

The complaint

Miss S complains about Accredited Insurance (Europe) Ltd's decision to decline a claim made under her home insurance policy for damage caused by subsidence.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here, concentrating on the key issues as I see them.

Where I refer below to actions taken or information provided by Accredited that may include actions taken or information provided by their agents. This is simply for the sake of brevity and clarity.

Miss S has a home insurance policy underwritten by Accredited which covers her home and its contents. The policy was inceptioned in late February 2021.

In February 2022, Miss S made a claim after she noticed cracking in the walls of her home, at the front and the rear.

Accredited appointed a loss adjuster to deal with the claim. However, they didn't visit the property until June 2023. This was partly due to Miss S unfortunately being in hospital for a prolonged period. But it was also partly due to administrative errors which caused the referral to the loss adjuster to be wrongly closed.

In July 2023, the loss adjuster told Miss S her claim was declined. They said the damage had occurred before the inception of the policy and so was not covered.

Miss S then commissioned her own expert to carry out a survey of the property. They concluded that some (most) of the damage at the property was caused by subsidence. This was likely due to an issue with the drains (at the rear of the property) and the influence of a large local authority owned tree (at the front).

Miss S complained to Accredited about their decision to decline the claim. They maintained their view that the damage was pre-inception and so, not covered.

They said the damage was evidenced in 2017, when Miss S had repairs carried out to cracks in one of her bedrooms, and in 2009, when images from Google Streetview show a crack in the bay at the front of the property.

However, they admitted the administrative errors which had led to some of the delay in the loss adjuster visiting the property. They awarded Miss S £600 in compensation for the trouble and upset caused by the delays in their handling of the claim.

Miss S wasn't happy with this outcome and brought her complaint to us. Our investigator looked into it and thought it should be upheld.

In her most recent view on the case, she said Accredited had acted unfairly in declining the claim for the reasons they'd given.

She said they should carry out further investigations at the property – as they'd offered to do during our investigation of the complaint. And then settle the claim in line with guidance issued by the Association of British Insurers (ABI) about handling subsidence claims.

She thought the £600 offered by Accredited was fair and reasonable compensation in relation to the delays which had occurred prior to Miss S making her complaint to them (in February 2024). But she said they should pay Miss S a further £500 to compensate her for the further delays in properly settling the claim to date.

Accredited didn't accept our investigator's view. They said their evidence hadn't properly been taken into account. And they asked for the case to be referred for a final decision by an ombudsman.

Miss S accepted the view in principle, but she asked why Accredited hadn't been instructed to pay the costs she'd incurred in commissioning her surveyor's report and further investigations at the property to support that report.

I agreed with our investigator that the complaint should be upheld. But I took a slightly different view about what needed to happen now to put things right for Miss S. And I wanted to be absolutely clear about my reasons for upholding the complaint.

So, I issued a provisional decision. This allowed both Miss S and Accredited the chance to provide further information or evidence and/or to comment on my thinking before I made my final decision in this case.

My provisional decision

In my provisional decision, I said:

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

Our approach on subsidence claims

I'll begin by setting out what we think about how insurers should approach claims for damage caused by on-going and/or historical subsidence.

In our view, if an insurer receives a claim for damage caused by subsidence and can show that the damage began *and finished* before inception of the policy, then they would be entitled to decline the claim and potentially refer the customer back to their previous insurer.

However, if the damage began before inception but is or was on-going during the period covered by the policy, then the insurer should deal with the damage which occurred during the policy term, even if that damage started prior to inception.

And if the only way to provide a lasting and effective repair for the damage occurring during the policy term was to repair pre-existing damage, then so be it, the insurer would be expected to carry out those repairs too.

None of that would prevent the insurer considering whether there had been a misrepresentation, under the Consumer Insurance (Disclosure and Representations) Act (CIDRA), at the point of purchase or renewal of the policy.

In brief, it wouldn't be fair and reasonable for a policyholder to buy or renew an

insurance policy knowing that their property was already suffering subsidence or not taking reasonable care to find out if it were, and not letting the potential insurer know about that beforehand.

If there had been a qualifying misrepresentation (under CIDRA), then the insurer would be entitled to apply the remedies set out in that Act.

The ABI guidance on subsidence claims

Our view on what's fair and reasonable when insurers deal with claims relating to on-going or historical subsidence damage dovetails with the ABI guidance on best practice in handling subsidence claims. Accredited and their agents – including their loss adjusters – should be well aware of this guidance.

Amongst other things, the ABI guidance sets out what insurers should do when they receive a claim which in fact relates to damage caused by subsidence which has occurred over a period where two or more policies (provided by different insurers) have been in place.

It says that if a claim is received within eight weeks of policy inception, the current insurer is entitled to refer the policyholder back to their previous insurer, who would be expected to deal with the claim.

If the claim is made after eight weeks, but within a year of inception, then the claim should be handled by whichever insurer (current or previous) was first notified of the claim. But the costs associated with the claim would be shared between the two insurers.

If a claim is made more than a year after inception, then the current insurer would be expected to deal with it and bear any associated costs.

Miss S's claim

Miss S's claim relates to damage at the front and at the rear of her property. Miss S's expert believes the damage at both front and rear to be subsidence-related but says there are likely to be two separate causes. At the front, there's a large tree in the street within influencing distance. And at the rear, the issues are likely to be related to a problem with the drains.

Accredited appear to think the damage at the front may not be related to subsidence (and the tree) but agree that at least some of the damage at the rear is caused by subsidence, likely because of a problem with the drains.

One problem we have in trying to pinpoint what in fact has happened here is that Accredited declined the claim (as pre-existing damage) before carrying out sufficient investigations to properly identify the cause(s) of the damage. In their view, of course, the causes were irrelevant if the claim was being declined because the damage was pre-existing.

It's only late in the day – after our investigation was underway – that Accredited appear to have agreed that further investigations might be necessary before they finally decide what to do with the claim.

In short, up to now, they've agreed that at least some of the damage is on-going. They say so in their communication with us, dated 3 October 2024, which asked for

this case to be referred to an ombudsman.

I bear in mind our established approach to this kind of claim – as set out above and which should be well known to Accredited.

Accredited acknowledge that at least some of the damage at Miss S's property is caused by subsidence.

They also acknowledge that at least some of the damage is on-going - and so, has occurred during their period on cover.

That being the case, Accredited should deal with the claim. It was notified to them after eight weeks from inception but (just) within a year of inception. The policy began on 28 February 2021 and the claim was notified on 23 February 2022.

Under the terms of the ABI agreement, as I understand it, Accredited are entitled to ask Miss S's previous insurer to share the costs of the claim because it was made within a year of inception. But that's a matter for Accredited – and it should not in any way affect how they handle Miss S's claim.

So, it wasn't fair or reasonable for Accredited to decline the claim on the basis that the damage was pre-existing – given that it (or at least some of it) is on-going and is caused by subsidence. For example, there was never any evidence to suggest that the issue with the drains at the rear of the property pre-existed the inception of the policy. And on that basis, I'm minded as things stand to uphold the complaint.

Accredited will therefore need to properly identify the cause(s) of the damage at Miss S's property. And they will have to carry out lasting and effective repairs to any and all damage which occurred as a result of subsidence and during their time on cover.

They will also have to repair any other pre-existing damage if that's necessary for an effective and lasting repair of the damage which has occurred during the policy term (again, see above, where I set out our approach on these issues).

Misrepresentation

It's very unfortunate in this case that Accredited's (or their agent's) communications about the reasons for declining the claim are at times unclear - at best.

I should be clear that, for the main part, in communications with Miss S and with us – and in internal communications between Accredited's staff, their managing agents and the loss adjuster – the reason given for declining the claim is simply that the damage is pre-existing.

There are occasional references in those communications to the idea that the damage "*would have been evident*" before the policy was purchased. But there's no suggestion about to whom it would have been evident. And that's not the reason given to Miss S for the decision to decline her claim.

As I've set out above, if Accredited could show a qualifying misrepresentation on Miss S's part here, then they might be entitled to void the policy and/or decline the claim or to deal with the claim proportionally or on different terms.

However, I'm minded as things stand to say that wouldn't be fair or reasonable. For

one thing, it's arguably entirely unfair to bring that into consideration now, more than 18 months after first declining the claim (for different reasons). It might appear, in that case, that Accredited were desperately and unfairly shifting their position as their previous grounds and arguments for declining the claim fell away.

More importantly perhaps, I don't think Accredited have any evidence to suggest misrepresentation (as per CIDRA) on Miss S's part.

She had cosmetic repairs carried out on cracks in one part of the house (at the rear) in 2017. If she had suspected subsidence at that point, it's inconceivable that she would have left it until 2022 to make a claim.

Furthermore, Accredited's own experts have said the cracks in that particular area aren't subsidence related. Whether they are or not (and we may find out only after proper investigations are completed), it would be a bit of a stretch for Accredited to say Miss S should have recognised those cracks as indicating subsidence in 2017 (and declared that when she bought the policy in 2021) when their own non-lay experts failed to recognise the cracks as subsidence-related on inspection in 2023.

In terms of the cracking to the front bay (as evidenced on Google Streetview from 2009), this wasn't originally put to Miss S as a reason to decline the claim. And again, Accredited have no real evidence or rationale to suggest that this ought to have been apparent to Miss S – or recognisable as an indicator of subsidence - before she bought the policy.

Miss S's view is that the crack mirrors cracks in other properties of the same age in the same street, none of which are suffering from subsidence. She had taken it to be due simply to the age of the property.

If Accredited had wanted to allege misrepresentation – as a reason to decline the claim or deal with it differently – they would have needed to consider carefully exactly what questions Miss S was asked when she bought the policy and exactly how she answered them.

They would have needed to carefully consider whether her answers indicated any qualifying misrepresentation (under CIDRA) - and if so, whether it was knowing / reckless or careless.

They would then have needed to determine what remedy was permitted (under CIDRA) given the nature of the misrepresentation.

And, if the misrepresentation was deemed careless (and the evidence to say it was reckless or knowing is lacking, to say the least), they'd have needed to establish whether they'd have offered the policy (had they known the true facts) and, if so, on what terms – all by reference to their underwriting criteria or guidance.

Neither Accredited nor any of their agents have done any of those things. And, as I say, they've given an entirely different reason for declining Miss S's claim. So, I'm minded to say it would be unfair and unreasonable to now introduce the question of misrepresentation and/or to use that as a reason to decline the claim (or deal with it differently).

Next steps

It's clear from what I've said above that I'm minded as things stand to conclude that

Accredited must settle the claim - and that they will have to accept responsibility for at least some of the repairs to the damage at Miss S's property.

I'm minded to say that they have two months from Miss S's acceptance of my final decision in this case (if indeed she does accept it) to review the expert evidence already in hand and/or to carry out further investigations to establish the cause(s) of all the claimed damage at Miss S's property – and then to set out clearly for Miss S what damage they are willing to cover.

I'm minded to impose a deadline of two months because of the delays already experienced by Miss S in the settlement of her claim and the need to progress to the repair stage as soon as practically possible.

On the face of it, that review and/or further investigation should establish – as an absolute minimum - what damage (if any) there is to the drains at the rear of the property; what is causing the lintel above the French windows at the rear of the property to deflect; what effect the tree in the street is having (if any); and what internal and external cracking is due to what cause.

If there is damage Accredited don't intend to cover, after carrying out that review and/or further investigation, they need to explain the reasons for that to Miss S very clearly - and by reference to the evidence and the relevant policy term(s).

For damage they do intend to cover, they should set out a scope of works and a timetable for repairs and communicate this clearly to Miss S.

If Miss S then disagrees with the proposed settlement, she'd be entitled to make another complaint to Accredited - and then to us, if she's unhappy with their response.

Compensation

It was 16 months between the claim notification and the loss adjuster's first inspection of the property. I'd normally expect a first inspection to be carried out within a month or so. Miss S was in hospital for five months. The remaining 10-month period is unnecessary delay caused by Accredited's administrative errors – as they've admitted.

Making a claim like this, relating to damage of this nature, is always going to be stressful and upsetting. At a difficult time for her, Miss S experienced that stress and upset for 10 months more than necessary because of the delays in the loss adjuster inspecting the property.

Accredited offered £600 in compensation for that period. I agree with our investigator that's fair compensation for the added trouble and upset Miss S suffered due to that particular period of delay, given the level of trouble and upset caused for Miss S.

Our investigator also thought that Accredited had an opportunity to re-assess – and get on with properly handling – the claim after Miss S complained to them and gave them a copy of her expert's report, in February 2024.

And because the delays after that point are essentially the same issue (delays) which Miss S had raised as part of her complaint to Accredited, she felt that she could – and should – ask Accredited to compensate Miss S for those delays too (February to date). She said £500 would be fair compensation for that period.

I agree that this is essentially the same issue Miss S had complained about originally and that we can therefore look into it as part of this complaint. And I agree that, in essence, the on-going delay to Miss S having a proper and full response to her claim is the result of Accredited's error in declining the claim, for the reasons they did, in July 2023.

I also agree that a further £500 in compensation for Miss S's on-going stress and upset – resulting from living in a damaged property, with the worry about whether it could and would be repaired – is fair and reasonable in all the circumstances.

So, I'm minded to require Accredited to pay Miss S a total of £1,100 in compensation for her trouble and upset.

Payment for Miss S's expert report and associated investigations

I don't agree with our investigator on this point. She said Miss S's expert's report didn't really have any impact on how the claim and/or complaint should be concluded.

I can see why she said that. In essence, the report simply says that the damage is caused by subsidence. It's silent as to when that damage might have started and to what extent it had developed before the policy was inceptioned.

Accredited's view, I believe, is that the report adds very little. They were already aware that the damage was caused by subsidence (at least in part), but their reasons for declining the claim were that the damage pre-dated inception of the policy – and Miss S's expert hadn't had anything to say about that.

I think that's something of an over-simplification. For one thing, whilst Accredited did clearly say the damage was pre-existing, they also said the damage at the front of the property wasn't due to subsidence. And Miss S's expert did disagree with that.

More fundamentally perhaps, Miss S only commissioned her expert because Accredited declined the claim outright. If they hadn't declined the claim, she would have had no reason at all to commission the report.

And, as I've set out above, I'm minded to conclude that the decision to decline the claim outright and in full – for the reasons they did so - was an error on Accredited's part. In essence, they and/or their agents entirely ignored our approach to subsidence claims – which they ought to know about – and they ignored the ABI guidance – which they ought to know about and apply.

In short, Miss S was put to the expense of commissioning her own expert report – and associated investigations – only because Accredited declined her claim in error.

And so, I'm minded to conclude that Accredited should reimburse Miss S for those costs, on receipt of relevant invoices / receipts and/or other proof of payment. And, given that Miss S has been out of pocket since paying for those reports / investigations, Accredited should add interest at 8% simple per annum to that payment."

The responses to my provisional decision

Miss S responded to say she agreed with my provisional decision.

However, she asked me to note – particularly when it comes to the timescales for next steps that I’m setting down – that her house now has black mould forming throughout due to the condition of the property. This has to be removed regularly. And it affects her children severely because they have asthma.

Accredited also responded to my provisional decision. They noted that the claim was declined for the wrong reasons. And made the following comments, which I’ll summarise rather than repeat in full.

One – they think the wording in the provisional decision might mislead Miss S into believing that they will restore her property, which has historical movement preceding the inception of the policy, to the state it was in before any subsidence movement had ever occurred.

Two – they object to my suggestion that they’d said some of the cracking in one of the bedrooms was not subsidence related. They say their report (June 2023) sets out the areas of cracking and notes one of the causes as subsidence.

Three – they don’t think the timescale set out in my provisional decision is feasible. That’s because a period of monitoring may be required – and usually that would involve at least three readings taken on a bi-monthly basis. They suggest the requirement should be that investigations are actioned (I assume they mean begun) within one month of my final decision being accepted by Miss S.

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.

Comments on next steps

I understand Miss S’s comments about the timescales I’m setting for next steps and I’m very sorry that she’s been caused this concern and worry about the health of her children.

I’m very keen – and I suspect Accredited will agree – that further investigations and repairs should be carried out as soon as practically possible. I’d also note that if those steps are subject to further *avoidable* delay, Miss S would be entitled to make a further complaint to Accredited - and then to us, if she’s not happy with their response.

Of course, Accredited have also commented on the proposed timeframes, but from a rather different – but equally understandable - perspective.

It might be useful if I clarify what I intended in the section of my provisional decision above headed “*Next steps*”.

I don’t think it’s unreasonable in all the circumstances – and bearing in mind the impact on Miss S and her family – to require Accredited, within two months, to:

- review the expert evidence already on file;
- carry out any further investigations (around the tree and/or the drains) to establish the causes of the current subsidence-related ground movement;
- determine what damage they propose to cover; and
- based on that, draft a scope of works for the proposed repairs.

And that's what my provisional decision suggested Accredited should do – within the two months.

Those preliminary investigations will presumably show what mitigation is necessary to address the causes of the subsidence (which *may* involve drain repairs and/or removal or restriction of the tree and/or indeed, something else entirely).

I understand that those preliminary investigations *might* then suggest a period of monitoring, after the mitigation works, to determine whether the property is stable or still moving. And that it wouldn't be sensible to complete the permanent repairs to the house itself before that monitoring was complete.

I don't think that should prevent Accredited for being able (within two months) to identify what repairs they are willing to cover and what damage they aren't going to cover (and why). And to scope out the repair works – even if they have to wait for monitoring to be completed before those repair works can begin.

Much of this is hypothetical at the moment – because of the lack of any thorough investigations to date – but *if* the permanent repairs can't sensibly be started immediately after the two months is up, then I'd expect Accredited to consider either temporary repairs to mitigate the impact of the current state of the house on Miss S and her family and/or alternative accommodation for a period of time.

As I say, it is difficult to pre-empt every hypothetical possibility at the present time given the state of knowledge about the causes and impact of the subsidence. But I would expect Accredited to react and respond to the changing picture - in a timely manner, in line with the terms of the policy, and bearing in mind the need to treat Miss S fairly and reasonably.

The cracking in the bedroom

I understand why Accredited's loss adjuster might want to respond to my suggestion that they'd said the cracking in one of the bedrooms wasn't subsidence-related.

I won't go into detail on this because it's not significant in terms of the overall outcome of this case. However, I'd refer Accredited back to the June 2023 inspection report.

This does in fact very strongly suggest that the cracking in the rear left bedroom (the cracking repaired by Miss S in 2017) was due to alterations to the house (an original arched window being partly bricked up and an opening being made between the kitchen and dining room beneath the bedroom) rather than subsidence.

Historical damage

I can understand why Accredited don't want Miss S to be given the impression that they're being required to cover any and all movement-related damage to her home.

However, I would refer them back to my provisional decision – and in particular, the sections about our approach on subsidence claims and the ABI's guidance. I set out there what considerations they need to take into account when deciding what they will and won't cover in this case.

Putting things right

The comments provided by Miss S and by Accredited haven't caused me to change my mind about the outcome of this case, for the reasons I've set out above. I hope though that my

comments have helped to clarify my thoughts on the timescales and what is to be achieved within the two-month period.

I set out in my provisional decision what I was minded to require Accredited to do to put things right for Miss S. I haven't changed my mind about that. And I'll repeat the outcome I've decided on in the section immediately below.

My final decision

For the reasons set out above, I uphold Miss S's complaint.

Accredited Insurance (Europe) Ltd must:

- carry out any and all investigations and/or reviews necessary to determine the proper settlement of Miss S's claim;
- set out clearly for Miss S what damage they propose to cover – and provide her with a scope of works and timetable for the repairs;
- set out any damage they do not intend to cover and explain clearly to Miss S why they have come to that decision by reference to the evidence and the relevant policy term(s);
- all of the above steps to be completed within two months of Miss S's acceptance of my final decision in this case (assuming she does accept it);
- pay Miss S £1,100 in total in compensation for her trouble and upset; and
- on receipt of invoices / receipts and/or other proof of payment, reimburse Miss S for the costs she incurred in commissioning her expert report and/or any investigations to support it or that her expert recommended, adding interest at 8% simple per annum to that payment (calculated from the date Miss S incurred the costs to the date this payment is made).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 7 March 2025.

Neil Marshall
Ombudsman