

## **The complaint**

Ms B complains that Chaucer Insurance Company Designated Activity Company rejected a subsidence claim on her buildings insurance policy.

## **What happened**

In 2016 Ms B noticed some cracking in the walls of her house. She reported this to her then insurer. It was looked into but wasn't thought to be due to subsidence. There had also been some signs of cracking around the time she bought the house in 2012, but that was also not thought to be subsidence.

Ms B renewed her insurance through a broker in December 2021 and her new policy was underwritten by Chaucer.

In 2022, after seeing further cracks in the walls, Ms B made a claim made on this policy but Chaucer but rejected her claim. It said when she renewed her insurance in December 2021 she had failed to disclose damage cause by previous subsidence.

Ms B complained but Chaucer didn't change its decision. In its response to her complaint Chaucer said:

- it was her responsibility to ensure she provided accurate information;
- she had failed to disclose previous incidents;
- due to the previous incidents, it had added an exclusion for subsidence and this meant there was no cover for subsidence.

Ms B referred her complaint to this Service. She said her property hadn't previously suffered from subsidence; there had been an issue in the past but it wasn't subsidence and had been rectified. So the information she provided was accurate.

Our investigator thought the complaint should be upheld. He said:

- there had been cracks in the past but the advice was that they were not due to subsidence;
- Chaucer had shown Ms B answered yes to a question about subsidence but hasn't shown what it would have done if the correct information had been provided;
- without that, it wasn't fair to decline the claim so it should reconsider the claim with a view to settling it.

Chaucer said its underwriting criteria show it would have provided insurance, but with an exclusion for subsidence.

The investigator then said that having reviewed the evidence, it wasn't fair to say there had been a misrepresentation when Ms B had been told the previous issues were not due to subsidence.

Chaucer now accepts Ms B answered the question about subsidence correctly. But it says there was another question about cracking which she didn't answer correctly. And if she had answered that question correctly, it would not have provided a quote at all, so she wouldn't have been able to buy the policy.

When the investigator asked for more information about this, Chaucer said Ms B bought the insurance through an aggregator website, the question about cracking was on that website, and it's set to decline automatically if the answer shows there has been cracking.

Chaucer couldn't provide a copy of the questions and answers given by Ms B on the aggregator site but said:

- it has provided a screenshot showing the questions that would have been asked and if she had confirmed there were previous cracks, no quote would have been given;
- on balance, the evidence shows what would most likely have happened.

The investigator considered this and said

- if Chaucer couldn't show the actual questions and answers given by Ms B, he couldn't be satisfied there had been a misrepresentation;
- if it could show the question asked and that Ms B answered this incorrectly, he might reconsider but if not, his view remained that Chaucer should reconsider the claim with a view to settle.

There was further correspondence but the investigator didn't change his view.

As no agreement has been reached, I need to make a decision.

### **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.

Chaucer says there's no cover because Ms B made a misrepresentation about the condition of her property when renewing her insurance and, if she had provided the correct information, it would not have offered her insurance. The relevant law concerning misrepresentation is the Consumer Insurance (Disclosures and Representations) Act 2012 ("CIDRA"). I've considered how this would apply here.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out an insurance policy. The standard of care is that of a reasonable consumer.

If a consumer fails to take reasonable care and makes a misrepresentation, the insurer has certain remedies if there is a qualifying misrepresentation, as defined in CIDRA. For it to be a qualifying misrepresentation the insurer has to show it would either have offered the policy on different terms or not offered it at all, if the consumer hadn't made the misrepresentation.

Chaucer initially said Ms B had failed to disclose previous subsidence. It now accepts there was no subsidence to disclose but says Ms B still made a misrepresentation because she was also asked "*Has your property ever had cracks on its external walls?*" She should have answered "Yes" to that question as there had been cracks previously. So if Ms B didn't disclose the previous cracks, which she was aware of, that would mean she failed to take reasonable care when answering a question about that.

Even if there was a misrepresentation I still need to consider the consequences of that. The remedy available to Chaucer under CIDRA would allow it to do what it would have done, if it had been given the right information. So if it would not have sold the policy to Ms B it can now proceed as if there was no insurance for her.

Chaucer says if Ms B had answered “Yes”, the aggregator website would not have provided a quote to her so she would not have been able to buy the policy. I’ve considered the screenshots provided by Chaucer. They are not taken from the time when Ms B bought the policy. So they don’t show what actually happened at the time. Chaucer says they do show that the website is automatically set to refuse a quote for this policy if there have been previous cracks. What they show is a list of quotes for Ms B for different policies, at current dates. None of the quotes is for a policy with Chaucer. So it’s implied from this that she would not have been offered a policy.

I’ve considered this carefully but don’t find it very persuasive. As mentioned, these are not from the time of sale. So they don’t show me what actually happened. To be persuaded, I’d want to see screenshots showing the questions Ms B was actually asked, the answers she gave and the result. That would allow me to say with some confidence what happened.

The evidence available is a record of the question currently asked and a list of quotes based on that. On the basis of this evidence I’d need to make some assumptions about what would have happened at the time. Given that Chaucer is seeking to show there was a misrepresentation, and what would have happened as a result, it’s for Chaucer to provide the evidence of that. On balance, I don’t think it has done enough to show this.

For these reasons I don’t think it’s fair for Chaucer to say there was a qualifying misrepresentation and Ms B would not have been able to buy the policy. So the claim should be dealt with in line with the policy terms. Unless there’s some other condition or exclusion that applies - and it would be for Chaucer to show it does apply - the claim should be covered.

### **My final decision**

I uphold the complaint and direct Chaucer Insurance Company Designated Activity Company to accept the claim and deal with it in line with the policy terms and conditions.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms B to accept or reject my decision before 28 May 2024.

Peter Whiteley  
**Ombudsman**