

## **The complaint**

Miss K and Mr O complain about Accredited Insurance (Europe) Ltd's ("Accredited") decision to decline part of their claim under their buildings insurance policy.

Miss K has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any actions taken, or comments made, by either Miss K or Mr O as "Miss K" throughout the decision.

## **What happened**

The background to this complaint is well known to the parties, so I won't go into too much detail but will summarise the key points. In December 2022, the houses which were two and three doors away from Miss K's home collapsed – causing damage to her home. Miss K reported this to Accredited to make a claim. Accredited appointed a surveyor to inspect the damage to Miss K's home and they reported there was no visible evidence that Miss K's property had become structurally compromised but the shockwave from the properties collapsing had resulted in cracking to walls, ceiling and the plaster around doors and windows.

The building control department of the local council then started monitoring Miss K's home and the property next door. They found there was uncertainty around the structural integrity of the neighbouring property, so Miss K was asked to move out. They also recommended an urgent inspection be made of the subfloor void in the area of the Party Wall between Miss K's home and the neighbouring property to be able to better understand what was occurring to the structure in this area. Accredited then agreed to provide cover but this was limited to the damage that had been caused by the collapse of the properties.

Accredited then appointed an independent surveyor – who I'll refer to as company H – to prepare a 'Specific Defect Report'. They found that the cause of the deterioration and instability of the Party Wall was likely the result of incorrect bricks being used when Miss K's home was originally built. Accredited then maintained their claim decision, so Miss K complained.

Accredited responded and explained they considered the claim for resultant damage caused by the collapse of neighbouring properties, and this was accepted under the 'Additional Accidental Damage' section of the policy. They said this provided cover for the cost to repair the damage caused and associated alternative accommodation ("AA"). They said, following the collapse of the neighbouring properties, the local council continued to monitor surrounding properties, and more recently there had been concerns raised about the stability of Miss K's property and the local council felt it was for Accredited to investigate.

Accredited said, although they initially felt the policy didn't provide scope for such investigations and rectification - as the cause was unlikely to meet the definition of one of the perils listed in the policy - they decided to cover the costs of an independent specialist to inspect the property and report their findings. They said this was to assist with understanding any potential issues with the Party Wall and to highlight any work Miss K may need to carry out before carrying out the work Accredited have provided a settlement for. They said they

also agreed to pay for two weeks AA whilst this inspection was arranged and undertaken. They said this would be the limit of their involvement as it would be very unlikely the policy would cover the problems based on the information they had about ongoing issues with properties on Miss K's road.

Accredited said, following the report from company H, they confirmed to Miss K the cause of the issues with the Party Wall didn't meet the definition of the sections of cover listed in the policy. They referred to the 'General Exclusions' section of the policy and highlighted three exclusions which they said applied here - 'existing damage', 'any gradual or maintenance-related loss or damage' and 'poor workmanship'. Accredited said, in addition to these exclusions, for any claim to succeed under the policy it needs to meet the definition of one of the perils listed in the policy. They said, having reviewed the report, they don't believe there's an operating peril that would cover the loss.

Accredited said they're therefore of the opinion they're unable to provide cover for the damage to the Party Wall and the wall within the subfloor void as this is a direct result of the instability recently flagged by the local council. They said they had however accepted the damage which was caused as a result of the collapsed properties and agreed the impact and shock caused cracking to Miss K's property. They said this damage was assessed by their surveyor who confirmed a claim under the 'Additional Accidental Damage' section of the policy. They said the settlement to reinstate this damage was £7,705.75 plus VAT, but they appreciated other works needed to be completed first and the settlement was available on the portal for Miss K to accept.

In relation to AA, they said they understand Miss K is unhappy they won't agree to extend the AA. Accredited said they provided AA while carrying out investigations. They said, following company H's report, they've been able to determine the works required to reinstate the damage caused by the collapsed properties wouldn't require Miss K to move into AA while they were being completed. They said additionally the cause of damage to the Party Wall didn't meet the definition of an insured peril on the policy and in any event it would be excluded under the sections they'd already mentioned. So, they said they couldn't offer further AA. They said, having fully reviewed the matter, the correct decision had been made to decline cover for the issues identified with the Party Wall and the wall within the subfloor void.

After considering all of the evidence, I issued a provisional decision on this complaint to Miss K and Accredited on 28 March 2024. In my provisional decision I said as follows:

*"I'll start by saying, I do fully acknowledge this has been a very upsetting event for Miss K and I do understand this has had, and continues to have, a significant impact on her and her family.*

*My role requires me to say how a complaint should be resolved quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute. I think it's important to add, I won't be commenting on every event during the claim and complaint process, instead I have taken a broad approach to the overall service provided.*

#### *Claim decision*

*My starting point is Miss K's home insurance policy booklet. This sets out the terms and conditions and, under the heading 'General Exclusions' it says Accredited won't cover, "Existing damage...Loss or damage which happens before your insurance policy starts" and "Any gradual or maintenance-related loss or damage...Loss or damage as a result of gradual causes including...gradual deterioration (whether you*

were aware of it or not)” and “Poor workmanship...Loss or damage caused by poor workmanship, use of faulty materials (including latent defects) or poor design (a latent defect is a fault which exists but which only causes a problem at a later stage under certain conditions).” Miss K says she understands that any work that needs to be done below the dpc level is unlikely to be recoverable under the policy. But she disputes Accredited’s decision to decline cover for other areas of work, this includes the Party Wall, damage to the first floor and other areas of damage to the internal decoration of her home.

I’ve looked at company H’s ‘Specific Defect Report’ and this says they’ve been instructed to inspect the Party Wall, including the wall within the subfloor void on the ground floor following the collapse of adjacent properties. The report shows the expert gained access to the subfloor to allow an inspection of the lower sections of the Party Wall. The expert sets out what they’d observed and said, “The original brickwork (soft red bricks) on all sides, including the Party Wall, is in a poor state of repair with evidence of severe spalling and delamination to the face of an extensive number of bricks, crumbling and loose mortar joints and in some places, there is significant deflection and distortion evident to the walls. The Party Wall is also severely cracked in places...”

The expert goes further to say, “We are concerned at the levels of deterioration to the Party Wall and the other walls within the subfloor void, especially as the indications are that the Party Wall between the neighbouring properties may have been the catalyst in the collapse the buildings.” The expert concludes, “Having only conducted one short inspection, we cannot be definitive on the cause of the deterioration other than to say that it is likely to be the result of the incorrect bricks being used when the house was originally built and their inability to withstand the levels of moisture you would normally find within a subfloor void of this type. Spalling will normally occur due to the freeze/thaw cycles and the inability of the bricks to withstand that exposure on a continuing basis. Given the location of the bricks in this instance, it is unlikely that they have been exposed to such low temperatures, so we are of the opinion that the deterioration in this instance is due to continued exposure to moisture over time.”

The expert then described the repairs which would need to be carried out and explained, given the level of deterioration it was likely that all of the walls within the subfloor void would need to be reconstructed and they also described the work which would need to be carried out to the Party Wall. They also took photos of the internal Party Wall and this shows – as the expert describes it - significant deterioration to the walls on all sides of the subfloor.

Miss K then instructed an independent expert – who I’ll refer to as company D – to provide a report. A structural engineer attended, and the report says they’d been instructed to assess the stability of the property following the collapse of neighbouring properties and the work required to make the property safe to occupy. The report says, at the point of the visit, [property next door to Miss K’s home] had been demolished by order of the local council. The report says, “Internally some general signs of historic movement and distortion were noted with sloping floors and distortion of door openings.” The report also says they managed to get a partial view of the rear wall and left-hand Party Wall, and the walls appeared to be intact however “some deterioration of the brickwork was noted.”

The report refers to the properties which had collapsed and says, “The reason for the collapse is not yet known, but available evidence would suggest that the collapse was due to deterioration and collapse of the underfloor walls. This is thought most

*likely to be due to deterioration of underfired bricks used in the original construction.” In their conclusion, the structural engineer says, “Inspection of the ground floor areas of [Miss K’s property] however showed no cracking that would be evidence of movement or deterioration of the walls at foundation level. The very limited inspection of the underfloor void showed some deterioration of the party wall brickwork, but no evidence of collapse.” And, “In order to determine if [Miss K’s property] is safe to occupy a systematic inspection of the loadbearing walls below ground floor level is required to determine their condition. This will require raising of the ground floor boarding at suitable locations throughout the property to allow a full inspection to be carried out of the load bearing walls.”*

*Company D then returned and carried out an inspection of the underfloor walls and an inspection of the neighbouring property’s side of the Party Wall and provided a supplementary report. The report notes “An inspection of the underfloor areas of the ground floor rear room and in the hall area was carried out... This showed that deterioration had occurred to the masonry of the party wall and the internal supporting walls and chimney breast. The rear [Miss K’s property and neighbouring property] party wall had areas of very soft, decaying and crumbling brickwork. Bulging and partial collapse of the brickwork was noted to the wall supporting the hall partitions. Deterioration was also noted to the [Miss K’s property and neighbouring property on the other side] Party Wall brickwork.”*

*The report goes further to say “It is therefore estimated that approximately at least 30-50% of the underfloor masonry has deteriorated to the extent that it requires replacement. This can possibly be achieved by carefully removing the decayed bricks and rebuilding the wall with bricks suitable for use below dpc level.” The report concludes, “Subsequent closer examination however showed that the walls below ground level have deteriorated to the extent that it is estimated that 30-50% of the bricks require replacement. Rebuilding may be possible, but is likely to be difficult, and the durability of the remaining original bricks in doubt. It is therefore recommended that complete rebuilding of the walls below dpc level is carried out in suitable masonry.” The report also concludes “The houses in the terrace [the two properties which collapsed and Miss K’s neighbouring property] have suffered from collapse. The reason for the collapse is thought most likely to be due to deterioration of underfired bricks used in the original construction.” Company D’s report also includes photos showing deterioration of brickwork.*

*So, I’ve taken into account all the information here, and I’ve decided this complaint based on what I believe is more likely than not. And, I’m more persuaded the issues with the Party Wall are most likely down to the condition of the walls below ground floor level. I say this for a number of reasons. Firstly, I’ve considered the areas where company H and company D’s findings are similar. Both reports refer to the brickwork below dpc level being in a poor state of repair with crumbling and decaying bricks. Both reports also comment on the incorrect bricks being used during the original construction. Company H refer to there being deflection and distortion in walls and company D refer to there being signs of historic movement and distortion with sloping floors and distortion of door openings. And both company H and company D have provided photos in their report showing the significant deterioration of the bricks and walls.*

*I’ve then considered whether I believe these issues are, more likely than not, responsible for the issues with the Party Wall – and I’m persuaded they are. Company H in their report say they’re concerned with the levels of deterioration to the Party Wall and other walls within the subfloor, particularly, as the indications are that the Party Wall between the neighbouring properties may have been the catalyst*

*in the collapse of those buildings. And company D make a similar finding as they say, in relation to the properties which have collapsed, the reason is most likely due to deterioration of underfired bricks used in the original construction. Both experts here appear to be attributing the collapse down to the use of incorrect bricks and resulting deterioration. So, in view of this, I can't say Accredited have acted unfairly in declining any repairs to the Party Wall on the basis it's excluded due to the issues being down to gradual deterioration and/or latent defects.*

*I can see Miss K says, in this case, it's a question of what has caused the damage to her property, the latent defects or the collapse of the neighbouring property. Miss K says, given the defects have been present for many years, it would be an extraordinary coincidence if they caused the damage at the exact moment that her neighbour's property collapsed. Miss K says for this exclusion to apply, the damage must be caused by latent defects, and in respect of the damage caused to most of her property she doesn't see how it was caused by a latent defect as opposed to her neighbour's property collapsing. I do acknowledge Miss K's point here but the policy terms and conditions say a latent defect is a fault which exists but which only causes a problem at a later stage under certain conditions. So, I don't think it's unreasonable for Accredited to apply this exclusion here as, based on the information I've seen, I'm more persuaded the incorrect bricks being used have led to the deterioration and this existing fault only caused a problem with Miss K's Party Wall at a later stage following her neighbouring property part collapsing and then being demolished.*

*I can see Miss K says the damage done to the Party Wall was caused by the neighbouring property using it as a counterweight while it was collapsing. She also says it was caused by her side of the Party wall, which was an internal wall, now becoming an external wall and being exposed to the elements. I do acknowledge Miss K's points, but I can see the surveyor at the local council has provided a chronology of events and refers to various inspections they carried out. They refer to Miss K's neighbour's roof, floor and rear wall pulling away from the Party Wall shared with Miss K's property. That being the case, I'm not persuaded any damage was caused by the neighbouring property leaning into Miss K's property or collapsing into Miss K's property.*

*Miss K has provided a copy of an email exchange between her and a structural engineer at company D in which Miss K asks whether they can provide a statement which says the damage done to the Party Wall was caused by the neighbouring property using it as a counterweight while it was collapsing. The structural engineer says, "With regard to the damage done to the Party Wall...I agree that it was the collapse of [neighbouring property] that caused the damage. You have defects in the underground walls that would have caused future problems, but the current damage is due to the collapse of the adjoining property."*

*I can see Miss K has also made reference to sections of company D's report which she says demonstrates the collapse of the neighbouring property was the cause of the issue with the Party Wall.*

*I have taken these points into account but, for the reasons I've mentioned above, I'm more persuaded by what I've seen in the reports from company H and company D. In addition to this, I don't believe it's unreasonable to link any Party Wall issues with deteriorated subfloor walls. And particularly in this case, where expert reports have established that link.*

*I can see Miss K has also referred to internal damage which has been caused which she says Accredited should cover. I can see Accredited have based their claim settlement offer on a schedule of works prepared by their surveyor. I've compared*

*this with the areas of damage identified by company D, and I think the schedule of works broadly covers these areas. I haven't seen any persuasive evidence which demonstrates that there are any areas of internal damage, for which the exclusions don't apply, which aren't being covered.*

*Given my decision in relation to the Party Wall, I don't think it was unreasonable for Accredited to decline to provide Miss K with AA. The information shows the local council informed Miss K she would need to vacate her property, but this was due to the risk of the neighbouring property collapsing and this affecting the stability of Miss K's home, in particular the Party Wall. But because I don't believe Accredited have acted unfairly in declining to cover the issues with the Party Wall, it follows that I don't think it's unreasonable for them not to cover any AA as a result of any instability associated with the Party Wall.*

*I acknowledge Miss K has concerns about damage which might occur when the site is cleared but Miss K will need to raise this as a separate claim with her insurer if there is any further damage caused.*

#### *The claim settlement*

*Although I've mentioned above that I believe the schedule of works broadly covers the repairs Accredited should be responsible for, I don't think they've calculated the amount fairly. I say this because Accredited say they're unable to offer a contractor as they won't be able to guarantee the work due to the lack of mitigation that has been carried out and the fact that the property remains unstable. The policy terms and conditions say if Accredited can't offer rebuilding work or repairs, through their preferred contractor, they will pay Miss K, "a) fair and reasonable costs to have the work carried out by your chosen supplier, or b) the amount by which the buildings have gone down in value as a result of the damage, whichever is lower." But the schedule of works which has been used to calculate a cash settlement appears to be based on Accredited's own contractor rates.*

*I acknowledge Accredited will need to wait for Miss K to carry out the work not covered by the policy, but at the point the need for the insured work arises, Accredited should adhere to the policy terms and conditions whether they decide they can or can't offer repairs through their preferred contractor."*

So, subject to any further comments from Miss K or Accredited, my provisional decision was that I was minded to uphold this complaint and require Accredited to adhere to the policy terms and conditions when settling the claim.

Following my provisional decision, Accredited have said they don't agree with the settlement terms set out in my decision. They say they can offer a contractor to complete the works they're responsible for, but at the time the settlement was offered to Miss K the property was unsafe.

Accredited say should Miss K have the works completed to rectify the defects with the brickwork below dpc level, they would be able to offer a contractor. Accredited say, until Miss K has this work completed no contractor would be able to complete the works included in their settlement as the property would still be in an unsafe condition.

Miss K has responded and maintains Accredited should be responsible for all damage outside the brickwork below dpc level, as this is attributable to the collapse of the three neighbouring properties. Miss K says she has spoken with a contractor on-site and they've said another survey would take time and money to complete but it wouldn't necessarily prove either way what caused the damage. Miss K also raises a point that the collapse of the

property next door to her property and using her property as a counterweight, is responsible for the damage caused.

### **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.

Having done so, I see no reason to depart from my provisional decision. So, I've decided to uphold the complaint for the reasons set out in my provisional decision and copied above.

I do acknowledge the points made by Accredited, but just to clarify, my provisional decision did allow them the option to appoint their own contractor to carry out the works. I found that Accredited had offered a cash settlement, but this was based on their commercial rates. Miss K hadn't asked for a cash settlement and Accredited had informed our service they're unable to offer a contractor as they won't be able to guarantee the work due to the lack of mitigation that has been carried out and the fact that the property remains unstable. So, it was on this basis, and in these circumstances, that I found it was unreasonable for the cash settlement to be based on Accredited's own contractor rates – and it also wasn't in line with the policy terms and conditions. But, once the works are completed to rectify the brickwork below dpc level, if Accredited are able to appoint a contractor to carry out the works they're responsible for, then this would be acting in line with the policy terms and conditions.

I acknowledge the points made by Miss K, but these have been covered in my provisional decision – and I haven't seen any evidence which persuades me Accredited should cover any damage beyond what they've agreed to cover. I note the comment made by the contractor on-site and acknowledge another survey may not necessarily provide any certainty on what caused the damage. But my decision has been based on the expert reports, and a balance of probabilities test to determine what I think, more likely than not, has caused the damage. And, for the reasons I've set out, I'm more persuaded the damage beyond what Accredited have agreed to cover, has been caused by issues which are excluded under the policy.

I also acknowledge Miss K's point that her neighbouring property, which collapsed, caused her property to pull away from the neighbouring property on the other side. I have considered the sections of company D's report which comment on this, but again I've decided this based on what I find more persuasive. The photos taken by company D show significant deterioration to the brickwork below dpc level on both sides of Miss K's property. And, as mentioned above, given the consistency between the reports from company D and company H, I'm more persuaded the incorrect bricks being used have led to the deterioration and this existing fault only caused a problem with Miss K's Party Wall at a later stage following her neighbouring property part collapsing and then being demolished.

### **Putting things right**

I've taken the view that Accredited haven't offered Miss K fair settlement terms for the insured works. So, when the requirement does arise for the insured works to commence, Accredited should adhere to the policy terms and conditions when looking to settle this part of the claim, depending on whether they can or can't offer repairs through their preferred contractor.

### **My final decision**

My final decision is that I uphold the complaint. Accredited Insurance (Europe) Ltd must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K and Mr O to accept or reject my decision before 14 May 2024.

Paviter Dhaddy  
**Ombudsman**