

The complaint

W complains that Covea Insurance plc declined its claim on its property insurance policy for subsidence.

Mr D is a director of W and brings this complaint on its behalf.

What happened

W is a property management company for a building containing three flats. Mr D arranges insurance for the building through a broker. In 2020 the broker arranged the policy with Covea and the policy renewed each year.

In October 2022 Mr D made a claim under the subsidence cover due to cracks in the building. Covea sent an expert to inspect the damage but subsequently declined the claim. It said a tenant in one of the flats had said the cracks had been present for around ten years. So Covea concluded the damage had happened before the inception of the policy and therefore wouldn't be covered.

Mr D didn't think this was fair. He said he had made claims on a number of occasions with previous insurers but they had concluded the damage was due to thermal movement and not subsidence. He made a complaint but Covea didn't uphold it so he brought it to this service.

Our investigator recommended the complaint be upheld. He said if the historic cracks in the building were not caused by the current subsidence then Covea wouldn't be responsible for these. But as it had shown there was an ongoing subsidence issue it was responsible for dealing with that claim.

Mr D accepted our investigator's outcome however Covea didn't respond. So the matter has come 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.

It is of note that Covea has provided this service with no information in relation to this complaint, despite being given ample opportunity to do so. Nor has it responded to our investigator's outcome.

The rules that govern this service are laid out in the Financial Conduct Authority (FCA) Handbook – the Dispute Resolution: Complaints Sourcebook (DISP). DISP 3.5.1 states that 'The Ombudsman will attempt to resolve complaints at the earliest possible stage and by whatever means appear to him to be most appropriate...'

As Covea has been given many months to provide information, I don't believe it would be fair to delay matters any further. And Mr D has provided the reports carried out by Covea and all the relevant policy information, so I consider this enough to make a fair assessment of the complaint. I therefore consider it appropriate to proceed to a decision based on the evidence available, without waiting further for a response from Covea.

Covea has said that as the cracks at the property developed before the inception of the policy then the subsidence issues wouldn't be covered. It's relied on the following exclusion to the subsidence cover:

*'We will not be liable under this Extension for:
Damage which commenced prior to the inception of the cover under this Extension'*

It isn't in dispute that the building has had problems with cracking before the inception of the current policy. Mr D has been very open about the previous claims he has made on policies in 2011 and 2017. The claim in 2011 was suspected to be subsidence but the repairs fell under the amount listed as the excess so W funded the necessary repairs itself. Whereas the claim in 2017 was concluded to be due to thermal movement.

So I can see that the property has been suffering from problems with cracking for some time. However, Mr D has explained that the most recent incident has caused new cracks that are wider and larger. And Covea has identified it as being an ongoing instance of subsidence caused by a nearby tree. And while it's said some of the cracks have been present for some time, it's provided no evidence to show that the current damage is linked to the previous instance of thermal movement or subsidence.

As this instance of subsidence has only just been identified, has caused cracks in different areas of the property, and is ongoing, I don't think Covea has done enough to show that the exclusion applies here.

I've also considered industry guidance and best practice. There's an agreement published by the Association of British Insurers (ABI), which applies to how domestic subsidence claims should be dealt with. The guidance explains that if the claim is notified more than eight weeks after the start of the policy and the cause of the damage is ongoing under the new policy term, then the current insurer should deal with the damage that is currently ongoing.

Based on this I don't think Covea has acted fairly and reasonably by declining W's claim. It's provided no evidence to show that the current issues are linked to previous ones. And it has an obligation under the ABI agreement to deal with new claims that arise during the term of policy cover. I therefore agree with our investigator that it should reconsider W's claim for the ongoing subsidence in line with the remaining policy terms and conditions.

My final decision

For the reasons I've given I uphold W's complaint and direct Covea Insurance plc to

reconsider its claim for subsidence without applying the exclusion for pre-inception damage, in line with the remaining policy terms and conditions

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D, on behalf of W, to accept or reject my decision before 25 August 2023.

Sophie Goodyear
Ombudsman