

## **The complaint**

Mr G complains that AA Underwriting Insurance Company Limited voided his policy and declined his claim for subsidence.

## **What happened**

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- Mr G took out home insurance through a broker in February 2021. AA underwrote the buildings insurance part of the policy. The policy renewed in February 2022.
- Mr G got in touch with AA in June 2022 after he noticed cracks in his home. AA appointed a loss adjuster. They thought the damage may have been caused by subsidence and recommended further investigations. They reported Mr G as saying that part of the building had been underpinned around 40 years ago.
- AA noted that when Mr G took out the policy, he said his home had never been subject to, or currently showed signs of, subsidence. But it thought this was incorrect based on what the loss adjuster had reported. AA said if it had known the property had previously suffered from subsidence and been underpinned, it wouldn't have offered the policy to Mr G. As a result, it voided the policy, declined the claim, and returned the premiums paid.
- Mr G didn't think this was fair and complained. He said he'd told the loss adjuster he wasn't sure if the building had been underpinned or not. He checked with the builder who carried out work 40 years ago and they said it hadn't been.
- AA's complaint response said the decision to void the policy and decline the claim would be reviewed, as more investigation was warranted. It offered £300 compensation and agreed to continue with the claim by carrying out monitoring.
- Our investigator thought the complaint should be upheld. He didn't think AA had shown Mr G had misrepresented his circumstances. As a result, he asked it to remove any record of policy cancellation and consider the claim in line with the terms of the policy. He thought the £300 compensation offered was reasonable.
- AA said it had already agreed to investigate the matter further. And it couldn't do so until it had made a decision about the claim.
- Mr G thought the distress caused to him by what had happened warranted more than £300 compensation.

## **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.

AA's position is unclear. On the one hand, it voided Mr G's policy and told him his claim was declined because he hadn't told it his home had been underpinned due to subsidence. On the other, when he complained, it acknowledged it hadn't sufficiently investigated the matter before voiding the policy and would go on to do so.

Rather than investigating it promptly— or simply accepting the policy should be reinstated and putting that right straightaway – it seems to have continued with the claim without reinstating the policy and paused making a decision about the policy until later.

Whilst progressing the claim was helpful, this approach left Mr G uncertain about where he stood. With the policy voided, he had no buildings insurance. AA wouldn't offer him a new policy, and neither would other insurers in the circumstances.

AA's approach is highly unusual and I don't think it treated Mr G fairly. I'll explain why.

In a nutshell, AA thought Mr G hadn't provided the right information when he took out the policy. He'd been asked whether his home had ever been subject to, or currently showed signs of, subsidence. The same question was asked at the renewal. At both times he said no, but AA thought he should have said yes.

The relevant law for this situation is the Consumer Insurance (Disclosure and Representations) Act 2012 (or "CIDRA"). It places a duty on the consumer to 'take reasonable care not to make a misrepresentation'. In summary, if Mr G fulfilled that duty, AA can take no action. If he didn't fulfil that duty, CIDRA sets out the remedies available to AA. The onus is on AA to show that Mr G didn't take reasonable care.

To support its position, AA relied on its loss adjuster's notes that Mr G said his home had been underpinned around 40 years ago. He contests the accuracy of that note – his recollection is that he said work was carried out then, but he couldn't recall whether it included underpinning or not.

AA has provided notes of a call it had with Mr G. It shows he said there had been underpinning but also that he couldn't remember exactly what work was done. Given this happened 40 years ago, I don't think it's unreasonable that he can't recall it clearly. AA's own internal notes recognise that *even if* the building had been underpinned, that doesn't necessarily mean it had suffered subsidence. And at no point in the call did Mr G say it had done. The question put to Mr G didn't mention underpinning – only subsidence.

Mr G later got in touch with the builder who said they didn't carry out any underpinning.

Taking all of this into account, I'm not satisfied AA has shown that Mr G failed to take reasonable care when answering the question about subsidence. There's no clear evidence to show the building previously suffered subsidence. It's also not clear it was underpinned, but that's not the key point. So AA has no remedy under CIDRA and can take no action.

To put things right, AA must return Mr G to the position he was in prior to the policy voidance. That means removing any record of it from any internal or external databases. Then, reinstating the policy and considering the claim subject to the remaining terms and conditions of the policy.

AA did effectively consider the claim, despite voiding the policy, as it setup monitoring and took readings. So the claim hasn't been brought to a standstill and that's reduced the negative impact on Mr G. But I've no doubt his experience has been made more distressing and inconvenient than it needed to be as a result of the way AA handled things. I'm satisfied

£300 compensation is reasonable in the circumstances. If AA has already paid that, it need pay no more compensation.

### **My final decision**

I uphold this complaint.

I require AA Underwriting Insurance Company Limited to:

- Remove any records of policy voidance or cancellation from any internal or external databases.
- Reinstate the policy and reconsider the claim subject to the remaining terms and conditions of the policy.
- Pay £300 compensation if not done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 September 2023.

James Neville  
**Ombudsman**