

## **The complaint**

Mr and Mrs D complain that Accredited Insurance (Europe) Ltd ["Accredited"] has unfairly declined a claim they've made on their buildings insurance policy following damage to their garage.

## **What happened**

Mr D has led the complaint with this Service so I've referred to him mainly throughout. References I make to Mr D's actions include those of his wife.

Accredited is the underwriter of the policy, i.e. it's the insurer. Part of this complaint concerns the actions of its agents, for which Accredited has accepted responsibility. Any reference to Accredited, includes the actions of its agents.

The background to this complaint is well known to the parties so I've included a summary here.

- Mr D owns a property insured under a buildings insurance policy underwritten by Accredited.
- Mr D says a period of ice, snow and very wet weather caused a landslip at the rear of his garage, causing damage to the garage's rear elevation. He reported this to Accredited to make a claim on the policy. It appointed an agent to validate and manage the claim.
- Initially, Mr D says the claim was accepted and Accredited appointed a contractor. The contractor undertook some work to limit any further damage and agreed what further works were required.
- Subsequently, Accredited arranged a further inspection of the damage. Following this, it said the cause of the damage was poor workmanship related to the construction of the retaining wall and garage, rather than landslip. It declined the claim.
- Mr D was unhappy with this and complained to Accredited. It issued a final response reiterating that it believed the damage to the garage was caused by the failure of the retaining wall behind. It said this was caused by the lack of drainage and general poor construction of the retaining wall and it was ultimately inevitable that it would fail. It also questioned the construction of the garage. It maintained the decline of the claim under the exclusions for poor workmanship and damage caused gradually.
- Mr D raised a complaint with this Service. Our Investigator considered the evidence and upheld the complaint. He said that Accredited hadn't shown the retaining wall and garage weren't constructed to the building requirements at the time and as they had stood for between 30 and 40 years with no prior problems, he said Accredited should accept the claim.

- Accredited disagreed and asked an Ombudsman to make a 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.

- When claiming on an insurance policy, the onus is on the policyholder to show, on balance, the claim is covered under the policy terms. When an insurer relies on an exclusion to decline the claim, the onus is on it to show the exclusion applies. I'll be keeping this principle in mind when looking at this complaint, together with what I consider to be fair and reasonable.
- I've seen from the report following the first inspection of the damage, Accredited's surveyor originally decided the proximate cause of the damage was ground movement. He also had detailed the remedial work required under the claim and approximate costs of this being undertaken. It was subsequent to this that Accredited changed its view on the cause of the damage and declined the claim.
- Mr D said the garage had been constructed sometime between 1980 and 1990 and I've seen nothing which shows Accredited disagreed with this. On balance, it seems to me more likely than not the retaining wall between the garage rear elevation and the ground behind it would have been built sometime before the garage
- Accredited says the retaining wall and garage were poorly constructed but it hasn't identified any guidelines from the period when they were built to show *why* they weren't built in line with the standards, guidelines and techniques required at the time. When asked about this, it merely said retaining walls do not require building regulation approval but made no comment on what was required at the time the wall was built, nor provided any evidence to support its stance.
- And it said the garage should have been considered by a competent builder when it was constructed – but I've not seen anything which shows it wasn't, nor any construction guidelines or best practice that supports its opinion on poor construction.
- So, while Accredited says they have been poorly constructed and were inevitably destined to fail, I have kept in mind here that they have stood the test of time, having been constructed between 30 and 40 years ago. So, in summary, I've not been given sufficient evidence to persuade me that Accredited's conclusion the issues occurring are most likely caused due to poor workmanship at the point of their construction.
- Overall, I'm not persuaded Accredited has done enough to show the exclusions for poor construction and gradual damage apply. It follows that I'm not satisfied it has declined the claim fairly. In light of this, I will be directing Accredited to accept the claim.

### **My final decision**

My final decision is that I uphold this complaint and direct Accredited Insurance (Europe) Ltd to accept and deal with Mr and Mrs D's claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 8 December 2023.

Paul Phillips  
**Ombudsman**