

The complaint

Mr P is unhappy that Zurich Insurance Company Ltd declined a claim he made on his Leasehold Home Insurance policy for damage caused by subsidence.

What happened

Mr P's property is in a block of flats. In 2023 he had a surveyor attend his property in relation to a mortgage arrangement. That surveyor considered there'd been movement to the building. As a result, Mr P commissioned a report from a structural engineer and made a claim for subsidence damage on his leasehold insurance policy. Zurich declined the claim. It gave a few reasons for this. It said that the damage to the building had happened before cover had started with Zurich in 2016, and this pre-inception damage wasn't covered by the policy. It also said Mr P's policy only covered internal damage to his flat, so he couldn't make a claim under his policy for subsidence damage to the building. Zurich also said there was no subsidence damage to Mr P's flat, so nothing for his policy to cover.

Mr P complained to Zurich about the claim decision. It didn't change its position. It said it also provided insurance to the freeholder, but that didn't include subsidence cover. So it was for the freeholder to resolve any subsidence issues.

In its investigations Zurich found there had been a previous claim for subsidence damage to the building around 30 years ago. It believed this had led to an underpinning of the building. It also found monitoring studs on the external walls, possibly relating to that claim. So it considered some of the damage to the building [which Mr P's policy doesn't cover] to be historic damage, rather than current.

Unhappy with Zurich's response, Mr P brought a complaint to this Service. He said his losses amounted to around £300,000 and he wanted Zurich to issue him with a Certificate of Structural Stability to confirm his property was stable. He said it should be able to do so if it had concluded there was no subsidence damage to his property. He said the freeholder hadn't been helpful and no one was taking responsibility for the difficult situation he was left in, being unable to re-mortgage the property or sell it due to these issues.

Our investigator didn't think Zurich needed to take any further action. She didn't think it had been shown there was a new episode of subsidence affecting his flat, during the period Zurich were on cover. But said even if there was, repairs to Mr P's home [covered under his Zurich policy] couldn't start until any external repairs were carried out, and those would be the responsibility of the freeholder.

She noted Mr P was in a difficult situation but said it's the freeholder that is responsible for any external damage, and if Mr P has issues with the freeholder those aren't for this Service to consider. She also said Zurich could only issue a Certificate of Structural Stability having accepted a claim and completed works. As that hadn't happened, she couldn't require it to issue such a certificate.

Mr P didn't accept that. He said his property was worthless and Zurich, as a buildings insurer, should protect him. He asked for an Ombudsman to consider the matter, so it has been passed 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.

I appreciate Mr P is in a very difficult position; he's been told his flat can't be re-mortgaged and he can't sell it. But my role is to decide if Zurich has acted fairly and reasonably in declining his claim for subsidence damage under his policy. Having considered everything, I think it's made a reasonable decision to decline the claim. I've explained why below.

Mr P holds a leasehold policy with Zurich, this does provide subsidence cover, but it ultimately covers subsidence damage to his leasehold property – his flat - not the building that the property is in.

Zurich says there is no subsidence damage to Mr P's property. It says the minor cracks it noted are more likely to be that of thermal movement than subsidence. Mr P's own report, carried out by C, says there is subsidence damage to the building, but makes no comment on whether the internal cracking to Mr P's property is as a result of subsidence or something else.

So on balance, based on what I've seen I think it's most likely Mr P's flat isn't showing signs of current subsidence damage. Mr P says if there isn't any subsidence damage to his flat, Zurich should issue a certificate of structural integrity. But I don't think it's reasonable to require it to, since it hasn't done any works to stabilise and repair the property.

It isn't the role of this Service to determine whether the building itself is currently suffering from subsidence damage or not. So I need to make clear that I'm not making a finding on that as part of my decision. But even if there is a current episode of subsidence affecting the building, it is the freeholder who owns the building. So it is the responsibility of the freeholder to resolve any issues causing subsidence to stabilise the building. If, having done so, there is internal damage to Mr P's property which happened during the cover period as a result of that subsidence, then his Zurich policy could respond. But at the moment, for the reasons given above, I can't say Zurich's position has been unreasonable.

Zurich also provides insurance to the freeholder. My understanding is that policy doesn't include subsidence cover. But I can't look at this as part of this complaint.

But the fact that Zurich insures the freehold building as well as providing the leasehold cover has, I think, caused some confusion. As there has been much discussion about historic damage to the building.

Mr P has asked if the previous insurer [prior to Zurich who has provided cover since 2016] would be responsible for the damage to the building if Zurich is saying there is no current subsidence damage. I think he was referring to the previous insurer of the freehold, rather than his own leasehold cover. But as all of this relates to the building, and not Mr P's property, it isn't my role to consider this in this complaint.

As far as I can see, Zurich hasn't said that the internal damage to Mr P's flat is historic. It says there isn't any subsidence damage. So I don't think he needs to contact his previous insurer at this stage.

I appreciate this isn't the outcome Mr P was looking for, but I don't think Zurich's decision to decline his claim is unreasonable. Mr P says his losses are at around £300,000, but as I don't think Zurich has acted unfairly, I can't require it to cover these losses.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 16 April 2024.

Michelle Henderson
Ombudsman