

The complaint

Mrs P complains that West Bay Insurance Plc has refused to cover a claim on her buildings insurance and about the way it has dealt with the claim.

Where I refer to West Bay Insurance, this includes its agents acting on its behalf.

What happened

Mrs P lived in her home with her late husband, Mr P. He took out buildings insurance underwritten by West Bay in 1965 and renewed it every year.

In November 2022 they were having a central heating system installed when work was stopped due to problems with the interior walls at their home. Mr P made a claim on the insurance.

Sadly, Mr P died shortly after this. The policy transferred to Mrs P who continued with the claim. She has been represented in relation to this by her daughter, Mrs P2.

West Bay instructed a firm of subsidence experts who advised that the cracks were likely due to movement in the floor slab rather than subsidence. On the basis of this, West Bay rejected the claim, saying the damage was not due to an insured event.

Mrs P2 made a complaint on behalf of her mother. She said Mrs P had been left with a home she couldn't live in, and they had never been given the full policy terms. She asked for a copy of the policy document and was unhappy with delays in receiving this.

West Bay gave its response to the complaint in January 2023 and said:

- It needs to check that damage is caused by an insured event, as set out in the policy terms.
- Subsidence specialists were instructed. Their advice was that the movement has been ongoing since the property was built and is gradually operating – and this is not an insured event.
- The property can be lived in, though repairs are needed.

A further response was sent in April 2023 about the information provided to Mr and Mrs P which said:

- Its process doesn't require full policy documents to be sent every year at renewal; this is an old policy and the terms have not changed.
- The information provided did explain how Mr P could request the full policy booklet if he needed it.
- There were delays providing the information requested about the policy and this caused some inconvenience.

A cheque for £50 was sent to Mrs P2 as compensation for the distress and inconvenience caused by the delays in providing policy information.

Mrs P2 referred the complaint to this Service. In its submission to us, West Bay confirmed its position that the damage wasn't caused by an insured event. It said all the information

requested had been provided but there was a delay and so compensation of £50 was paid.

West Bay also said it had noticed some incorrect information in correspondence about the claim sent to Mrs P, which would have been upsetting. It was willing to offer a further £100 compensation for the distress caused by this.

Our investigator's initial view was that the compensation offer was fair but Mrs P didn't accept this. After reviewing everything, the investigator said:

- West Bay didn't need to send a hard copy of the policy booklet if it wasn't requested.
- Renewal information was sent each year – this gave a summary of the cover and explained how to obtain a full copy of the policy terms via a website link, or to request one by phone or email.
- Mrs P2 did request a copy of the policy terms and this was sent but only after she chased several times. There was a delay but the offer of compensation in respect of this was fair.
- The decision to decline the claim was reasonable. The cost of repairs was only covered if the damage was due to an insured peril and although the policy covers subsidence the evidence doesn't show this was subsidence.
- Mrs P2 said they were instructing a surveyor and if they provided any further evidence, West Bay could consider this.

Mrs P didn't accept the investigator's view and Mrs P2 provided further comments on her behalf, including:

- If a customer doesn't have access to the internet, they have to make the effort to contact West Bay to get information about the policy.
- Mr P was elderly and vulnerable; he wasn't able to contact West Bay about his policy – and she faced barriers when she asked for information.
- With regard to the claim, West Bay has concocted a decision based on consolidation of the floor, which is not an insured peril.
- It's unclear how West Bay could say the damage started in the 1960s – evidence from the family shows there was no sign of cracking that long ago.
- The Insurance Policy Information Document ("IPID") indicates that the property is covered by insurance and Mr P never had the full policy terms. He took out insurance knowing the structure of the property was covered and when they needed to claim for the first time, West Bay let them down.
- The way the claim has been dealt with has caused a huge amount of distress and inconvenience to the whole family. West Bay has failed to treat elderly, vulnerable customers fairly as required by FCA principles.

The investigator considered the comments but didn't change her view. So the complaint 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.

Mrs P2 has referred to West Bay's obligations, particularly to vulnerable customers, including under the Consumer Duty. That came into force on 31 July 2023 and applied to actions taken from that date onwards. The events I'm considering took place before then and so the Consumer Duty wasn't relevant. I've considered the way the claim was dealt with in line with the rules in force at the time.

The relevant industry rules and guidance said insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim.

No insurance policy will cover every risk that may result in financial loss. Insurers decide what risks they want to accept when deciding whether to offer a policy. Insurance is always subject to terms and conditions that limit the insurer's liabilities to its policyholders. This policy provides cover for certain insured events, as set out in the policy terms. Amongst other things, these include damage caused by fire, storm or flooding, or escape of water. A claim will only be accepted if it's one of the insured perils. The relevant one in this case would be damage caused by subsidence, heave or landslip.

Mrs P says the damage is due to subsidence. In the first instance it's for the insured to show they have a valid claim. So the onus is on Mrs P to show there is subsidence at the property. Mrs P2 has provided evidence from members of the family about the condition of the house and says this shows the damage wasn't present until recently. But she hasn't provided expert evidence (or indeed any evidence) showing the damage was caused by subsidence.

West Bay obtained a report which said the damage wasn't due to subsidence and was in fact caused by movement in the floor slab, likely due to the use of faulty or unsuitable materials in the construction of the floor slab. The movement has led to separation internally at floor and ceiling levels, rather than external cracks which would more typically be seen with subsidence. West Bay has also pointed out there's an exclusion in the policy for faulty or unsuitable materials being used.

I appreciate Mrs P2 says she doesn't accept there have been issues in the property going back to when it was built. But when it made its decision, that was the expert advice given to West Bay. Without any contrary expert advice I think it was fair for West Bay to make the decision it did, which was in line with the policy terms.

Mrs P2 has said she would be obtaining a report from a surveyor on the cause of the damage. I'm not sure if she has done so, or provided any further evidence to West Bay. I'd expect it to review the claim in light of any new evidence that's provided. Based on the information it had at the time, I think the decision to decline the claim was fair.

Mrs P2 also raised concerns about the service provided to her parents. West Bay said while it was responsible for dealing with the claim, providing policy documents to Mrs P was the responsibility of a different firm, which dealt with the sale and administrative issues. The investigator considered this but said the complaint responses didn't differentiate between the two firms and as West Bay offered a "further" compensation payment this indicated it was following up the original response rather than a different payment by a different firm.

The issues all relate to how the claim was dealt with, and the responses did not differentiate between the two firms. West Bay is responsible for the way the claim was dealt with. It's also responsible for the production of the policy documents.

Mrs P2 says the documents weren't clear, as the IPID led her father to believe he was covered and he shouldn't have had to read the full policy terms – which he didn't have – to know that he wasn't covered. The IPID only provides a summary of the cover provided and make it clear it should be read together with the policy terms and conditions. I think the relevant policy terms are clear.

It's not unusual for policy documents to be provided electronically or through website links. I don't think an insurer would need to send a hard copy of the policy booklet to every policyholder at every renewal.

Renewal information was sent each year. This gave a summary of the cover and explained how to obtain a full copy of the policy terms via a website link, or to request them by phone or email. That's in line with industry practice. I do appreciate Mr P was elderly and vulnerable, and didn't access the internet. If West Bay had been made aware of this it would be reasonable to expect it to provide the policy documents in another way on being asked to. But it wasn't asked until Mrs P2 requested a copy later on.

Mrs P2 did request a copy of the policy document and this was sent, but only after she chased several times. There was delay but West Bay offered compensation of £50 for this. Mrs P2 commented on the fact the cheque for that payment was sent to her, not her mother. West Bay was responding to her about the delays she experienced when she asked for a copy of the policy documents. This wasn't about the service provided to her parents.

Mr P, and later on Mrs P, were the policyholders. Mrs P is the complainant in this complaint. While Mrs P2 has been representing her mother, she is not the complainant. I only have power to make awards to a complainant. So I can't make an award to Mrs P2 or comment on the way she (or the wider family) has been affected – or any offer West Bay has made to her.

I can consider the impact on Mrs P herself of the way the claim and related issues were dealt with. When the complaint was referred to this Service, West Bay identified that a letter sent to Mrs P about the claim in December included information that was incorrect and offered a further payment of £100 in respect of this. This payment was to reflect the upset caused at a time that was already difficult. In the circumstances I think that was a fair offer to make.

I do appreciate this was an extremely difficult time for Mrs P and she's naturally concerned about the condition of the property. But West Bay would only need to cover the claim if it was for an insured event as set out in the policy terms. While it would have been very upsetting to find the claim wasn't covered, that distress wasn't due to a failing by West Bay.

My final decision

West Bay Insurance Plc has already made an offer to pay £100 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that West Bay Insurance Plc should pay £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 17 May 2024.

Peter Whiteley
Ombudsman