

The complaint

Mr and Mrs L have complained that Accredited Insurance (Europe) Ltd declined a subsidence claim they made on their home insurance policy.

Mr L has primarily dealt with things so, for simplicity, I'll refer to him only.

Reference to Accredited includes its agents and representatives.

What happened

As the circumstances of this complaint aren't in dispute, I'll outline the key points about what's happened:

- Mr L bought a new home and took out an insurance policy for it underwritten by Accredited in March 2022.
- In September 2022, Mr L noticed cracking to his home and got in touch with Accredited. It appointed a loss adjuster. They inspected the damage and said it had likely been caused by foundation movement which had started prior to the policy.
- Accredited voided the policy because it said there had been subsidence damage when the policy was taken out – and had it known this, it wouldn't have offered Mr L a policy.
- Mr L took advice from an engineering company I'll call Y. It inspected the damage and carried out drainage and soil investigations. Y recommended a number of steps for Mr L to take to tackle the problem and repair the damage. Mr L shared this information with Accredited and asked it to reimburse his costs.
- Accredited agreed to rescind the voidance. It said the information Mr L had provided showed there was no current subsidence, but there was historical movement and damage which had deteriorated since Mr L had taken out the policy. It declined the claim based on three policy terms. It also said it would cancel the policy as the claim had been declined. It didn't agree to reimburse any of Mr L's costs.
- Our investigator thought the complaint should be upheld. She wasn't satisfied Accredited had shown any of the policy terms applied or that it was fair to cancel the policy. To put things right, she asked it to reconsider the claim, including Mr L's costs, reinstate the policy, remove any voidance and/or cancellation markers and pay £500 compensation for the impact of its errors and poor claim handling on Mr L.
- Mr L agreed with this. Accredited didn't. It insisted it had acted fairly throughout. Our investigator wasn't persuaded to change her mind.

My provisional decision

I recently issued a provisional decision in which I said:

There are a number of different points to this complaint, so I'll take each one in turn.

Policy avoidance

- Whilst Accredited voided the policy initially, it later agreed to rescind this action. That means the policy hasn't been voided, so I don't need to consider this point in detail.
- However, I would expect Accredited to put right the impact of voiding the policy and then rescinding it. That means ensuring all avoidance markers are removed from any internal and external databases. It also means taking into account the avoidable delay, distress and inconvenience to Mr L of this action when considering a fair level of compensation, which I'll do later on.
- As the policy avoidance has been rescinded, Mr L doesn't need to declare it when taking out insurance in the future.

Claim declined

- With the policy avoidance rescinded, there was a valid policy in place to consider the claim against. Accredited declined the claim for a number of reasons.
- The policy covers damage caused by subsidence, subject to a number of terms and conditions. Accredited has been unclear about its position on whether subsidence caused the damage claimed for.
- In its complaint response, Accredited said: "we understand and appreciate there is no current subsidence". That suggests it didn't think subsidence had caused the damage claimed for. It also said: "there was evidence of subsidence prior to your purchase of the property" and "the damage had deteriorated since the purchase, this is due to the underlying issue not being addressed". That suggests it *did* think subsidence had caused the damage claimed for.
- The loss adjuster said the damage had likely been caused by foundation movement related to tree root induced clay shrinkage subsidence. After Accredited reviewed the information Mr L gathered from Y, it said there was no doubt the damage had been caused by subsidence. It repeated that when it provided its file to this Service. So I think overall Accredited accepts the damage has been caused by subsidence.
- Accredited relied on three different policy terms to decline the claim. The onus is on Accredited to show it would be fair to rely on at least one of these terms in order for it to decline the claim. They are:
 1. "We will not pay for ... any incident which commenced outside of the period of insurance of this policy".
 2. "We will not pay for ... any claim resulting from ... gradual causes including deterioration or wear and tear".
 3. "You must maintain your property in a good state of repair and take all reasonable precautions to safeguard property from loss or damage".
- Accredited's main reason for declining the claim is the first policy term. It says the subsidence problem began before the policy started, and Mr L bought the house, in early 2022.

- Accredited asked Mr L for a copy of his pre-purchase survey. He said he didn't have a survey carried out. The mortgage company completed its own survey, which wasn't shared with him. So he didn't have a survey to provide Accredited with.
- As a result, Accredited said it wasn't responsible for putting right problems which a survey would have identified, had one been carried out. Mr L wasn't required, either when buying the house or taking out this insurance policy, to have a survey carried out, so I don't think it would be fair for Accredited to hold that against him.
- The loss adjuster reported after their inspection. They said the damage appeared longstanding due to the presence of metal lathe repairs and historic images. They didn't expand on this comment further or explain *why* they thought this. Whilst the report contained lots of photos, they only showed widespread damage after the claim had been made. The report didn't say who wrote it and/or what relevant professional qualifications, if any, the author had.
- Mr L says he had the metal lathe repairs carried out in August 2022 – after the policy started and the movement had occurred – following informal advice from a friend. As a result, I don't think this repair shows that movement began prior to the policy.
- Some historic images are from a well known online archive of photos taken from the street. An image from 2018 shows damage to a small boundary wall at the front of the property. It's *possible* this damage is a sign of ground movement at that time. But there are numerous possible causes of the damage, so I don't think the image shows subsidence had *likely* begun at that time.
- Other images are from when the property was listed for sale online. Most of those provided by Accredited are so unclear, they can't be properly assessed. They appear to show a crack and crinkled wallpaper in one area. Again, whilst it's possible this damage is a sign of ground movement prior to the policy starting, as the damage could have been caused in a number of ways, it's not persuasive evidence of a subsidence problem.
- Whilst the claim was being investigated, Mr L said he had photos from around the time he moved in that might help Accredited. It didn't take him up on that offer. I find that surprising, as it's exactly the kind of information that would have helped Accredited establish the type and extent of damage at the relevant time.
- Mr L reiterated his offer during our investigation and shared the photos with our investigator. They were shared with Accredited, who questioned whether more were available. I would have expected Accredited to explore and consider all relevant information thoroughly during the claim and complaint – not at this late stage. In my view, the available photos are consistent with those in the online sale listing.
- After our investigator upheld the complaint, Accredited said Mr L had bought the property below the market estimate according to a property website and suggested this be explored with Mr L. Again, if this was something Accredited thought was relevant, it should have asked Mr L about it whilst investigating his claim and complaint. The figures involved are all automatically generated estimates that could be driven by a number of factors. And Accredited hasn't established if, or why, the price Mr L paid was discounted. So I don't find this point relevant or persuasive.
- Mr L took advice from Y, a structural and civil engineer. They inspected and described the damage. Of note, they said there was no "undue distortion visible to

the door frames, ceilings, or floors, throughout the property ... [or] to any of the window/door frames or window sills on the front, side or rear facades, and these facades seem to be reasonably plumb”.

- Y said cracking to the rear of the building “looks to be of varying age”, but was normal, localised minor damage and no cause for concern. It’s not linked to the foundation movement at the front of the building.
- Lastly, Y said Mr L had noted localised cracking at the front of the building when he bought it but that it had significantly worsened and spread since the summer of 2022.
- After our investigator upheld the complaint, Accredited questioned why Y hadn’t specified when they thought the subsidence problem had started. Once again, if this is something Accredited thought was relevant, it should have asked Y during the claim or complaint.
- Overall, I think Y established that, at most, some minor isolated cracking was present in early 2022, prior to the policy starting. But the most significant movement and damage occurred later. Y didn’t say the initial minor cracking had been caused by subsidence. And they didn’t find any significant distortion as one might expect had the subsidence problem been more longstanding.
- Y is a structural and civil engineer, so their professional opinion carries a lot of weight. Neither the loss adjuster nor Accredited seems to have relied upon a comparable level of professional expertise when forming their opinion.
- And I think the photographic evidence available supports Y’s opinion. It shows only minor damage, which wasn’t necessarily a sign of subsidence, around the time Mr L bought the property and much more significant, widespread damage after summer 2022 that’s been accepted as subsidence damage.
- Overall, that means I’m not satisfied Accredited has shown the subsidence damage claimed for commenced prior to the policy.
- But even if I thought Accredited had shown that, I’d also go on to consider whether it was fair for Accredited to rely on that policy term to decline the claim.
- Subsidence is rarely a sudden event whose beginning can be pinpointed to a moment in time, in the same way a storm or a fire usually can be. It’s generally a gradual, longer time problem that policyholders only become aware of once damage reaches a significant enough level.
- This can present a risk of detriment to policyholders where an insurer, or insurers, struggle to establish exactly when a subsidence problem began but nonetheless consider they’re not responsible. Or if subsidence begins prior to them taking out a policy – but they only become aware of it later. The Association of British Insurers has recognised this risk and taken steps to mitigate it with the Domestic Subsidence Agreement. Whilst that concerns a change of insurer, rather than a property owner, so it doesn’t apply here, the underlying purpose of the agreement is still relevant in this case. In short, the Agreement says the current insurer will deal with the claim where the policy has been in place for at least eight weeks. Mr L had the Accredited policy for around six months when he noticed the damage and made a claim.

- If the subsidence problem had begun before Mr L bought his house and took out the Accredited policy, I don't think he was, or ought reasonably to have been, aware of it. Photos from that time show minor damage only and aren't a clear sign of subsidence. So, even if I were to disregard the Agreement noted above entirely, I'd still likely find it was unfair to decline the claim in these circumstances.
- In summary, I'm not satisfied it would be fair for Accredited to rely on the first policy term to decline the claim, *even if* subsidence began prior to the policy.
- Turning to the second policy term, I haven't seen any evidence to suggest the damage has been caused by wear and tear. The evidence shows the property has suffered deterioration due to subsidence – and that's been a gradual process.
- Taken literally, that means the damage can be declined. However, I don't think it would be fair to take the term literally. To do so would be to effectively exclude the vast majority of subsidence claims given subsidence damage is, by its nature, usually gradual. Similarly, to exclude any deterioration would be to exclude claims for damage. That's not the usual purpose of this kind of policy exclusion.
- In these circumstances, I'm not satisfied it would be fair to decline the claim by relying on the second policy term.
- To take the third policy term literally would again be unfair in my view. It would mean declining many otherwise covered damage claims on the basis the policyholder failed to maintain their property and/or take steps to prevent damage from happening.
- Mr L had no reason to suspect a subsidence problem until damage worsened significantly. And, when it did, he got in touch with Accredited about it. So I'm satisfied he acted reasonably and in line with the spirit of the policy term.
- In conclusion, I haven't been persuaded that it would be fair for Accredited to rely on any of the three policy terms it raised to decline the claim. As it accepts the damage was caused by subsidence, and that's covered by the policy, to put things right it should now accept the claim. The remaining terms and conditions of the policy will still apply. The next steps will be for Accredited to investigate the claim, bearing in mind the findings of Y.

The cost of Mr L's advice

- After the policy was voided and the claim was declined, Mr L took advice from Y. As a result, he paid for Y's professional advice, as well as ground and drain investigations, totalling £4,110. He'd like Accredited to reimburse those costs.
- Had Accredited accepted the claim, as it should have done, Mr L would have had no need to turn to Y. Accredited and/or its loss adjuster would have carried out relevant investigations and provided the professional input required to progress the claim. That would usually involve having a suitably qualified and experienced professional oversee ground and drainage investigations, consider the damage and set out an appropriate way to deal with it. That's in keeping with what Y did.
- So I'm satisfied the advice Mr L took, and the investigations he paid for, were reasonable in the circumstances. They've also positively contributed toward the claim, as they will help inform the next steps. As a result, I think it would be reasonable for Accredited to reimburse Mr L's costs.

Cancellation

- When Accredited declined the claim, it also cancelled the policy. It says it did this because there was no valid claim.
- I'm disappointed and concerned by this approach. It's inconsistent with good industry practice, Accredited's own policy, and what's fair and reasonable.
- The cancellation term within Accredited's policy says, in summary, it has the right to cancel the policy where a policyholder: doesn't pay for the policy, doesn't provide relevant information and/or is abusive or threatening. That's in keeping with the approach taken by many insurers and doesn't strike me as inherently unfair.
- However, none of these things has happened in this case. And the term doesn't include for when a claim is declined. So Accredited hasn't acted in line with its policy.
- Having a policy cancelled can have a significant impact on a policyholder when taking out future insurance. So good industry practice is only to do so where the circumstances justify such action. Here, Mr L simply made a claim for damage, and that claim was declined. I see no justification to cancel the policy in these circumstances. And in my experience, it would be highly unusual for any insurer to cancel a policy in similar circumstances.
- Because Mr L had a cancelled policy and an ongoing claim, potentially for subsidence, his options for obtaining a new policy were severely limited. That meant getting in touch with the ABI, and a specialist broker, for support.
- In March 2022, he paid around £150 for his policy with Accredited. He eventually found cover with a different insurer in September 2023 for around £750. I'm satisfied the cover was broadly similar.
- Had the Accredited policy remained in place, Mr L would likely have renewed it in March 2023. The premium may have increased from £150 to take into account general inflation and the registering of the subsidence claim – but it wouldn't have taken into account a cancelled policy, as there wouldn't have been one. So I think it's unlikely to have risen by as much as £600.
- In the interest of reaching a fair and pragmatic resolution, I think it would be reasonable to estimate that around half of that increase may have happened regardless and the other half may not. That means Mr L has likely lost out on around £300 due to Accredited unfairly cancelling the policy. As a result, I'm satisfied it should pay that amount.
- Once Accredited accepts the claim, it should offer ongoing home insurance, including subsidence cover, to Mr L in line with guidance set out by the ABI. So I would expect it to offer Mr L a policy ahead of the end of his current policy in September 2024. It will be up to Mr L whether to return to Accredited or not. If he insurers elsewhere, he won't have to declare a cancellation, and that won't mean paying more than he ought to for home insurance any longer.
- To put things right, Accredited should ensure all cancellation markers are removed from any internal and external databases and pay £300. I'll also take into account the

avoidable delay, distress and inconvenience to Mr L of the cancellation when considering a fair level of compensation.

- As the policy cancellation will be rescinded, Mr L doesn't need to declare it when taking out insurance in the future.

Non-financial impact on Mr and Mrs L

- The claim was made in September 2022. By now, around eighteen months later, as a result of the way Accredited has handled the claim, the only meaningful progress has been made as a result of Mr L getting in touch with Y.
- Because Accredited voided and then cancelled the policy, and declined the claim – all of which I've found to be unfair – there have been significant delays. That's caused a great deal of distress and inconvenience for Mr and Mrs L.
- They've had to live with the damage, spend time and energy communicating about the problems, take steps with Y, and contact other parties to obtain a new policy – all of which they shouldn't have needed to do. It's clear this had a considerable impact on Mr and Mrs L.
- Taking everything into account, I consider a reasonable level of compensation to be £1,000 in these circumstances.

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.

My apologies to both parties for an error which led to Accredited being referred to as another insurer in parts of my original provisional decision. I've corrected that in the text above.

Accredited said it reluctantly accepted my provisional decision,

Mr L said he had nothing further to add in response to my provisional decision.

As both parties have accepted my provisional decision, and haven't made any further comments or challenges, I see no need to consider matters further.

I remain satisfied the award proposed in my provisional decision is a fair and reasonable way to resolve this complaint for the reasons given above.

My final decision

I uphold this complaint.

I require Accredited Insurance (Europe) Ltd to:

- Accept the claim for subsidence damage, subject to the remaining terms and conditions of the policy.
- Remove all policy voidance and/or cancellation markers from any internal or external databases.
- Pay £4,110 for the advice and investigations Mr L paid for.
- Pay £1,000 compensation.

- Pay £300 for the likely additional premium cost.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 18 April 2024.

James Neville
Ombudsman