

The complaint

Mr and Mrs C complain that Accredited Insurance (Europe) Ltd (Accredited) unfairly declined their home insurance claim. Any reference to Accredited in this final decision includes its respective agents unless specified otherwise.

What happened

The background of this complaint is known in detail to the parties involved so I've summarised what I've found to be the key points.

- Mr and Mrs C made a claim for accidental damage on their Accredited home insurance policy after noticing a wheelbarrow had fallen into their swimming pool which they said had caused damage to the pool liner. They said the wheelbarrow must have blown over during previous high winds.
- Accredited appointed an engineer to review and validate the damage and cause. The engineer concluded that the damage being claimed for was due to subsidence and degradation of the liner. And that little if any damage was because of the wheelbarrow entering the pool.
- Accredited declined Mr and Mrs C's claim. It said the damage happened gradually and was the result of wear and tear – both of which are excluded under the policy. It also referenced the fact that the policy doesn't cover subsidence to swimming pools.
- Mr and Mrs C complained to Accredited about its decision and provided a written summary from the liner installer (A) that disputed its findings regarding subsidence. Accredited's engineer maintained that subsidence was a likely factor in the damage caused to the pool liner and that it was most likely at the end of its serviceable life.
- A few months later, Mr and Mrs C informed Accredited that the old pool liner had been removed and that there were no cracks around the pool and so no subsidence/movement had occurred. They provided photos to support their findings and argued that Accredited's engineer hadn't done enough to show the correct cause of the damage or that the claim wasn't covered.
- Accredited's engineer reviewed the new evidence but said the photos weren't clear enough to determine the condition of the pool beneath the liner. They went on to say that even if no subsidence was occurring, they were still of the opinion the pool liner was at the end of its serviceable life and that this was the cause of the damage.
- Mr and Mrs C sent a sample of the pool liner to a pool liner manufacturer (B) for their opinion on the condition. B concluded the material had plenty of life left in it. At the same time, Mr and Mrs C brought a complaint to this Service.
- Our Investigator considered the matter and upheld the complaint. He was persuaded by A's findings that there was no subsidence or damage within the pools structure and that Mr and Mrs C had suitably evidenced that the lining hadn't deteriorated. So he didn't agree Accredited could fairly rely on the exclusions it had to decline the claim.
- Accredited disagreed and provided a further report from its engineer. The new report

pointed to the lack of mortar around the pool and its likely effects on the liner. And that the overhang of the pool paving slabs would've protected the liner from the wheelbarrow. He also said B's comments on the liner couldn't reasonably be relied on as they hadn't carried out the required standard of testing to make this finding.

- In response to this, Mr and Mrs C provided further information from A disputing Accredited's findings regarding the relevance of the mortar to the pool liner and the reliability of B's comments.
- Our Investigator then issued a further view maintaining his decision to uphold the complaint. He was more persuaded by A's findings regarding the mortar and paving stones, and he said that if Accredited thought there was further tests that should've been carried out to suitably evidence the liners elasticity, the onus was on it to carry out these tests. As it hadn't done this, he still wasn't persuaded it had reasonably demonstrated that the exclusions fairly applied.
- In response, Accredited provided a fourth and final report from its engineer which argued that the alleged damage mechanism (wheelbarrow falling into pool) was highly improbable and not compatible with the evidence. The Investigator maintained his position on the complaint and Accredited asked for the case to be considered by an Ombudsman, so the was passed to me to decide.

I issued a provisional decision on the complaint giving both parties the opportunity to respond with any final comments before I issued my final decision. I've included part of what I said below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Generally speaking, buildings insurance is designed to cover the cost of repairing or rebuilding the insured property if it's damaged or destroyed due to a type of unforeseen event (often known as an 'insured event' or 'insured peril'). And, when a policyholder makes a claim, the onus is on them to show that an insured event most likely caused the damage.

If the policyholder shows, or the insurer agrees, that an insured event caused the damage, the onus switches to the insurer – it should either accept the claim or show, again on the balance of probabilities, that an exclusion applies or that a condition has been breached.

In this case, Mr and Mrs C are claiming that a loaded wheelbarrow accidentally fell into their swimming pool during high winds and damaged the pool liner. The claim has been considered under the accidental damage part of the policy.

As Accredited considered and cited policy exclusions when declining the claim, our Investigator concluded that it had accepted an insured event had occurred, which therefore switched the onus onto it to show why the exclusions it sought to rely on most likely applied.

Our Investigator didn't think Accredited had done enough to reasonably demonstrate this and so he upheld Mr and Mrs C's complaint. But from what I've seen, Accredited's main reason for declining the claim appears to have somewhat shifted since its final engineer report, where it no longer cites policy exclusions in declining the claim but rather it doesn't think the damage being claimed for is consistent with a wheelbarrow falling into the pool – so essentially no insured event.

While I'm minded to say that the detail of this argument could've been made clearer to Mr and Mrs C earlier in the claim, and appears to have been somewhat lost in the multiple reports and back and forth between the parties as set out in the background above, it's still a

relevant point that I need to consider in this case.

Accredited's reasons for this conclusion are set out in its final report dated December 2023 which states: "The pool is lined coping stones that overhang the pool. Ordinarily, the pool liner should be flush to the wall. Therefore, if it was flush to the wall, it would simply be impossible for the wheelbarrow to "snag" on the liner and pull it away as it toppled in.

Moreover, the liner would have been secured with screws via fixing tabs. If this tab had been forced out, as alleged, it would have to of been torn out. However, no such damage is visible. Therefore, not only is the alleged damage mechanism highly improbably, but it is also not compatible with the physical evidence."

The insured event being claimed for here is accidental damage. And as set out above, before the consideration of any exclusions that may or may not apply, Mr and Mrs C must first show that the damage they're claiming for most likely happened accidentally, which is defined in the policy as "sudden and unexpected, and not caused deliberately by you or your tenants.". If they haven't reasonably demonstrated this, I'm unlikely to say Accredited's decision to decline the claim is unfair. So I've looked at the evidence that's been provided regarding the incident.

Mr and Mrs C say that a wheelbarrow fell into their pool damaging the pool lining. They don't know exactly when this occurred, and they didn't actually see this happen. Instead, they've drawn this conclusion because they found the wheelbarrow at the bottom of their pool after high winds and at the same time noticed the liner was coming away in certain areas.

But Mr and Mrs C's conclusion alone isn't enough in this case to persuade me that the wheelbarrow falling into the pool is the most likely cause of the damage they're claiming for. And I've not seen any expert reports that I think reasonably support this.

Instead, the photos I've seen of the area do appear to show a slight overhang of the coping stones around the pool, so on balance, I do think it's likely that had the pool liner been flush to the wall as it seems it should have been, it's unlikely the wheelbarrow would have made contact in the way that would likely be needed to cause the damage being claimed for.

Accredited has also referenced the point that there doesn't appear to be any damage around the liners screw holes – something that could reasonably be expected had they been ripped out at the likely force needed to separate the pool liner from the wall. And so far, I haven't seen anything from Mr and Mrs C that reasonably disputes these findings.

With all that in mind, I'm not currently persuaded that Mr and Mrs C have reasonably demonstrated that the damage they're claiming for most likely happened accidentally. So I can't say Accredited has acted unfairly by declining the claim based on the information currently available to it. Therefore, I don't intend to direct it to pay the claim.

I do however think that Accredited could've communicated better with Mr and Mrs C regarding the reasons behind its claim decision. I say this because, while it cited its doubts about the alleged cause of damage in its initial correspondence to Mr and Mrs C, it also considered and referenced policy exclusions – something it arguably didn't need to do in this case if it didn't think the damage was caused by the relevant insured event as set out above.

Mr and Mrs C then spent time and effort gathering evidence to dispute these exclusions, when in fact this was unlikely to change Accredited's position on the claim given its stance on how the damage occurred, so arguably wasn't necessary in this case.

With all that in mind, I think it's likely there's been a level of avoidable inconvenience caused

to Mr and Mrs C. Therefore, I intend to direct Accredited to pay them £150 compensation in recognition of this.”

Accredited responded to my provisional decision saying it had nothing further to add. Mr and Mrs C disagreed with my findings. In summary, they said:

- They firmly believe that the evidence they've already provided (which they say was considerable and time consuming to gather) demonstrates that the damage being claimed for was caused by the wheelbarrow.
- Accredited introduced new issues each time they provided evidence which they think is unreasonable. And they dispute Accredited's final report as it appears to suggest they're not being truthful about the cause of the damage which they find insulting.
- They say the pool liner was in good condition and flush to the wall prior to the wheelbarrow going into the pool. They say the photos already provided support their conclusion on the cause of damage.

I've considered these comments in full before making my final decision.

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.

I understand that Mr and Mrs C truly believe the wheelbarrow caused damage to their pool liner. But as I've explained, they need to be able to reasonably evidence this. And for the reasons already set out in my provisional decision, the evidence I've seen doesn't persuade me that this was most likely the case. Mr and Mrs C haven't sent me anything further in response to my provisional decision that changes my mind on this.

I appreciate the time and effort Mr and Mrs C have gone to throughout the course of their claim and complaint to gather and provide evidence. And I agree that Accredited could have communicated better with them at points, potentially mitigating some of the back and forth I've seen between the parties in this case. This is why I looked to award £150 compensation to Mr and Mrs C to recognise the inconvenience this caused them. I still think this is fair in all the circumstances of this case.

My final decision

For the reasons set out above my final decision is that I uphold this complaint in part. Accredited Insurance (Europe) Ltd must now pay Mr and Mrs C £150* for the distress and inconvenience caused in this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 15 August 2024.

Accredited Insurance (Europe) Ltd must pay the compensation within 28 days of the date on which we tell it Mr and Mrs C accept my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Rosie Osuji
Ombudsman