insurer covering and handling an accepted subsidence claim under the policy.*

*AAU will be aware that once a claim has been accepted by the actions of an insurer and it has acted to repair the property – for example, repairing drains and acting to remove the cause of the damage such that structural repairs can be done – it cannot reasonably just change its mind and say it isn't liable for the claim.*

*Now I suspect that AAU will say it had good reason to change its view here as it obtained new evidence. I accept that AAU did obtain an external expert report in August 2022. But it had already changed its mind on the claim in May 2022. And despite my having asked it why and how that change came about – based on what expert opinion – AAU hasn't satisfactorily explained that decision. It said it was based on the surveyor/loss adjuster's findings. But the report from that professional was dated August 2022 – there's nothing to suggest that review was undertaken or began in May 2022. So I'm not persuaded that AAU's May decision was reasonably made. And the professional's report from August 2022, which in theory might*

*show the May decision was fair and reasonable, is not persuasive evidence of that. Not in light of the wealth of contemporaneous evidence gathered during the course of the claim by various experts in their field. Also the author of the August 2022 report doesn't seem to be a qualified engineer or surveyor – only a 'fellow' of certain technical institutions, referring to himself as a chartered surveyor and chartered loss adjuster. And AAU whilst seeking to validate the appropriateness of his evidence only said that he is a "highly experienced Structural Specialist", also commenting that he is a fellow of institutions denoting excellence in the industry/field of subsidence. In assessing subsidence an engineer is usually seen to be the most appropriately qualified expert and Mrs B presented an engineer's report at the start of the claim which AAU accepted and acted upon. And AAU had its own in-house engineers review the claim as it was on-going, with no concerns raised. I'm not persuaded that AAU can fairly or reasonably decline the claim at this stage.*

*I'm also mindful that, despite AAU's August report suggesting the property is likely not currently moving, Mrs B has concerns that it is. She had some repairs done to the external cracking last summer – which AAU will have to reimburse her for, plus interest\* – but believes the cracks are opening up again. And whilst the (neighbour's) hedge, felt to have been a cause for the subsidence at the property, was reduced, it wasn't removed completely as recommended by the arborist. So it isn't clear if this is still having an effect on the property.*

*I know Mrs B would like the hedge removing. But AAU can't force the neighbour to do that. In theory it could take legal action against the neighbour with a view to obtaining a court order dictating removal of the hedge – but that is a long, costly process, the outcome of which is not certain. That process would also likely create ill-feeling between Mrs B and her neighbours, which as a vulnerable individual, might cause Mrs B significant problems. Where a property suffers subsidence and remains subject to movement where the cause for movement cannot reasonably be curtailed, then an insurer will have to look to other methods for ensuring the property is stable such that lasting repairs can be done. At the minute it is not clear if the property is still the subject of subsidence movement or not – although the repairs potentially having failed might suggest that it is. But it could also be, if they have failed, that they weren't completed well.*

*I'm also mindful at this point that despite other investigations completed during the course of the claim, AAU did not seek to monitor the property for movement. That would often be a first stage of most subsidence claims, running alongside other investigations such as those undertaken by soil specialists and arborists. And it helps an insurer not only validate a claim under the policy but also ensure that any repairs which are done are long lasting. Because an insurer must complete lasting repairs and repairs will not last if a property is still moving. I'm really unsure why AAU didn't complete this type of investigation, although I'm mindful that, in 2020, following it completing drain repairs, it did instruct Mrs B to monitor her property for signs of ground recovery. I think it's disappointing that AAU seems to have chosen to ignore good industry practice and put most of the usual activity carried out by insurers in connection with technical specialists, in this type of claim, onto Mrs B.*

*So I think further investigations are required at this stage to determine if movement is continuing and, if it is, what is needed to stabilise the property such that further repairs can be done. Therefore, I am going to require AAU to undertake monitoring at the property – the form of which, possibly crack and/or level monitoring, and over what period this will need to be done being determined by a suitably qualified expert – to see if it is currently moving. And I think it should also, now the hedge has been reduced, ask the previous arborist for an updated report, assessing the likely impact of the reduced hedge. As I understand it, it has been reduced to little more than stumps and it may well be it hasn't grown back. I know Mrs B is concerned about root activity none the less, and I think that the revised state of the hedge, along with its likely impact on the property, is something an expert should review. If*

*the further investigations show the property is still suffering subsidence, then AAU will need to determine what is needed to stabilise the property and undertake that work, such that lasting repairs can be done. If the property is shown to be stable then AAU can move to complete the necessary repairs.*

*I know Mrs B would like me to just direct AAU to underpin the property. But that wouldn't be fair, even at this late stage in the claim. That is because underpinning is not something that is always necessary or appropriate in subsidence claims. It is one method of stabilisation, sometimes used by insurers where the cause for movement can't be forestalled. But even where the cause for movement can't be forestalled, underpinning is not always the most appropriate method for otherwise achieving stability. And if used inappropriately, underpinning can cause more damage to occur. What is needed to stabilise a property has to be properly considered by suitably qualified experts taking into account all the necessary technical information. So it wouldn't be fair or reasonable on Mrs B or AAU, for me to make that direction here when, not only has no expert assessment of stability or what is needed to achieve it been undertaken, but it isn't even clear the property is still moving.*

### Renewal

*I asked AAU about renewal. But it didn't answer my questions. Mrs B has said that AAU initially said it would not renew the policy in 2022. That she had several months of worry thinking she would not be covered and trying to find cover elsewhere, until renewal was then offered. I've no reason to doubt what she's said in this respect. And AAU knew she had an ongoing subsidence claim. So it shouldn't have been even thinking about refusing her renewal. That's not in line with what the industry, and this service, considers to be best practice when there's an ongoing claim. I'll take the upset caused to Mrs B into account when awarding compensation.*

*Mrs B also said though that when renewal was offered, a loading was applied to the premium on account of the subsidence claim. She provided a document from the broker which confirms AAU did do that. Whilst an insurer usually wouldn't negatively rate a policy in respect of subsidence specifically, having any claim on your record will likely affect your insurance premium. But it is also fair to say that most premiums will go up a little each year in any event. Having seen Mrs B's cover in 2021 and the renewal, when it was agreed, in 2022, I don't think the premium has been increased to such a degree it seems unfair. The difference in the cost of cover is only £22.96. So I'm not going to make any finding against AAU in this respect.*

### Compensation

*I think AAU made this claim far more difficult for Mrs B than it should have been. As I said, from the outset AAU did not follow good industry practice and it put extra pressure on Mrs B by making her obtain an expert report. Then there seem to have been unreasonable delays in 2020. Whilst the pandemic was on-going at that time, I've seen no good reason why external investigations at the property could not have been on-going. Yet the arborist did not make their report until 2021. And whilst it may not have been possible to fully monitor the property during some of 2020, as access inside would likely have been required, AAU hasn't acted since the initial severe pandemic restrictions were lifted to check if the property is still moving. Rather, in 2022, it unfairly and unreasonably declined the claim.*

*Mrs B has explained how worried she's been during this time. She has seen her house damaged by cracking and has seen it deteriorate and/or been worried that it would. I know that because some cracks were full thickness, leaving holes in the property's wall, she's felt unsafe. The property has also been colder than it otherwise would have been. All of which prompted Mrs B to arrange repair of the cracks herself in summer 2022. With further upset*

*also being caused by AAU in 2022 when it initially said it wouldn't renew the policy for the coming year. I think AAU should pay Mrs B £1,250 compensation for the upset its poor handling of this claim has caused."*

AAU did not comment on my findings or redress. Mrs B said she was happy with the findings – but that she wanted to point out that the hedge had grown back considerably. She provided photos.

### **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 note Mrs B's comment. I can see from the photos provided that cutting the hedge down to stumps has not killed it – there's quite tall and extensive regrowth.

Having reviewed matters, I've no reason to change my views stated provisionally. My provisional findings and redress are now those of this, my final decision.

### **Putting things right**

I require AAU to:

- Undertake further investigations at the property to determine if it is still subject of subsidence movement – in line with my comments above – including a review by the arborist who reported before (if they're available, if they aren't or aren't willing to engage further then another will need to be sourced) on any likely influence from the hedge.
- If it's felt the property is stable then it should arrange and complete any necessary repair of the property, including the cracking previously recorded as part of the claim.
- If it's felt that movement is still occurring, in line with my comments above, decide what's needed to stabilise the property and undertake that work before completing other necessary, lasting repairs, including to the cracking previously reported as part of the claim.
- Reimburse Mrs B's cost for the 2019 engineer's report, plus interest\* from the date the report was paid for until settlement is made, subject to Mrs B providing proof of payment.
- Pay Mrs B £655 plus VAT, as reimbursement of her repair costs in 2022, plus interest\* from 9 June 2022, the date of payment, until settlement is made.
- Pay Mrs B £1,250 compensation for the distress and inconvenience caused.

\*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require AAU to take off tax from this interest. If asked, it must give Mrs B a certificate showing how much tax it's taken off.

### **My final decision**

I uphold this complaint. I require AA Underwriting Insurance Company Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 23 June 2023.

Fiona Robinson  
**Ombudsman**