

The complaint

Mr and Mrs R complain that Soteria Insurance Limited has handled their buildings insurance claim unfairly and refused to cover all the damage claimed for.

Mrs R has been the main correspondent and so for ease I'll refer to her throughout. References to Soteria include the acts of its agents instructed to deal with the claim.

What happened

The background is well-known to the parties, so I'll only summarise the main points. In 2018 Mrs R made a claim for damage to her home that she considered was a result of subsidence. Soteria's engineer visited the property but didn't believe subsidence was the cause and so rejected the claim. A year or so later Mrs R instructed her own surveyor who inspected the house and concluded subsidence was the cause (a nearby large tree causing the impact). Soteria accepted the claim.

Due to the poor state of Mrs R's property, including extensive damp and unrelated to subsidence, Soteria made a cash offer for the subsidence related damage as it said its trades people wouldn't undertake repairs. The tree was removed, and the property was monitored for further movement. It was concluded that there was no longer evidence of movement and the property deemed stable.

The issues Mrs R brought to us, in summary, concerned:

- Inadequate compensation for the delay and poor handling (Soteria offered £75).
- More repairs are subsidence related than Soteria has factored in (decoration, an outside path, damp-proof course, concrete slab, investigate foundation damage, piling needed).
- Reimburse the cost of a second report.
- Soteria should instruct contractors to carry out the work.

Our investigator largely wasn't persuaded that Soteria had done anything wrong, except around how the claim was handled. For example, while Mrs R was dealing with Soteria, and a joint policyholder, Soteria mainly addressed correspondence to Mr R. The incorrect declination of the claim had delayed matters and was distressing. The investigator thought £200 compensation was a fairer reflection. On all matters related to repairs though, she explained that Soteria had acted fairly given there was no evidence to support it was a result of subsidence.

Mrs R disagreed with the investigator and provided further information, which led the investigator to adjust her initial opinion:

- She remained of the view that there was no evidence the foundations were damaged (or a concrete slab), but Soteria had said if it was discovered they were then it would review that aspect.
- A slope to a front bedroom had been included in the cash settlement.
- There was no expert evidence subsidence had damaged the damp-proof course or

the outside path.

- Soteria had provided conflicting views on decoration, and she didn't think it was fair to exclude decorating costs simply because of a poor state of repair. She said Soteria should confirm what parts of decoration would be rectified because of the subsidence.
- She said £300 compensation was fair and Soteria should assess whether there was decoration required because of subsidence.

Mrs R requested an ombudsman to review the complaint and Soteria only replied to the investigator's initial view agreeing to pay £200 compensation.

I issued a provisional decision stating what parts of the complaint I intended to uphold and what Soteria needed to do to put things right:

I'm satisfied that it was clearly an error on Soteria's part to reject the claim from the outset as not being subsidence related. Soteria's agents are experts in the matter and while they noted 'some vegetation' in their report, the reality was the vegetation was an extremely large tree right next to the house. And it was this that was identified by Mrs R's expert as the proximate cause of the subsidence. Soteria's initial decision being flawed has caused delay albeit I factor in that it took Mrs R over a year to provide her own report.

The property was in a significant state of disrepair – Mrs R's own expert said as much too. I've seen photographs of the property and note, for example, rotten window frames on the outside and extensive mould and damp inside. While Mrs R suggests the damp/mould was a consequence of the subsidence I'm not so persuaded and will explain why.

Foundations

There's no persuasive evidence that the foundations are damaged. And I don't agree that Soteria, at this stage, needs to pay for piling. While her expert recommended possibly incorporating a new piled foundation, that method is not apparently necessary for a lasting and effective repair at this point. Remedial steps were taken to remove trees and after a period of monitoring the property was found to be stable and not moving. Soteria has said that if during repair works the foundations are found to be damaged it will review the matter. I'm satisfied this represents a fair outcome.

Damp

There's no persuasive evidence the damp-proof course was damaged by subsidence. Indeed, neither expert has concluded as such. Mrs R's expert has said if there is potential rebuilding between the foundation and damp-proof course level then estimated costs should be included. At this point though, the property is considered stable and Soteria has already agreed to review matters if the foundations are found to be damaged. The extent of mould and damp within the property is not, in my opinion and having read the expert evidence, a consequence of subsidence. So I'm satisfied this isn't a matter to be factored into Soteria's settlement at this stage. It should review matters if persuasive documented expert evidence to the contrary arises in the future.

Concrete path

The available evidence shows the path has a crack but there's no expert evidence that this is a result of subsidence. Soteria's expert suggests the damage is age-related and so I'm satisfied Soteria does not need to take any further action.

Front left bedroom

While Mrs R doesn't think Soteria has factored into its settlement a slope in the front left bedroom. As the investigator explained, relevant work for this appears in the schedule of work and was confirmed in an email to Mrs R in February 2022. I'm not persuaded Soteria

needs to take any further action regarding this slope.

Decorating costs

While I agree with the investigator that it's not fair to exclude the costs that are subsidence related, I don't think it's fair that all costs should be covered. Exposed mould and damp will need addressed before redecorating takes place, and I'm not persuaded that should be covered by Soteria. However, it's correct that where Soteria repairs cracks and strip existing plaster to re-skim, that will leave redecoration as part and parcel of the insured works.

Given the length of time that has passed since the claim was notified and where we are today, I'm going to recommend an amount that I think it's fair to expect Soteria to pay. This will give finality and allow both parties to move on. In doing this I've taken into account the extensive disrepair of the property and the fact that the damp / mould is not, in my view, a consequence of subsidence. I've also considered Soteria's point about 'betterment' in so far as redecoration will put Mrs R's property in a better position than it was before the claim.

It's inevitable that any redecoration will leave a room in a better position. However, the extent of mould and the requirement to deal with that would add cost and time beyond mere redecoration by painting walls. So, I've looked at Soteria's schedule of work that originally included the decoration.

As far as I can tell from the schedule, redecoration is factored into the front and rear bedrooms, and the hallway. The decorating costs total £1,591.57 including ceilings, walls, and architraves. To reflect the extensive disrepair, I'm satisfied 50% reflects a fair amount for Soteria to pay - £795.79. VAT at 20% (£159.16) would be chargeable on this share and so where Mrs R demonstrates she's paid for redecorating Soteria must pay that additional amount. Soteria's liability here is to pay VAT on the costs Mrs R has paid up to £795.79. If Mrs R has paid less than this Soteria need only pay VAT on the amount Mrs R paid.

Handling of the claim

As alluded to earlier, the catalyst for the delay was Soteria's initial decision to reject the claim as not subsidence related. I don't think Soteria's expert gave sufficient weight to the very large tree next to the house. That was the proximate cause as determined by Mrs R's expert and seemed to me to be an obvious cause to actively rule out, which I'm not satisfied Soteria did. I factor in that it took Mrs R some time to provide her own expert report but that shouldn't have been required if Soteria had fairly assessed the claim in the first place.

I've thought carefully about Soteria's decision not to proactively carry out the repairs. The insurance policy allows Soteria to give a cash settlement and given the extensive disrepair outside of the insured damage, I'm satisfied that's a fair option for Soteria to exercise.

Soteria has reimbursed the cost of the first expert report Mrs R obtained but, like the investigator, I'm not persuaded it should cover the cost of the second report. The first report was clearly a factor in identifying an insured event had occurred, whereas the second report has no impact on what should be covered.

Finally, I've thought carefully about the impact of the delay. I appreciate the frustration caused with the initial rejection but as things progressed it was clear the repair process was not going to be straightforward. Mrs R has contested aspects of what she thinks Soteria should cover but as explained, the vast majority of these are not issues I think should be covered by Soteria at this stage. While I am of the view Soteria should cover some decorating costs these are far from what Mrs R thinks and overall, I think the impact is limited. Soteria has offered to pay £200 but I agree with the investigator that £300 is a fairer reflection of the frustration and distress caused. It was a single mistake by Soteria that took a reasonable amount of effort and expense to sort out.

Putting things right

- *Pay Mr and Mrs R £300 compensation less any amount already paid.*
- *Pay Mr and Mrs R £795.79 to reflect 50% (circa) of the decoration costs. And add simple interest at 8% per year from 22 April 2022 when Soteria issued its settlement amount to the date this additional payment is issued.*

If Mr and Mrs R provide documentary evidence of VAT paid on any redecoration then Soteria is to reimburse that up to a maximum liability for VAT of £159.16

My provisional decision

I intend to uphold this complaint and require Soteria Insurance Limited to put things right as explained in the section immediately above.

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.

Soteria responded to say it had nothing further to add having considered my provisional decision.

Mrs R replied to say that she had “expected to cover decoration costs as well as replacing windows. With regard to subsidence related damage to the floor plate, footings and foundations - as the walls will need to be razed to the foundations before being rebuilt (in order to carry out the repairs per the scope Soteria have specified) we are concerned about the likelihood of lengthy delays whilst the house is uninhabitable if such damage is confirmed. Therefore we would need an undertaking from Soteria that they will assess and rectify any situation promptly (bearing in mind we would incur costs for accommodation as well as storage, and the delays may present difficulties for the contracted builder).

If Soteria can guarantee that they will make a prompt assessment of any situations arising then we are happy to proceed.”

I don't intend to add much more to the reasons I gave in my provisional decision and repeated earlier in this decision. For clarity though in considering Mrs R's reply, Soteria has said that if during repair works the foundations are found to be damaged it will review the matter. Until and unless that's relevant Soteria can't say whether such damage is covered by the policy or how that damage will be rectified. Soteria has said it will review things and that's all it can reasonably commit to at this stage.

In that review the policy terms and conditions remain a relevant consideration and so Soteria's review will be in accordance with the policy. Soteria will still need to handle the claim promptly and fairly and if the property is uninhabitable then consideration of alternative accommodation and other heads of cover in the policy for provision of storage (if a policy benefit) will necessarily form part of Soteria's review. I am not going to require Soteria to give any undertaking or guarantee because that's of no relevance at this stage. Mrs R will need to decide whether to accept my final decision within the relevant timeframe and if she does, this decision becomes legally binding on Soteria.

Putting things right

- *Pay Mr and Mrs R £300 compensation less any amount already paid.*

- Soteria must pay the compensation within 28 days of the date on which we tell it Mr and Mrs R accept my final decision. If it pays later than this, it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.
- Pay Mr and Mrs R £795.79 to reflect 50% (circa) of the decoration costs. And add simple interest at 8% per year from 22 April 2022 when Soteria issued its settlement amount to the date this additional payment is issued.

If Mr and Mrs R provide documentary evidence of VAT paid on any redecoration then Soteria is to reimburse that up to a maximum liability for VAT of £159.16.

My final decision

I uphold this complaint and require Soteria Insurance Limited to put things right in the way specified above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 29 September 2023.

Sean Hamilton
Ombudsman