

The complaint

Mr W complains that Arch Insurance (UK) Limited (“Arch”) unfairly declined a claim for storm and subsidence damage to his property.

Any references to Arch in this decision include its appointed agents.

What happened

Mr W made a claim to Arch in 2023, following damage that he suspected was due to a storm. Arch investigated and advised Mr W to make a further claim for subsidence, as it was thought that the property had also suffered subsidence damage. So Mr W raised a subsidence claim.

Arch ultimately declined the claim because it said the nature of the damage wasn’t consistent with ground movement after all. Its loss adjuster thought, based on his investigations, that the cracking was related to a lack of lateral restraint and settlement.

Mr W disagreed. So he made a complaint and provided a report from a surveyor to confirm that the cracking was due to subsidence. In its final response, Arch said the claim wasn’t declined because the cause of the damage was found to be a lack of lateral restraint. It was declined because the damage wasn’t determined to be subsidence related. It said that whether there was a degree of settlement due to the absence of foundations, or whether the damage was due to wind loads, neither constituted subsidence.

Because Mr W didn’t accept Arch’s response, he referred his complaint to this service. Our Investigator considered it, but didn’t think it should be upheld. He said he was more persuaded by the evidence Arch had provided, than by Mr W’s independent report.

Mr W didn’t agree with our Investigator’s opinion, so the complaint has now come 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.

Having done so, I’m not upholding this complaint. I’ll explain why.

The policy covers “*subsidence, ground heave or landslip*” but there are exclusions to this section of cover. In order for a claim to be accepted, it’s for the insured party to show that the damage is from an insured peril – in this case that would be subsidence. But if it’s not caused by an insured peril, then there isn’t a valid claim.

If the insured party can demonstrate that the damage was caused by an insured peril – then it’s for the insurer to show that a valid exclusion applies in order to fairly decline the claim. But in this case, Arch says it hasn’t yet been established that the damage was due to subsidence. So it doesn’t need to rely on any exclusions in the policy to decline the claim.

Arch said in its final response letter that Mr W should obtain a report “clearly evidencing that the property is currently, or has very recently been, affected by subsidence movement”.

So I've looked carefully at the report Mr W did provide before the final response was issued. This says, in conclusion, that the “*masonry cracking to the rear and internal walls is caused by foundation subsidence. The bowing out movement is triggered by the internal wind pressure*”. But the expert testimony Arch has provided doesn't reach the same conclusions.

Whilst I've no doubt that both professionals are suitably qualified to comment on matters as experts, I've found the findings of Arch's subsidence consultant to be more detailed and more persuasive. These findings include a thorough explanation of the type of damage that can be seen and the likely causes, for example:

“...although the wind may have caused damage to the roof and affected the rear wall, the rear wall appears to have been moving for some time and would only [have] exacerbated an existing issue. The same can be said about the roof, which appears in a poor condition and the window has just exacerbated this.

The stepped cracking that has been discovered is uniformed and does not widen as this climbs the wall. There is no [external] cracking noted here, however it appears there is a second skin of brick works, which is either part of the original building or is a boundary wall, flushed against the rear wall.”

Further detail has also been provided in the comments made by a senior claims handler in the final response letter to Mr W. This states:

“The diagonal cracking referred to here is of the kind more usually referred to in subsidence cases as Stepped Cracking in which a crack forms along a mortar line and progresses upwards and across at a steady rate. This type of crack is generally considered a subsidence tell-tale... However, subsidence is not the only cause of stepped cracking and further inspection of the crack can provide more information. Subsidence is not present in all cases of ground movement, in fact most properties experience movement throughout the year, particularly on soils, however, when this is due to general weather conditions the movement tends to be regular across the building and therefore no damage is suffered. Problems only begin to arise when different parts of the foundation move at different rates (differential movement). This results in one part of the building rotating away from the other with the foundation forming the pivot point. When this occurs, the crack will reflect it by widening as it progresses from the bottom of the wall to the top.

The crack in the client's property does not demonstrate this type of movement and instead is more consistent with one wall moving laterally away from the other in a consistent fashion, a mechanism which was noted to be occurring [by both parties' experts].

Given the level of detail provided and the explanations given, I've found Arch's expert evidence to be more persuasive. And from what I know about subsidence claims, I think the explanations are plausible – and that it hasn't yet been demonstrated that the damage is subsidence related. It follows therefore, that it hasn't been shown that the damage was caused by an insured peril covered by the policy, and so I don't consider Arch to have declined the claim unfairly.

I've considered the comments from Mr W's expert, who clearly disagrees with the conclusions reached by Arch's expert. He's said that in his opinion, lack of lateral restraint doesn't cause vertical movement. I agree with that position as a lack of lateral restraint

usually causes walls to bow or bulge outwards rather than causing downward movement like subsidence. But I accept Arch's explanation that even if the damage isn't caused by a lack of lateral restraint, Mr W still hasn't evidenced that the damage is subsidence related – because subsidence isn't the only cause of ground movement. For the claim to be covered, as Arch said, Mr W would need to provide expert evidence that shows, with adequate reasoning, why it is thought that the damage has been caused by an insured peril.

If Mr W obtains such evidence in the future, he should submit it to Arch in the first instance for Arch to consider. But as it stands, Arch hasn't declined the claim unfairly and so – while I'm sorry to disappoint Mr W, I won't be requiring Arch to do anything differently on the basis of the evidence already provided.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 December 2024.

Ifrah Malik
Ombudsman