

The complaint

Mr K has complained on behalf of H, a limited company, about the way Covea Insurance plc handled a claim made under their buildings insurance policy.

Reference to Mr K and/or H includes any representatives. Similarly, reference to Covea includes its agents and representatives.

What happened

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

- H owns the freehold of a building which is split into four flats. Each flat is owned by a different leaseholder. Each of the leaseholders are beneficiaries of the policy, in relation to their individual flats and their share of the common parts.
- Covea insures all parts of the building under a buildings insurance policy. It began in August 2021 and renewed the following year.
- Mr K got in touch with Covea in January 2023 to make a claim for crack damage to the property. Covea appointed a loss adjuster to consider the claim. They inspected the damage and said it had been caused by subsidence. They noted Mr K had a report from a structural engineer, E, about earlier cracking. Covea explored this point to see how long the subsidence problem had been happening for.
- In September 2023, Covea declined the claim. It said the cracking noted by E dated back to 2010. As the policy began in 2021, it said this meant the damage had begun prior to the policy starting – and that wasn't covered by the policy.
- Mr K complained about the outcome of the claim and the time it had taken to reach the outcome. Covea maintained it was fair to decline the claim. And it said the time taken was reasonable.
- Our investigator thought Covea had acted fairly. Mr K disagreed, so the complaint has been passed to me.

My provisional decision

I recently issued a provisional decision in which I said:

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

- There are two main complaint points for me to consider – the claim decline and the way the claim was handled. I'll look at each separately.

Claim decline

- The policy covers damage to the building caused by subsidence. I don't think there's any dispute that the property has suffered subsidence damage.
- Covea declined the claim for one reason – a policy term which says subsidence damage isn't covered if it "*commenced prior to the inception of the [policy]*". The onus is on Covea to show it would be fair to rely on this term to decline the claim.
- For me to be persuaded it was fair for Covea to rely on this term, I'd first need to be persuaded the subsidence commenced prior to the start of the policy. That means before August 2021. It's not sufficient to show that *some* damage happened before then – Covea must show the *subsidence* damage happened before then.
- There have been a number of professional reports, which I'll discuss in mostly chronological order. In 2010, a chartered structural engineer inspected the property. They said none of the defects were structurally significant and didn't suggest there were any signs of subsidence or foundation movement.
- E first reported in 2014. It noted cracking and movement but didn't identify subsidence. Similarly, E's 2018 report mentioned damage and movement – but it didn't identify any active subsidence damage. It attributed most movement to causes including historic explosion, lack of lateral restraint, thermal expansion, and vibration.
- E said one of the flats may be suffering differential foundation movement, but the damage was slight and didn't justify ground investigations. It suggested Mr K monitor the crack and take action if significant movement was observed. A pre-purchase surveyor's report for the flat from 2017 also noted the potential for foundation movement given the local soil conditions, but said no movement was evident at the time of the inspection.
- E reported again in 2022. It said cracking had recently appeared and significant movement had occurred since earlier reports. It went on to identify an active subsidence problem. It didn't suggest this had begun prior to 2022.
- The only professional opinion I've seen from Covea is the loss adjuster's. They said E's 2018 report found the damage *wasn't* the result of subsidence. They went on to say: "*With hindsight, it is possible, given the location of this damage that it may have been the result of subsidence in 2018 however it is difficult to categorically confirm this*". I don't think the loss adjuster had the benefit of the 2022 report at that time. And I haven't seen any professional opinion from Covea or its loss adjuster about the 2022 report that might challenge E's findings.
- Taking all of this together, I don't understand how Covea has concluded the subsidence problem began prior to August 2021. It's not in doubt there was earlier damage and movement – but none of the professionals have positively identified active subsidence movement until 2022. E is a structural engineer, so I have no reason to doubt its professional opinion. And the loss adjuster seemed to agree with it. They noted the *possibility* that subsidence had begun by 2018 but couldn't be sure and seemingly hadn't seen the 2022 report.
- In these circumstances, I'm not satisfied Covea has shown subsidence damage began prior to the policy. As a result, I don't think it was fair for Covea to rely on the policy term to decline the claim. As that was the only reason it gave for declining the claim, it follows that to put things right, it should now accept the claim. The remaining terms and conditions of the policy will apply.

Claim handling

- Mr K complained that Covea took too long to reach a decision about the claim. And, as a result of declining it unfairly, caused further delays. I agree and I'll explain why.
- When Covea discovered there were earlier reports about cracking, I think it was reasonable for it to consider the reports and the impact they may have on the claim. However, that process took far longer than it should have done. And the wrong conclusion was drawn from them, which has caused many months more of delays. Covea disregarded the professional opinion of its loss adjuster and E, which is highly unusual – and contributed to the problem.
- Whilst Covea said some of the delay arose waiting for Mr K to provide information, from emails I've seen, it took less than a week for him to provide the reports initially. When Covea asked him to get new comments from E, he did so within a few weeks. After that, Covea asked him for information he'd already provided months earlier.
- Overall, it took Covea almost eight months to decline the claim. In that time, the loss adjuster visited and reported. And the professional reports were considered. These activities were reasonable and would inevitably have taken some time. In my view, three months at most would have been reasonable, so there's a significant delay. And it's quite clear the cause of the delay was Covea – not Mr K.
- Covea has told this Service that some of the timescale was brought about by having to refer the matter between its internal departments and claim handling agents. Covea has a duty to handle claims promptly and fairly. Whilst it can do so using agents if it wishes, that doesn't change its duty to act promptly. The use of claim handling agents shouldn't slow down a claim or disadvantage a policyholder.
- This complaint has been brought by H. So the scope of this complaint is limited to matters which impact H as a limited company and freeholder.
- Each leaseholder is entitled to raise a complaint about matters which impacted them directly as individuals. That could include the particular distress and inconvenience each suffered.
- I bear in mind that H is a limited company, so it can't suffer distress. And any inconvenience suffered by the leaseholders is a separate matter. Within this complaint, I can only consider the inconvenience suffered by H as a result of Covea's delays. And that's limited to any additional administration, over and above that which would have been required as a result of the claim, even if it was handled as it should have been.
- In these circumstances, I consider Covea should pay H £250 compensation.

Responses to my provisional decision

Both parties responded to my provisional decision. I'll summarise their responses and then go on to explain my findings.

- Mr K noted the claim had begun in January 2023 and, given the time since then, the building had deteriorated and needed urgent attention. As a result, H had begun taking steps to remedy it. That included appointing a structural engineer to take

professional advice about the next steps, following which they carried out ground investigations, a drainage survey, and setup monitoring. Together that cost nearly £10,000. Mr K asked that I require Covea to cover these costs and continue the claim with the same contractors to avoid any delays.

- Mr K also asked me to require Covea to take the next steps immediately, avoid further delays, and to carry out repairs within a year.
- Covea made a number of points, which I'll summarise:
 - It questioned why I didn't comment on its position that it wouldn't have offered subsidence cover to H if Covea had been told there was a history of subsidence when it took out the policy.
 - It also said I'd suggested H's own assessment of the damage is from an expert, when Covea says it isn't.
 - The onus is on the policyholder to prove their loss occurred as a result of an insured event and happened during the time the policy was active. H hasn't done that because all the expert evidence suggests the subsidence began prior to the start of the policy.
 - A surveyor also said the building would have started to suffer movement from the moment it was constructed due to the limited foundations in place.
 - The claim could be very high value, so Covea expects this Service to review the case properly before an outcome is reached.

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 can assure Covea this complaint has been thoroughly considered. I've taken into account relevant industry rules, guidance, best practice, and read and considered all the evidence provided by both parties – initially and in response to my provisional decision, including all emails sent by Covea recently. Whilst I may not comment on each and every point made, or piece of evidence provided, I have taken it all into account. My role is to reach and explain a decision that I consider to be fair and reasonable in all the circumstances, with minimal formality. That's what I'll focus on.
- I agree with Covea that the onus was initially on H to show the damage was caused by an insured event. Subsidence is an insured event and there's no dispute that's the cause of damage. So H fulfilled the first step.
- After that, it was broadly for Covea to do one of the following – with the onus being on Covea to show it would be fair to take the second or third option:
 1. Accept the claim.
 2. Decline the claim by relying on a policy term.
 3. Decline the claim due to misrepresentation when the policy was taken out or renewed. This would usually involve Covea showing that H didn't provide the information it should have done at that time – and that caused Covea to offer a policy, or a policy with subsidence cover, when it wouldn't have done so had H provided the information it should have done.
- Covea took the second option. When it declined the claim, it relied on a policy term which says subsidence damage isn't covered if it "*commenced prior to the inception*

of the [policy]”. When it responded to the complaint, it pointed back to this policy term. At neither point did it mention the potential to take the third option or rely on any other policy term to decline the claim.

- When Covea provided this Service with its file, it said it wouldn’t have offered subsidence cover had it been aware of the property’s history. It didn’t mention anything else to suggest it might take the third option and it reiterated the policy term above it had relied on. Nonetheless, our investigator asked Covea whether it was seeking to rely on misrepresentation – and if so, to provide the relevant evidence.
- In response, Covea said: *“while [H] did not inform us at inception of the cover that they had pre-existing subsidence issues, we were made aware that [H] had this pre-existing damage and the property was being monitored for movement once the policy had started and as a result our underwriters did not think it reasonable to now void the policy and instead we moved to decline the claim on the grounds the damage and issue with subsidence was clearly pre-existing”*.
- So I think Covea was quite clear that it wasn’t taking the third option and seeking to rely on misrepresentation – it was solely taking the second option and relying on the single policy term quoted previously. It’s not for this Service to raise arguments for an insurer – we consider the reason(s) it raised only. So, when reaching my provisional decision, as Covea hadn’t sought to rely on misrepresentation, I saw no reason to consider it. I solely considered the policy term it had relied upon.
- In response to my provisional decision, Covea hasn’t said it’s seeking to rely on misrepresentation and/or provided any of the relevant evidence to do so. Because of this, I still see no reason to consider misrepresentation.
- However, Covea seems to be asking me to take into account that it says it wouldn’t have provided subsidence cover, had it been told there was subsidence at the property when the policy began. But it’s not relying on misrepresentation. And it has only raised the ‘pre-existing damage’ policy term, which I’ll come back to later. So there’s no mechanism for me to consider the point Covea is making. It’s effectively asking me to consider misrepresentation without relying on misrepresentation or providing any of the relevant evidence for it. I don’t consider that’s a fair and reasonable position to take.
- And *even if* I were to go on to consider it, Covea seems to be saying it was aware of damage and movement when the policy was taken out, but not of subsidence – and had it been told there was subsidence, it wouldn’t have included subsidence cover on the policy. However, I’ve found that there *wasn’t* evidence of subsidence prior to the start of the policy. So there would have been no subsidence for H to tell Covea about at that time – and the policy would have been offered with subsidence cover. So I’m not persuaded this point would make a difference in any case.
- Returning to the ‘pre-existing damage’ policy term Covea has relied upon, in response to my provisional decision, Covea says I’ve suggested H’s own assessment of the damage is from an expert – but Covea doesn’t think it is. The professional opinions provided by H, and which I relied on, were as set out in my provisional decision. In summary, that was a pre-purchase report by a chartered surveyor, a structural engineer’s report, and three reports from E – all of which were written by building engineers. I haven’t seen anything to suggest these professionals aren’t independent and/or may otherwise be unreliable for some reason. So I’m

satisfied the opinions I relied upon are from relevant and suitably qualified professionals – not from H itself. And it follows that it's fair to take them into account.

- Covea hasn't challenged or commented on my findings about the content of the reports, so I see no need to repeat my findings here. But, in summary, I thought they generally said there was no clear evidence of subsidence prior to the policy starting. Whilst there was certainly damage and movement, none of the five reports said that amounted to subsidence movement before the policy began. I've re-read the reports and I remain satisfied that's a fair summary of them – and I note Covea hasn't questioned that summary.
- I also commented on Covea's loss adjuster's report. Again, Covea hasn't challenged or commented on my findings about this. But I'll reiterate and highlight the elements of that report I consider to be most relevant here:
 - The property was built around 1900.
 - The damage had occurred 'recently'.
 - E's 2018 report concluded the damage at that time hadn't been caused by subsidence.
 - With hindsight, it is possible, given the location of this damage that it may have been the result of subsidence in 2018 however it is difficult to categorically confirm this.
- I consider the loss adjuster's report broadly aligns with the narrative of the five reports provided by H. It notes the damage was 'recent' rather than, say, several years ago or more. It accepted what E had said about there being no sign of subsidence in 2018. And whilst it suggested the possibility that the 2018 damage *may* have been subsidence, it didn't go so far as to say that was likely to be the case.
- Covea has pointed to the pre-purchase surveyor's report. It says this shows the building would have started to suffer movement from the moment it was constructed as it had limited foundations. That report says the property was built in 1890, which is broadly consistent with the loss adjuster's estimate. So it's clearly stood for well over 100 years, maybe over 130. According to Covea, it's been suffering from subsidence to some degree throughout that time. If that were the case, one might expect it to have suffered significant damage by the time of the claim in 2023. Or at least for any of the professionals who reported to have identified subsidence prior to the start of the policy in 2021, such as the pre-purchase survey.
- As I said in my provisional decision, the pre-purchase survey noted the potential for foundation movement given the local soil conditions, but said no movement was evident at the time of the inspection. It also said it's *possible* the foundations are no deeper than 600mm. It didn't go on to say what the actual foundation depth was, that 600mm was limited, or that movement would have happened since construction. I agree with Covea that 600mm is shallower than current building regulations, but Covea didn't take steps to establish what the actual foundation depth is – 600mm was merely the surveyor's estimate and the reality may be different, potentially deeper. Even if the foundation were 600mm, or shallower, that doesn't necessarily mean subsidence would have occurred since construction and ever since.
- In my view, the key evidence is the professional reports. There are six including the loss adjuster's. All are broadly consistent that there was no clear evidence of subsidence prior to the start of the policy – particularly those written with the benefit of inspecting the property prior to the start of the policy and seeing its condition at

that time. It's only Covea who sees things differently, but it's not clear why. I would expect it to be directed by the professionals, but it hasn't provided any such evidence to support its view and challenge the other professionals.

- Overall, I'm satisfied Covea hasn't shown it would be fair to rely on the one policy term it raised. It hasn't raised a misrepresentation argument and I've noted why it would be unlikely to make a difference even if it had been raised – or if I otherwise considered that Covea wouldn't have offered subsidence cover had there been a history of subsidence. I've taken into account what Covea has said about the possible shallow foundation, and possible historic subsidence, but it's not supported by evidence, so I haven't been persuaded by this argument. As a result, I remain satisfied it would be in line with the policy terms, and fair and reasonable in all the circumstances, for Covea to accept the claim.
- I recognise Mr K has recently taken steps to deal with the damage and mitigate against any losses caused by the damage getting worse. And I can understand why he's done that. However, I don't think Covea has been involved in these steps at all – and hasn't seen any of the professional reports and investigations carried out in 2024 or had a chance to consider them yet. As such, I'm not persuaded it would be fair and reasonable for me to require it to reimburse the costs at this stage. But, as part of Covea accepting the claim, I would expect it to consider these costs.
- I'm requiring Covea to accept the claim. It hasn't yet had a chance to go on to handle and settle the claim, so I'm not persuaded it would be fair and reasonable for me to dictate how it must do so. Covea is required to follow, amongst other things, relevant law, rules, guidance, best practice and the terms of the insurance policy – and that will influence the remainder of the claim. That includes a requirement for Covea to handle the claim fairly and promptly and to act fairly and reasonably throughout. So I would expect it to keep these requirements in mind when handling the claim. I don't consider it necessary for me to be more specific than that at this stage.
- And I don't think it would be practical for me to do so – there can be a number of steps which may need to be taken in a subsidence claim and the reasonable timescale for doing so can vary and be hard to accurately predict. Setting a timescale can be unhelpfully restrictive for both parties and may inadvertently interfere with Covea's ability to meet its requirements and/or disadvantage H. So it wouldn't, in my view, benefit either party to be more specific.
- H will be entitled to make a new complaint about the way the claim is handled and/or settled if it's not satisfied with the way Covea deals with things.
- Neither party commented on or challenged my proposed compensation figure. So I see no reason to discuss it further. I maintain it's a fair and reasonable amount, noting it's for the inconvenience to H specifically – not the individual leaseholders.

My final decision

I uphold this complaint.

I require Covea Insurance plc to:

- Accept the claim, subject to the remaining terms and conditions of the policy.
- Pay £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 26 September 2024.

James Neville
Ombudsman