

The complaint

Mr M complains a Society of Lloyd's (SoL) underwriter unfairly stopped providing him subsidence insurance.

What happened

In March 2020 Mr M made a subsidence claim against his home insurance policy. It was provided by a SoL underwriter – I'll call it U. At renewal of his policy, in May 2020, U would only agree to extend the cover for three months whilst it considered the open subsidence claim. Once that expired it offered a renewal for 12 months – but with a £10,000 subsidence excess. But when that policy expired, in August 2021, U didn't offer any renewal of cover to Mr M. Instead his broker found alternative home insurance with a different provider – but without subsidence cover.

In July 2022 Mr M complained to U that he had been disadvantaged by its decision not to offer him cover. He couldn't find insurance that included subsidence cover. In response it said it had made a business decision to no longer offer cover to the type of property Mr M wished to insure. It said it wasn't obliged to offer him insurance. U felt it had given him sufficient time to find alternative cover.

In August 2022 Mr M took out insurance with another different provider, but again without subsidence cover.

Mr M didn't accept U's response to his complaint, so he referred it to SoL. In response it said prior to the expiry of his policy, in August 2021, U had already made a commercial decision to no longer provide the policy Mr M held. It said that meant he couldn't be offered cover. SoL explained this applied to all policyholders that held that type of policy – not just him.

SoL said commercial decisions about which cover to provide are made by its individual underwriters. It felt U had allowed Mr M's broker adequate time for it to find him alternative cover. So it didn't challenge U's stance. However, it did recommend it pay Mr M £50 compensation for failing to provide a clear explanation in its July 2022 response.

Mr M wasn't satisfied as he was still unable find subsidence cover. To resolve his complaint he would like to be provided with subsidence cover for his property.

In May 2023 our Investigator upheld Mr M's complaint. He said it was fair to follow the principles of Association of British Insurer's (ABI) guidance on continuation of cover following a subsidence claim. He felt U hadn't shown it couldn't make an exception for Mr M by providing continuing cover. Neither was he satisfied it had taken reasonable steps, following the withdrawal from the market, to put alternative arrangements in place for Mr M.

So he recommended SoL offer Mr M continuous home insurance, including subsidence cover, on reasonable terms from the date it was removed. It didn't accept that outcome, so the complaint was passed to me. SoL said it doesn't accept ABI guidance requires insurers withdrawing from providing home insurance to ensure continued subsidence cover.

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've come to the same outcome as the Investigator.

As this is an informal service I'm not going to respond here to every point or piece of evidence SoL and Mr M provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything provided.

The language used by U (and SoL) to explain its decision not to provide continued cover, to this service and Mr M, hasn't been very clear. But it seems from recent correspondence that it decided to withdraw from offering property insurance policies.

Insurers can choose to withdraw from the market – for example deciding to no longer provide domestic buildings insurance policies. It's not this service's role to tell an insurer what policies it should offer to the market – that's a choice for the insurer to make. But we can consider if affected consumers have been treated fairly – or if they have been unfairly disadvantaged by an insurer making such a decision.

When considering this we generally look to see if the insurer has taken reasonable steps to ensure the intention of the ABI guidance is achieved despite their withdrawal from the market. The guidance is intended to ensure consumers with previous or current subsidence claims can continue accessing subsidence cover on reasonable terms – and to support a smooth functioning of the property market. It says that when there is a claim the insurer handling it should normally continue to provide subsidence cover for the property.

If U hadn't decided to withdraw from the home insurance market Mr M would, had it acted in line with the guidance, continued to be provided with subsidence cover. He hasn't been able to find cover elsewhere because of the claim. So he's certainly been disadvantaged by the market withdrawal. I've considered if U's response to that can be considered to be in line with the spirit of the guidance – and if not, has Mr M been treated unfairly.

I accept U and SoL aren't members of the ABI – but we consider the guidance as indicative of industry good practice (SoL seems to accept this as well). So we still feel it's fair that it's followed regardless of membership.

SoL doesn't agree with this services' interpretation of the guidance. It highlights the guidance's recognition that continuation of subsidence cover will not always be possible. It doesn't accept the guidance requires insurers withdrawing from the market to make exceptions and offer cover – or that it must find alternative cover for policyholders.

I accept the guidance doesn't give explicit direction on what is expected when an insurer withdraws from the home insurance market. It does, though address block transfers of business. It says it would be good practice to specify how 'continuing cover' cases should be handled in transfer agreements.

I accept this isn't the situation Mr M and U are in. There wasn't, as with a block transfer, an opportunity for U to specify terms of a transfer agreement. But this service is of the opinion its approach to block transfers demonstrates the spirit of the guidance – that an insurer choosing to stop providing cover should make arrangements to ensure policyholders aren't disadvantaged.

SoL has also pointed out the guidance accepts insurers can't guarantee to maintain cover in all circumstances. But the guidance doesn't provide any examples. So it doesn't state withdrawal from the market as one of those circumstances.

However, the guidance also accepts problem cases will arise from time to time. Examples it gives are repeated subsidence damage and non-disclosure cases. Again the guidance doesn't refer to withdrawal from the market. But importantly it does say that even in these problem cases cover should be provided wherever possible.

In this service's view this means insurers should arrange cover unless they can present a compelling reason not to. This service has previously explained that might include a risk significantly outside of an insurer's usual underwriting criteria. However, that wouldn't apply to subsidence as that's the problem the guidance is intended to remedy.

So, whilst considering SoL's arguments, I'm satisfied that the guidance applies to the circumstance. And that U acting in the spirit of the guidance, when withdrawing from the market, would have taken reasonable steps to arrange continuous cover for Mr M.

U did provide an extension of cover to Mr M. That saw him through to August 2021. But after that it left him without subsidence cover. I haven't seen that it took other reasonable steps, beyond that short extension, to ensure the intention of the guidance was achieved.

Other insurers, in similar situations, have found different solutions after withdrawing from the market. These include making an exception for affected customers and continuing to insure. Others have arranged with another insurer to take over the affected policies. Insurers have paid the additional cost between the existing policy and one provided by a specialist provider allowing the homeowner to access continued subsidence cover on reasonable terms.

Neither U, nor SoL, has taken these, or other, actions to maintain cover for Mr M. The guidance does intend for cover to be maintained wherever possible. U isn't operating in the home insurance market now. So it's understandable why it would prefer not to provide subsidence cover to Mr M. But being unable to provide it is a different matter. I'm not persuaded, by what I've seen, that is the case.

SoL has explained how unlikely it would be that another insurer could be found to provide cover. But I haven't seen the possibility was actively pursued. So I'm not persuaded it's not possible for continuous cover to be arranged with another underwriter.

So I'm satisfied there was a failure to act in line with the spirit of the guidance (and so follow industry best practice). I consider not following best practice, in the circumstances, is failing to treat him fairly. Without subsidence cover, Mr M's been disadvantaged. There's an uncertainty for him about how any future subsidence will be addressed and potential impact on the value of, or prospects of selling, his home.

I understand SoL's point that it isn't an insurer or intermediary. For that reason I'm requiring it to arrange for an insurer, U or otherwise, to provide the cover. It doesn't need to be involved in the detail of setting up the policy.

So SoL should arrange for an underwriter to offer home insurance, including subsidence cover, to Mr M on reasonable terms. To ensure he isn't left without a gap in subsidence cover that cover should be backdated to the point his policy with U ended.

The premium and other terms should be calculated in line with general underwriting guidelines and offer reasonable terms in line with good industry practice. To ensure the

provision meets its purpose and is line with the spirit of the guidance neither should be set in a way that effectively prevents Mr M from accessing the ongoing subsidence cover.

My final decision

For the reasons given above, SoL will need to arrange for an underwriter to provide ongoing subsidence cover as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 January 2024.

Daniel Martin
Ombudsman