

The complaint

Mr D has complained on behalf of a limited company, A, that Accredited Insurance (Europe) Ltd declined a claim he made on A's buildings insurance policy for subsidence damage.

Reference to A and Accredited includes their respective agents and representatives.

What happened

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- A owns a building which is rented to tenants. In April 2021 it made a claim to Accredited for crack damage.
- Accredited appointed a loss adjuster. Their surveyor initially thought the damage had been caused by subsidence as a result of an escape of water from underground pipes and arranged for a drainage survey from a company I'll call G.
- The survey revealed a number of drainage problems, which confirmed the surveyor's initial thoughts. They recommended repairs were carried out as soon as possible, which Accredited agreed with. The loss adjuster told A the claim had been accepted.
- G attempted to carry out repairs but was unsuccessful. They updated their survey with comments about the drainage system and its problems.
- In February 2022, Accredited declined the claim. It said the damage had been caused by a maintenance issue and defective workmanship due to the condition of the drainage noted by G.
- A didn't think it was fair to decline the claim and complained. It said there was no evidence to show the drainage had been incorrectly installed. It also said there had been delays and poor communication during the claim.
- Accredited said it was waiting for further information from A to consider the matter further, although it didn't say what that information was. And it accepted there had been delays in communication and shortcomings in the service offered.
- Accredited later said the claim was declined for the same reasons as before. A referred the complaint to this Service.
- Our investigator didn't think the complaint should be upheld initially. But after further correspondence with both parties, he said Accredited should look at the claim. He wasn't satisfied Accredited had shown the drainage was defectively designed or the subject of poor workmanship.
- A agreed with this. Accredited asked for more time to reply, which our investigator agreed to, but it didn't respond. So the complaint has been passed to me.

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 damage caused in a number of ways. Relevant to this claim, that includes:
 - Damage to the building caused by subsidence
 - Damage to the building caused by water escaping from a pipe
 - Accidental damage to underground drains
- This cover is subject to a number of terms and conditions. The ones Accredited have relied on are as follows:
 - The policy doesn't cover subsidence damage: *"caused by or consisting of ... defective design or workmanship or the use of defective materials"*.
 - The policy doesn't cover accidental damage to underground drains: *"caused by ... faulty workmanship, defective design or the use of defective materials"* or *"the costs of maintenance"*.
- None of these terms apply to escape of water cover. And Accredited hasn't raised any other policy term to decline cover for escape of water. Instead, it says the damage wasn't caused by an escape of water and/or that a leak from a drain doesn't amount to an escape of water.
- The policy also covers the reasonable cost of drainage clearance.
- Accredited's surveyor initially thought the damage had been caused by subsidence as a result of water escaping from the underground drainage system. They reviewed G's drainage survey and confirmed those findings, given the problems noted.
- Whilst there has been a dispute about the nature of the drainage problems – and what impact that has on the policy cover – I haven't seen anything from the surveyor, or any other professional, to suggest the cause of the building damage has been reconsidered and changed to something else. So there seems to be no doubt that the cause is as set out by the surveyor.
- I don't agree with Accredited's arguments about the escape of water cover. I'm satisfied a leak from a drain amounts to an escape of water from a pipe. And were it not for that leak, the ground wouldn't have moved, and the building wouldn't be damaged. So I'm satisfied the escape of water caused the building damage. I note the surveyor took the same view as me and is the only professional opinion available.
- That means the building damage was caused by an insured cause – escape of water – and none of the policy exclusions Accredited raised apply to this cause. So it was unfair for Accredited to decline the claim under this section.
- There's no doubt the building damage was also caused by subsidence. Accredited declined cover under this cause by relying on the policy exclusion noted above. The onus is on Accredited to show it would be fair to rely on this exclusion. To do so, I would expect it to provide sufficient evidence to show what the defective design or

workmanship problem was, including reference to the relevant standards or guidance that applied at the time of construction, and how that caused the damage.

- G's initial survey noted the need for a repair but didn't suggest any concerns with the broader condition of the drainage system. After their unsuccessful repair, they updated their survey. In summary, they said some parts of the system were in a poor condition, were poorly constructed, hadn't been designed well, and the drainage problem was a maintenance issue.
- The loss adjuster noted that part of the problem was a collapsed drain and asked whether G had repaired it. This suggests the loss adjuster considered the collapsed section led to the leak and caused the building damage. It's possible other parts of the drainage system are as G described them – but haven't caused the building damage. However, the position isn't clear.
- A took advice from a different drainage company, D, who said the system wasn't in a satisfactory structural condition, as there were holes and fractures.
- I understand from the loss adjuster's report that the building is over 100 years old. It's unclear whether the drainage system is the same age. It seems some parts of it are made of more modern materials and it's possible alterations were made when the building was converted into flats more recently. But I haven't seen anything to suggest when these things happened. Nor have I seen any reference to any standards or guidance from that time to show how the design and/or workmanship was defective to an objective standard.
- And it's not clear how any alleged defective design or workmanship led the drain to collapse and/or to develop holes and fractures – and to cause the building damage.
- Accredited asked for time to provide this kind of information – and was granted it – but hasn't provided anything. That suggests it doesn't have this kind of information. I would have expected it to have gathered this information during the claim and, at the very latest, its complaint investigation. It doesn't seem to have done that.
- The drainage system clearly isn't functioning as it should. But that doesn't necessarily mean its design and/or workmanship was defective – or that if there were defects related to the design or workmanship, that they were the cause of the building damage. The onus is on Accredited to show this and, for the reasons above, I'm not satisfied it's done so. That means it was unfair for Accredited to decline the claim under this section too.
- As a result, I'm satisfied it would be fair for Accredited to accept the claim for the building damage under the subsidence or escape of water sections. In either case, as the leak caused building movement, I would expect Accredited to take steps to stabilise the building.
- Accredited may be able to achieve that without putting right all the drainage problems. For example, if it can repair the leaks without carrying out other work. If that's the case, the remaining drainage damage can be considered under the accidental damage to underground drains section of the policy. For the same reasons as given above, I'm not satisfied Accredited has shown the exclusions related to defective design or workmanship apply to this section of the policy. And it's not clear why the drainage problems would be considered maintenance.

- Finally, A has submitted a number of invoices for drain clearance. So Accredited should consider these under the section for clearance of drains.

My final decision

I uphold this complaint.

I require Accredited Insurance (Europe) Ltd to accept the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 29 May 2024.

James Neville
Ombudsman