

## **The complaint**

2 complains about Covea Insurance plc ("Covea") for declining its insurance claim for subsidence and consequential damage. 2 wants Covea to accept the claim and undertake monitoring and investigations as recommended.

## **What happened**

2 is a limited company made up of the owners of flats within a shared building.

2 insures the property with Covea and included subsidence in the building insurance it purchased.

The property was previously the subject of a subsidence claim around 20 years ago and, as a consequence, Covea set the excess for subsidence claims at £5000.

Repairs were done at that time, and these have remained intact.

In 2022, the members of 2 noticed cracks developing in the front fascia of the shared property. These were mainly on one side of the bay window to the property, towards a mature tree based on the street. Bowing to the window arch on the ground floor began to appear and diagonal cracks opened up into a corner of the bay.

2 commissioned a structural engineer report. That report considered that there was evidence of movement which may be caused by the nearby tree. It made a number of recommendations, including that immediate repairs were done to the window arch, and that monitoring and limited geotechnical investigations were undertaken to assess the soil substrate.

It also recommended that 2 make a claim under its buildings' insurance.

2 submitted a claim to Covea.

Covea sent a buildings engineer to inspect the property in May 2022.

The engineer then prepared a report in which he stated that the damage was not caused by subsidence and was from downward pressure which was not an insured peril. Based on this, Covea declined cover.

2 complained and Covea sent its final response letter in November 2022. In that response, Covea maintained its view that there was no evidence of subsidence and therefore no cover.

2 was not happy and referred its complaint to us. Our investigator looked into the available evidence and recommended that the complaint be upheld. They considered that the report obtained by C was more persuasive and thorough than the rebuttal report produced by Covea. They recommended that Covea take on the task of monitoring the property going forward.

Covea did not accept that view and asked for an ombudsman decision.

I issued a provisional decision in respect of this claim in May 2023. In that provisional decision I agreed with my colleague and also considered that Covea ought to accept the claim and the costs incurred to date. That provisional decision has been shared with the parties and they have been invited to comment.

Covea has responded, disagreeing with my provisional decision. It argues that 2 has not demonstrated that there was an insured peril, that the costs incurred so far have not exceeded the excess, and that I am not able to award compensation to a company like 2.

2 has provided further information resulting from a freedom of information request regarding other trees in the locale. 2 has not explicitly indicated whether it accepts the provisional decision.

### **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 have considered the additional information provided and I remain of the view expressed in my provisional decision.

Covea has argued that 2 has not sufficiently demonstrated that there has been an insured peril. I do not agree. The evidence currently available indicates that subsidence is the most likely cause in the structural engineer's opinion, or alternatively that Covea's assessor considered that the cause of the cracks was downward pressure. I cannot see that other reasons have been put forward, and no supporting reasons were given for Covea's view that the cause was downward pressure.

Consequently, on the available evidence the most likely cause is subsidence and changes in the soil substrate.

2 cannot definitively prove this without carrying out further investigations, as prescribed by the structural engineer, but in my view, it has demonstrated the peril to a reasonable degree and it is now for Covea to take on further investigations.

There has not been enough done by Covea to fairly decline the claim and so I uphold the complaint.

I accept that the costs expended (which have been detailed to me) have not yet reached the excess level, but the costs 2 has expended should be added to the claim, and counted within the excess, so that further costs incurred in monitoring and investigations are borne by Covea.

Further costs (once the costs exceed £5000) should come from Covea, unless it can demonstrate that an exclusion applies, or it can show that there is no subsidence or other insured peril. Based on the currently available evidence it cannot do so at present.

In respect of Covea's argument that I cannot award compensation for inconvenience to a limited company, this is not correct. I cannot award compensation for distress, as the entity cannot experience distress, but I am satisfied that the company has been caused additional inconvenience, beyond its usual responsibilities, such as to make an award of compensation justified.

I have not seen any further arguments against my provisional decision and so I adopt my previous reasoning in addition to the above.

### **Putting things right**

In order to put things right, I consider that Covea should accept the claim and undertake the investigations described in the structural engineer's report, in addition to any investigations and monitoring which Covea would usually undertake in subsidence claims. It should do this in consultation with 2, and report back to 2 regularly.

2 has explained that Covea may need to provide information to the local authority to support any argument for reducing the tree, if it is shown to be a factor in the movement. Covea should provide this support.

In addition, Covea should attribute to the claim the costs which 2 has already incurred, such as the costs of the structural report that it has obtained, and the immediate repairs mentioned in the structural report.

I also consider that 2 has been caused additional inconvenience by the decline decision and I consider that Covea should pay to 2 £200 compensation for its additional inconvenience.

### **My final decision**

For the reasons given above, and in my provisional decision, I uphold 2's complaint and direct Covea Insurance plc to:

- Accept and process 2's claim for subsidence;
- Carry out the immediate repairs as recommended in the structural report dated 14 June 2022, or attribute to the claim the costs 2 incurs for doing this;
- Attribute to the claim the costs 2 has incurred in obtaining the structural report dated 14 June 2022;
- Undertake limited geotechnical investigations and monitoring of further movement, as described in the structural report of 14 June 2022;
- Regularly liaise with 2 with updates of the above investigations and monitoring, and provide information to 2's local authority as required by 2; and
- Pay to 2 £200 compensation for the additional inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask 2 to accept or reject my decision before 5 July 2023.

Laura Garvin-Smith  
**Ombudsman**