

The complaint

Ms B is unhappy with what Accredited Insurance (Europe) Ltd did after she made a claim on her legal expenses insurance policy.

What happened

In March 2024 Ms B contacted Accredited seeking assistance for a claim she wanted to pursue under her legal expenses insurance policy. She said she'd purchased a property in June 2022 and had subsequently found significant damp and structural issues. She believed the vendors had deliberately mis-represented the condition of the property and wanted to pursue a claim against them.

Accredited considered the claim under the 'Buying and Selling property' section of the policy and turned it down. It said Ms B had completed on her purchase prior to taking out the policy meaning her claim wasn't covered. In any case an event or circumstances which might lead to a claim had to be notified to it within 180 days of it happening. In this case Ms B had obtained reports on the property prior to her purchase which found damp issues were present. So it didn't consider the claim had been notified within a reasonable time.

Our investigator said a survey Ms B had obtained did identify damp problems but suggested waiting for a period of 12 months to see if these were matters that could be managed before embarking on more invasive works. As Ms B purchased the property in June 2022 that period would end in June 2023. She didn't then contact Accredited until March 2024 which was more than 180 days later. He thought there had been a breach of the policy condition. But, as he didn't consider Accredited's position had been adversely affected by that, he didn't think it could rely on that to turn down the claim.

However, he accepted Ms B was aware of the damp issue prior to taking out the policy. And the policy excluded claims where it had been bought after the property purchase completed. So he thought Assurant was able to rely on that to turn down the claim. Accredited agreed with his outcome. Ms B didn't. She said the property issues only became apparent over time (because they had been concealed by the previous owner).

I issued a provisional decision on the complaint last month. In summary I said:

I've looked first at the terms and conditions of Ms B's policy. I think it's agreed a claim against the vendor of the property would fall within the insured event 'Buying and selling property'. That covers "professional fees to defend or pursue legal action arising from a dispute over the terms of a contract to buy or sell your home". So it could in principle cover the claim for misrepresentation Ms B wants to pursue against the vendor.

Accredited referenced an exclusion in this section which excludes "professional fees arising from...claims where you bought this policy after the date you completed the sale or purchase of your home". It says that applies here as Ms B completed the purchase of her property on 29 June 2022 and the policy commenced the following day. But the term doesn't reference the date the policy commenced. It refers to the date it was bought. Ms B's policy schedule

says the purchase date was 28 June 2022. So she did buy the policy prior to completing the purchase of her home meaning this exclusion doesn't apply.

However, I appreciate the general cover offered by the policy is for "insured events that arise during the period of insurance". And the definition of insured event includes "the initial incident, act or failure to act, which sets off a natural and continuous sequence of events that leads to a claim for professional fees or a benefit being paid under this policy". In addition, the policy says it doesn't cover professional fees where "the date of the incident was before your legal expenses insurance cover started with us". Date of incident means "the insured event happens on the date of the event that leads to a claim".

In this case I think the insured event would be the alleged failure by the vendor to disclose information (or to provide false information) about the condition of the property. That must have happened prior to Ms B taking out the policy. It's potentially when the vendor completed a 'Property Information Form' or when they provided information to the surveyors Ms B appointed to inspect the property.

However, our long standing approach when considering whether it's fair of an insurer to rely on terms like this to turn down a claim is to think about what a consumer knew at the point they took out the policy. In particular, whether they knew (or should reasonably have known) at that point there was something that could lead to a legal dispute in the future.

I don't think there was in this case. The basis of Ms B's argument is the seller deliberately concealed information from her about the true state of the property. And I think Ms B took reasonable steps to try and establish what the position on that was. She had a home buyers survey carried out which concluded "the property is considered to be a reasonable proposition for purchase at the proposed purchase price..." It did identify some repair work was required but said "these deficiencies are considered normal in properties of this age"

A separate damp and timber survey commissioned by Ms B found issues with damp but concluded "If you are happy to accept that properties such as this one are always likely to be subject to damp issues to some degree it may be wise to proceed with some degree of caution in that the remedial work I have recommended is invasive and costly and it is certainly feasible that you delay carrying out any remedial work until you have occupied the property for a reasonable period of 12 months as once the property is occupied and the heating and ventilation levels are balanced effectively you may find that those areas showing damp may improve to a degree of which you deem it to be acceptable".

Those reports would clearly have made Ms B aware there were damp issues at the property which might need remedial action, But I don't think that would be unexpected at a property I understand dated back to at least 1790. And I don't consider the reports would reasonably have made Ms B aware she might need to bring a future legal claim against her neighbour for concealing the true condition of the property; Ms B says those issues only became apparent to her at a later date and after she'd been living in the property for some time. I don't think that is something she'd have been aware of prior to taking out her policy. So I don't consider Accredited can fairly rely on the fact the insured event didn't take place during the period of insurance to turn down Ms B's claim either.

Accredited also referenced a claims condition which says "you must tell us about any event or circumstance which may lead to a claim under this policy within a reasonable time of it happening, and always within 180 days". But it's not clear to me whether Accredited is continuing to rely on this term to decline the claim given our investigator explained why it couldn't do so and it accepted the outcome he'd reached.

In any event I appreciate Ms B didn't contact Accredited until March 2024 to make her claim. And while the damp survey suggested waiting for 12 months prior to deciding whether any remedial action was required I do think that if matters at the property were deteriorating as Ms B describes she might well have been aware of a potential claim against the vendor more than six months prior to her contact with Accredited.

But, as our investigator said, in order for Accredited to rely on late notification to decline a claim we'd expect it to show how that had adversely affected (or prejudiced) its position. In this case it hasn't done so. And I'm not aware Ms B has taken any steps that would impact Accredited's ability to progress the underlying claim. Nor is it apparent there would be any evidential issues; if anything it appears the passage of time has increased the information available to Ms B about the problems at her property.

So for the reasons I've explained I don't agree Ms B's claim has been fairly declined by Accredited. It will therefore need to reconsider this against the remaining terms of the policy (including the requirement for a claim to have reasonable prospects of success) and provide funding for it in line with those terms if cover is available. I also think Ms B will have been caused some unnecessary distress and inconvenience as a result of her claim being wrongly turned down (at a point when she was already dealing with some challenging issues at her property). Accredited will need to pay her £200 in recognition of that.

Responses to my provisional decision

Both parties accepted my provisional 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.

As both parties have accepted my provisional decision I don't have any reason to change the conclusions I set out in it.

Putting things right

Accredited will need to reconsider Ms B's claim against the remaining terms of the policy (including the requirement for a claim to have reasonable prospects of success) and provide funding for it in line with those terms if cover is available. It will also need to pay Ms B £200 in recognition of the unnecessary distress and inconvenience it caused her.

My final decision

I've decided to uphold this complaint. Accredited Insurance (Europe) Ltd will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 14 April 2025.

James Park
Ombudsman