

## **The complaint**

Miss B has complained that Admiral Insurance (Gibraltar) Limited declined a subsidence claim made on her home insurance policy.

## **What happened**

As the circumstances of this complaint aren't in dispute, I'll summarise what's happened.

- In 2022, Miss B noticed a small gap between the garage door and adjoining main house. She didn't think there was anything to be concerned about until early 2023, when she noticed the gap had widened and there was cracking to the garage. She got in touch with Admiral about it.
- Admiral appointed a loss adjuster, S, who thought the damage had been caused by subsidence. They said this likely began in 2022 – prior to Miss B taking out the insurance policy with Admiral. It declined her claim.
- Miss B approached her previous home insurer – who said it thought Admiral should be responsible for the claim. Miss B complained.
- Admiral maintained the damage had begun prior to the start of its policy and it had therefore declined the claim fairly.
- Our investigator thought the complaint should be upheld. He said Admiral should proceed with the claim because the subsidence problem had continued and been notified to Admiral after its policy had begun.
- Admiral disagreed with our investigator. It insisted it was entitled to decline the claim because the problem began prior to its policy. It also said the policy terms required Miss B to maintain her property – and because she'd allowed the damage to get worse, she hadn't fulfilled this term.
- Our investigator said Miss B had taken reasonable steps to deal with the damage, so she had maintained her property. And he wasn't persuaded to change his mind that Admiral should deal with the claim.

## **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.

- The policy covers subsidence, subject to a number of terms and conditions.
- Admiral accepts the damage was caused by subsidence. It's declined the claim based on a policy term which says: *"we will not cover ... any damage resulting from an event which happened before this policy started"*.

- Miss B took out home insurance with Admiral in January 2023. She first noticed the gap in 2022 and got in touch with Admiral in 2023 after it widened. S said they thought the subsidence damage had begun prior to 2023. I haven't seen any professional opinion to the contrary and it seems consistent with the evidence available, so I have no reason to question S' opinion on this point.
- In my view, that means the damage likely began before the policy started. Whilst that strictly means the policy term applies, I'm not satisfied it would be fair to apply it in the circumstances of this case. I'll explain why.
- Had Miss B been aware in 2022 that the damage was subsidence – and chosen not to report the problem to her then insurer – I'd likely agree it was fair for Admiral to rely on that policy term to decline the claim. But I'm not satisfied she did. Whilst a tree was removed from the garden in 2022, I don't think that means Miss B was aware the damage was, or could be, caused by subsidence. She says it had grown too big and was removed prior to noticing any damage to the garage. So I'm not persuaded Miss B was aware of a subsidence problem until 2023 – by which time Admiral had become her home insurer.
- This kind of situation is part of the reason for the ABI Domestic Subsidence Agreement. It acknowledges that subsidence is usually gradual in nature, it can happen across more than one insurance policy, and policyholders are often unaware of it initially. The Agreement provides a practical and efficient way for insurers to deal with such a situation. I'm satisfied this is the situation Miss B encountered.
- For these reasons, I'm not satisfied it was fair for Admiral to decline the claim based on the policy term for existing damage.
- In response to our investigator asking Admiral to deal with the claim, it also introduced another policy term to support its decision to decline the claim. This is disappointing to see – I would expect Admiral to fully consider all relevant reasons before declining a claim *and* when responding to a complaint. It shouldn't wait until late in the process to raise a new argument. Nonetheless, I'm required to consider this new argument.
- The policy term says: *"You must maintain your property in a good state of repair and take care to prevent any damage. If damage does happen, you must take action to prevent further damage"*.
- The purpose of such a policy term is to ensure policyholders take reasonable steps to look after their property and minimise the chances of claims arising due to a lack of reasonable care.
- Admiral says that because Miss B noticed the gap in 2022 and didn't take action straightaway, she didn't sufficiently maintain her home and meet this policy term.
- To take the term as literally as Admiral has, would require Miss B to act immediately upon spotting *any* damage, no matter how minor or inconsequential it may appear. I don't think that's reasonable or in keeping with the purpose of the policy term.
- Miss B says she noticed a small gap initially and put it down to general wear and tear. However, when some months later she noticed it had widened, she took advice from a builder and then a structural engineer. As a result of the advice she received, she referred the matter to Admiral. Given the garage is, I understand, over fifty years

old, and the gap was small, I don't think Miss B's initial reaction was unreasonable. But when the position changed, she took reasonable steps to have the problem considered by the appropriate professionals.

- I also bear in mind that Miss B had no reason to suspect a subsidence problem in 2022. I wouldn't have expected Miss B to take advice from a structural engineer over a small gap. So even if she'd taken action at that time, it's likely they would have been limited to minor repairs. It's likely the movement would have continued and the damage would have returned after the policy began. So I don't think taking further steps in 2022 would have made a material difference to the situation.
- In my view, contrary to what Admiral has said, Miss B proactively took steps to maintain her property. So I'm not satisfied it would be fair for Admiral to decline the claim based on this policy term.
- Overall, that means I haven't been persuaded it would be fair for Admiral to decline the claim. To put that right, it should accept the claim, subject to the remaining terms and conditions of the policy. It will then need to go on and consider how to settle the claim fairly.

### **My final decision**

I uphold this complaint.

I require Admiral Insurance (Gibraltar) Limited to accept the subsidence claim, subject to the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 20 February 2024.

James Neville  
**Ombudsman**