DRN-5317156

The complaint

Ms C and Mr T complain about Red Sands Insurance Company (Europe) Limited's decision to decline a claim they made under their home insurance policy.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

I'll on occasion refer below only to Mr T, because he's been our main correspondent on this case - and it makes my decision easier to read. There's no disrespect intended to Ms C.

Ms C and Mr T have a home insurance policy underwritten by Red Sands, which covers their family home and its contents, amongst other things.

They bought their home in 2018 and were insured with another company until 2022, when they first took out their policy with Red Sands.

In 2023, they made a claim after discovering damage to their home which appeared to be consistent with subsidence.

After some preliminary investigations, Red Sands voided the policy and said they weren't going to deal with the claim. They said Ms C and Mr T hadn't disclosed a previous subsidence claim when they bought the policy.

Ms C and Mr T raised two complaints. One against Red Sands and one against their former insurer for recording misleading information about previous claims on the shared Claims & Underwriting Exchange (CUE) database.

The outcome was that the previous insurer corrected the information on CUE – which no longer had a record of any subsidence related claim(s) – and Red Sands agreed to reinstate the policy and consider the recent subsidence-related claim.

After the policy was voided and the claim declined, Ms C and Mr T paid to have the required repairs to the property completed themselves. They did so because the damage was on-going and getting worse.

The repairs were to underpin the left-hand side front bay structure and replace the timber bressummer beams above the bay window.

Red Sands re-considered the claim, as they'd agreed. But they declined it. I'll go into their reasons in more detail below. But in essence they said Ms C and Mr T were aware of an on-going issue when they bought the house – because it was highlighted in a pre-purchase survey they'd commissioned.

They also said that, in any case, the damage was most likely caused by an escape of water and/or settlement – neither of which are covered under the policy terms.

Ms C and Mr T then raised a second complaint with Red Sands – about their decision to decline the claim. And when Red Sands maintained their position, Ms C and Mr T brought their complaint to us.

Our investigator looked into it and came to the conclusion that Red Sands hadn't acted fairly and reasonably in declining the claim. And he asked Red Sands to:

- accept Ms C and Mr T's claim for subsidence;
- pay £500 compensation for the impact the declined claim had on Ms C and Mr T;
- consider a breakdown of the work undertaken and costs presented by Ms C and Mr T to decide which work was related to the subsidence and which work, if any, was the result of any uninsured peril;
- make an offer of settlement to Ms C and Mr T for the work undertaken which is related to the subsidence - and add 8% simple interest per year to this amount from the date Ms C and Mr T paid for repairs, to the date it is reimbursed;
- consider any aspects of the claim which are still outstanding and should be included, such as redecoration, reinstallation of fixtures and fittings etc.; and
- consider any further information provided by Ms C and Mr T in respect of any financial loss they say they have incurred as a result of Red Sands' handling of the claim.

Red Sands disagreed and asked for a final decision from an ombudsman. In short, their view is that the decision to decline the claim was justified and remains valid.

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.

First of all, I'd like to ask both parties to understand that we're all in a more difficult position because the repairs have already been carried out and it's now impossible for any more investigations to take place which might better identify the root cause(s) of the subsidence.

That's not Ms C and Mr T's fault. They were left with no real choice but to get the repairs done after the policy was voided, because the damage would have become progressively worse and very likely more expensive to put right.

It's not Red Sands' fault either. Their decision to void the policy was perfectly reasonable at the time, based on the (as it turned out, inaccurate) information about previous claims on CUE.

However, it does mean that I now have to make this decision based very much on the balance of probabilities rather than any clear and undisputed facts about the cause of the damage at Ms C and Mr T's home.

I'll now address each of Red Sands' reasons for declining the claim in turn. I will say at the outset that I agree with our investigator's proposed outcome to this complaint. I'll explain why below.

Settlement

Red Sands have said the damage at the property has been caused, in part at least, by settlement. They have pointed out – quite accurately – that settlement is not covered under the policy terms. Most, if not all, home insurance policies will exclude damage caused by settlement.

I am satisfied however that this is not a settlement issue. The house has been in place – with the bay which has now been damaged – for many decades. It's inconceivable that the downward movement of the bay is caused by the weight of the building causing it to settle into the ground beneath – if that were to have happened, it would have happened in the first half of the last century.

Escape of water

Red Sands have also argued that the issue may have been caused by water escaping into the soil around the foundations of the bay from a damaged drain and/or gulley adjacent to the bay.

And they pointed to the policy terms, which say that they will cover damage caused by downward movement of the land beneath a building, but not if that movement is caused by an escape of water.

The policy terms do indeed say that. There is an argument that the relevant exclusion is an onerous and/or unusual term, which ought to be highlighted very clearly to the policyholder at the point of purchase.

Escaping water is one of the main causes of subsidence – excluding it would exclude a fair proportion of the risk to the building. So, this is a very significant policy term. And most home insurance policies do not include any form of exclusion for subsidence damage when the root cause is an escape of water.

However, I don't think I need to resolve that particular debate, because there is now little to no evidence that water escaping from that drain and/or gulley caused – in whole or in part - the damage to the bay.

Ms C and Mr T had a pre-purchase survey carried out in 2018, when they bought the property. This identified a problem with the guttering and drainage around the bay. But Ms C and Mr T say they had those issues addressed soon after agreeing to buy the house. And that's around five years before they reported the current damage.

They also had an engineer inspect the property before commissioning the repairs after the policy was voided. His report refers to a *possible* escape of water into the footings of the bay from the drain / gulley.

But he does not definitively say that there *was* an escape of water or that, if there had been, it was sufficient to cause the problems we now see with the property. And he advances at least four other explanations for the damage.

On balance then – and particularly taking into account the time between the issues with the drain / gulley being addressed by Ms C and Mr T and the current claim – I'm not persuaded that the on-going subsidence was or is caused primarily, or indeed at all, by any escape of water from the previously damaged drain / gulley.

As I said above, it is now impossible to carry out further investigations to be sure about the causes of the subsidence. So, I am working here on limited evidence, and I have to make a decision based on the balance of probabilities.

The damage is gradual and/or pre-existed the inception of the policy

Red Sands have pointed out that the policy is quite explicitly (as per the Terms) to cover sudden and unexpected damage.

They say the current issues – or at least a very significant part of them – are the continuation of on-going damage (and causes of damage). And that they pre-date the inception of the policy in 2022.

There's also an argument that Ms C and Mr T knew about the issues when they took out the policy and so, were taking out a policy knowing – or strongly suspecting - that they'd inevitably later need to make a claim. Whilst that is certainly intertwined with the idea that the damage was gradual and/or pre-existing, I'll deal with that specific argument separately in the section below this one.

As Red Sands will know, we take the view that it's inherently unfair, in most circumstances, for an insurer to decline a claim on the basis that the damage was gradual *if* the policyholder was not aware that the damage was occurring (and it's not the case that they *ought* to have been aware).

In this case, Mr T has told us – and I have no reason to doubt what he says – that they made the claim after significant cracks began to appear in the bay. Before that, it would not have been apparent to Ms C or Mr T that the damage was on-going.

So, whilst I don't think it's disputed that the damage has occurred over an extended period of time, I don't think Red Sands can fairly decline the claim on the basis that the damage occurred gradually, because Ms C and Mr T weren't aware of the damage (and it's not the case that they ought to have been aware).

As for the question of whether the damage pre-dated policy inception, we agree with the approach set out in the Association of British Insurer's (ABI's) Domestic Subsidence Agreement.

This says that insurers receiving a subsidence claim – where the damage started before the policy was taken out (and the policyholder was unaware of it) but continued afterwards – should either:

- ask the previous insurer to deal with the claim (if it was raised within eight weeks of policy inception); or
- handle the claim themselves but seek a contribution from the previous insurer (if it was raised after eight weeks but before 12 months from inception); or
- deal with the claim themselves (if it was raised more than 12 months after the policy was incepted).

I'm aware that not all insurers are members of the ABI and signed up to that agreement. However, in any case, its terms reflect what we think is fair and reasonable, for any insurer.

In this case, it was certainly more than eight weeks after inception that Ms C and Mr T raised the claim. So, in our view, Red Sands should deal with the claim, even if the subsidence began before the policy was taken out.

The exact dates of inception and claim aren't entirely clear from the information we have on file. It looks like the claim was raised around 12 months after inception. If it's in fact just inside 12 months, then Red Sands may wish to talk to the previous insurer about the cost of the claim – but that's a matter for them and not for Ms C and Mr T.

In summary, I'm satisfied on balance that Red Sands can't fairly decline the claim on the basis that the damage was gradual, or on the basis that the damage pre-existed inception of the policy.

Ms C and Mr T knew about the damage – and the likelihood of a claim – before they took out the policy

I think we'd all agree that it would not be fair for a customer to take out an insurance policy – allowing the insurer to calculate the risk apparent to them, in order to determine the premium – knowing full well, or strongly suspecting, that they already had damage to their property that would inevitably need to be fixed later.

Red Sands have at least implied that Ms C and Mr T knew they had an on-going and potentially serious issue with downward movement of the bay *before* they took out the policy. And chose not to disclose this.

There is also a very much related argument that Ms C and Mr T made a misrepresentation when they bought the policy, as per the Consumer Insurance (Disclosure and Representations) Act 2014 (CIDRA). That's a more technical argument and I'll deal with it separately in the section below.

For now, the question I'm addressing is whether, when they bought the policy, Ms C and Mr T knew or suspected (or had good cause to suspect) that they had serious on-going damage to the property which would very likely lead to a claim in future.

The key evidence here is the pre-purchase survey that Ms C and Mr T had carried out in 2018.

This identified a number of issues with the property, most of which are of no relevance to the current claim. Those which *are* relevant are addressed below.

The report raised issues around the guttering and drainage around the left-hand bay (the part of the house now affected by subsidence).

As I've said, these issues were later addressed by Ms C and Mr T. There's no suggestion in the report that these issues may have impacted the ground at the foot of the bay or caused downward movement of that part of the property.

It said that there was cracking evident in various places but said this indicated historical movement. So, Ms C and Mr T had no cause to infer from this that they had an on-going issue.

It also said there were lifted floorboards near the bay. This is important, because this is where Red Sands have argued Ms C and Mr T ought to have been aware of – and taken steps to address – a known and identified problem.

The report sets out a list of repairs which are essential. Amongst that list, the following appears:

> *"Inspect the floorboards within the main lounge, particularly close to the bay."*

The report states that failure to carry out the listed works as soon as possible would likely lead to "*a further deterioration in the fabric of the building*". And it says that where further investigation work is recommended, this should be carried out immediately.

There's no dispute here then that the report alerts Ms C and Mr T to the fact that they should inspect those floorboards as soon as possible. But I note this inspection work specifically isn't subject to the caveat that failure to proceed will likely lead to further deterioration of the fabric of the building (that's what will happen, the report says, if the essential *repairs* – not the immediate investigations - aren't carried out).

When they looked into the claim, Red Sands' agents asked Mr T what he'd done about the recommendation about the floorboards close to the bay. He said that was a "*cosmetic issue*" which "*didn't need fixing*".

I believe it's Red Sands' position is that the report was directing inspection of those floorboards – which the report says were possibly damaged because the bay had dropped - because such an inspection might determine that there was damage caused by downward movement of the bay.

In other words, Ms C and Mr T *ought* to have had an inspection carried out. And if they had, that inspection would inevitably have pointed to the on-going problem with downward movement of the bay. And that would all have become apparent long before Ms C and Mr T bought their policy with Red Sands.

I can understand Red Sands' position on this issue. But having thought about it carefully, I don't think on balance that they can make that case against Ms C and Mr T.

Mr T later clarified that they had in fact had the carpets in the lounge taken up (as the report recommended) and had inspected the floorboards – and rafters supporting the floor - throughout the lounge.

As the report had also identified, they found work that needed to be done to repair / replace some rotten timbers and floorboards. But they hadn't identified any issue with the floorboards close to the bay, which appeared to be sound.

I believe that's what Mr T had meant when he said the issue with those floorboards was cosmetic and didn't need fixing.

The key question for me is whether Ms C and Mr T wilfully ignored damage (or potential damage) that had been flagged up in the report for further investigation - and therefore failed to identify that the bay was still moving downwards at the time.

Having considered the exact wording of the report, I think it's more likely that Ms C and Mr T thought (perfectly reasonably) that it flagged up those floorboards for further attention because they might be rotten or warped or damaged in some other way.

The report does at least imply that the issues with the floorboards may be linked to movement of the bay. But when it comes to the section setting out essential repairs and further investigations, it's unclear about why the inspection is necessary. In fact, it gives no specific reason at all for the recommendation.

It is therefore, in my view, ambiguous and legitimately open to different interpretations. I can't justifiably conclude that the report's recommendations inevitably pointed Ms C and Mr T towards further investigation of the movement in the bay (whether via the floorboard inspection or anything else).

Nor can I justifiably conclude that Ms C and Mr T ought to have known that they needed to find out if the bay was still moving. If anything, the other elements of the report – particularly the assertions that the cracking was historical and that the outside walls were not showing any damage – point in a completely different direction.

In short, I can see why Red Sands might argue that Ms C and Mr T ought to have carried out more investigations when they bought the house, which may have then highlighted the on-going movement.

But, on balance, I don't agree with that argument. Without the benefit of hindsight, taking the report as it would have been read by Ms C and Mr T in 2018, I don't believe they were alerted to a possible on-going movement issue which needed further investigation.

If they had been, I suspect they may not have purchased the property. It would be an eccentric and very risky choice, to say the least, to buy a house they knew was subsiding on the assumption they needn't worry because they could always make an insurance claim later.

Misrepresentation

In short, CIDRA requires potential customers buying a policy to answer questions put to them by the prospective insurer accurately and/or with due care.

Where a knowing / reckless or careless misrepresentation is made at the point of purchase, the insurer has a number of different remedies specified in the Act, depending on the individual circumstances.

In this case, it's Red Sands' assertion that Ms C and Mr T made a careless misrepresentation when they bought the policy. And if they (Red Sands) had known the truth, then they wouldn't have offered cover at all. If that were the case, Red Sands would be entitled, under CIDRA, to decline any claim and cancel the policy.

The truth of the matter is – very likely – that Ms C and Mr T's property *was* suffering an on-going subsidence issue when they bought the property. And Red Sands have provided evidence to show that they would not have offered cover, in those circumstances.

So, the key question for me was whether Red Sands are right to assert that Ms C and Mr T's non-disclosure of that information was careless – rather than entirely reasonable and/or innocent.

Ms C and Mr T were asked two specific and relevant questions during their on-line policy purchase journey. One was whether the property "*had ever shown signs of heave, subsidence or landslip*". The other was whether the property "*had ever had any cracks wider than 1mm on internal or external walls, i.e. damage caused by subsidence*".

As I've already said, the pre-purchase survey report mentioned downward movement. But it made no mention of subsidence specifically, nor did it say (or imply) that the movement was caused by subsidence.

Ms C and Mr T are not building experts or insurance professionals. I don't think they can be accused of being remiss in not picking up that the term downward movement might suggest the possibility of subsidence.

In terms of the cracks, the report noted cracking in various locations but said this was likely historic – and didn't specify the width of any of the cracks.

The fact that the report didn't flag the cracks as being a cause for significant alarm suggests that they weren't wide at the time.

Ms C and Mr T believe the cracks to have been minor. There's no evidence to contradict their view or to suggest any of the cracks were wider than 1mm. And there's no reason to disbelieve what Ms C and Mr T tell us – again, if the cracks and been wider, I suspect that might have caused Ms C and Mr T to pause before going through with the purchase of the house.

In summary, I don't believe Red Sands have shown that Ms C and Mr T made a careless misrepresentation when they bought the policy. And that being the case, the remedies set out in CIDRA aren't available to them in this case. They can't void the policy and refuse to deal with the claim.

Summary

Red Sands have advanced a number of reasons to justify their decision to decline the claim. I'm satisfied that on balance none of those reasons is persuasive.

The damage was not caused by settlement. It was likely not caused in any significant part by an escape of water.

The damage may have begun prior to the policy being taken out, but it was on-going subsidence damage and continued once Ms C and Mr T were on cover with Red Sands. And so, the fair and reasonable thing is for Red Sands to accept and deal with the claim.

Whilst the damage may have been gradual, it would not have been apparent to Ms C and Mr T before they made the claim.

I'm not convinced that Ms C and Mr T knew – or ought to have known – before they bought the policy that there was an on-going issue which would likely cause further damage to the property and/or would likely need to be addressed by a future insurance claim.

Ms C and Mr T did not make a careless misrepresentation when they bought the policy, given the information they had at the time and their own knowledge and expertise.

So, it was not fair or reasonable for Red Sands to decline Ms C and Mr T's claim.

Putting things right

It follows then that I agree with the outcome proposed by our investigator. And I'm going to require Red Sands to:

- accept Ms C and Mr T's claim for subsidence;
- pay £500 compensation for the impact the declined claim had on Ms C and Mr T;
- consider a breakdown of the work undertaken and costs presented by Ms C and Mr T to decide which work was related to the subsidence and which work, if any, was the result of any uninsured peril;
- make an offer of settlement to Ms C and Mr T for the work undertaken which is related to the subsidence - and add 8% simple interest per year to this amount from the date Ms C and Mr T paid for repairs, to the date it is reimbursed;

- consider any aspects of the claim which are still outstanding and should be included, such as redecoration, reinstallation of fixtures and fittings etc.; and

- consider any further information provided by Ms C and Mr T in respect of any financial loss they say they have incurred as a result of Red Sands' handling of the claim.

The £500 award of compensation is based primarily on the fact that Ms C and Mr T have experienced significant stress and upset as a result of the problems with their property. Whilst this was inevitable, the stress and upset has been significantly prolonged by Red Sands' errors and omissions in dealing with the claim - specifically, their (in my view, unjustified) decision to decline the claim.

Mr T has made us aware of financial losses he says he and Ms C suffered as a result of the decision to decline the claim. The loss of use of the money is already covered by the interest to be added to the settlement (at 8% simple per annum).

I'd expect any costs related to the necessary repair work (e.g. building regulations fees) to be covered by the settlement, on provision of proof of payment. But there are other costs – for example, those relating to experts' fees - which I'd expect Red Sands to consider as part of the claim.

Finally, Red Sands have argued that Ms C and Mr T have paid for works – for example, underpinning – which they chose as the risk-free option – when less expensive works may have provided an equally effective way to deal with the problem. They've referred specifically to the engineers' report, which suggested re-building the bay rather than underpinning.

I'm not entirely convinced that taking down and re-building the bay – with adequate foundations – would have been any cheaper than the underpinning option. However, I don't think that's relevant anyway.

I note Ms C and Mr T engaged another expert, who *did* recommend underpinning. And I don't think it would be fair to reduce the settlement figure based on the idea that Red Sands might have done something different had they been involved at that stage.

As I said earlier, Ms C and Mr T were left with no option but to make these decisions themselves – and quickly – given that their policy had been voided, and the subsidence was on-going.

My final decision

For the reasons set out above, I uphold Ms C and Mr T's complaint.

Red Sands Insurance Company (Europe) Limited must:

- accept Ms C and Mr T's claim for subsidence;

- pay £500 compensation for the impact their decision to decline claim had on Ms C and Mr T;

- consider a breakdown of the work undertaken and costs presented by Ms C and Mr T to determine which work was related to the subsidence and which work, if any, was the result of any uninsured peril;

- make an offer of settlement to Ms C and Mr T for the work undertaken which is

related to the subsidence - and add 8% simple interest per year to this amount from the date Ms C and Mr T paid for repairs, to the date it is reimbursed;

- consider any aspects of the claim which are still outstanding and should be included, such as redecoration, reinstallation of fixtures and fittings and so on; and

- consider any further information provided by Ms C and Mr T in respect of any financial losses they say they have incurred as a result of Red Sands' handling of the claim and/or their decision to decline it.

If Red Sands Insurance Company (Europe) Limited considers that they're required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms C and Mr T how much it's taken off. It should also give Ms C and Mr T a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C and Mr T to accept or reject my decision before 6 June 2025.

Neil Marshall
Ombudsman