

## The complaint

A company, which I'll refer to as T, complains that West Bay Insurance Plc trading as Zenith Insurance failed to issue a certificate of structural adequacy following a subsidence claim on T's buildings insurance policy.

Mr M, who is a director of T, brings the complaint on T's behalf.

## What happened

T made a subsidence claim on its buildings insurance in 2019. West Bay appointed loss adjusters to investigate the claim. They reported that the damage at the property was likely due to subsidence caused by tree roots. West Bay agreed to cover the claim and instructed a firm of consulting engineers (which I will call "P") to deal with the repairs.

T appointed loss assessors to assist with the claim and later appointed a firm of surveyors (which I will call "C") to deal with the repairs. The work was completed in early 2023.

This complaint relates to a request T made for West Bay to issue a certificate of structural adequacy. West Bay said it couldn't issue a certificate because to do that, it would have to oversee and deal with all the repairs, but in this case T had arranged for the repairs to be done. West Bay also said there was no requirement in the policy terms for it to issue a certificate.

Mr M complained on behalf of T. He said although C had dealt with the repairs, the schedule of structural repairs had been prepared by P, on behalf of West Bay, and P had been retained to supervise and sign off the works. So he maintained that West Bay should provide a certificate.

Our investigator's initial view was that West Bay didn't need to issue a certificate of structural adequacy, because it hadn't dealt with the repairs and she hadn't seen evidence confirming that West Bay agreed to issue a certificate. But she said West Bay could provide something to T outlining what had caused the subsidence and what it had done to resolve the problem. And if it had prepared the schedule of repairs, it could provide a copy of that schedule.

Both parties initially agreed with this recommendation and West Bay provided a letter for T. but Mr M then said as the letter didn't amount to a certificate of structural adequacy, it would leave T in difficulty. He thought a certificate should be issued.

The investigator explained that she didn't think West Bay was responsible for issuing a certificate. But she reviewed this again after receiving further evidence from Mr M, and said the further evidence showed

- West Bay had in fact instructed P to remain involved and supervise the repairs, which had been done on the basis of a schedule of work that P had prepared, acting as West Bay's agent.
- Even if P hadn't supervised all of the work, it knew that it needed to oversee the repair works to ensure compliance with the specification and to sign them off.

- P should have taken the necessary steps to ensure this happened but had failed to do so.
- So West Bay should now issue a certificate of structural adequacy.

West Bay says P did not oversee the full extent of the works, and wasn't told when they had been completed. So it is not in a position to issue a certificate of structural adequacy, when it didn't supervise the repairs or carry out an inspection of the completed work.

As no agreement has been reached, I need to make a 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.

In making my decision I need to consider what's fair and reasonable in all the circumstances of the case, taking into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the time.

The relevant industry rules and guidance require insurers to deal with claims promptly and fairly, and to provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress. They should settle claims promptly once settlement terms are agreed.

I'd expect the settlement to put the customer, as far as possible, back in the position they were in before the loss or damage. Where repairs are being done, that means carrying out an effective and lasting repair.

I appreciate that West Bay didn't carry out the repairs – T arranged for the works to be done. But, looking in particular at the further evidence Mr M has provided recently, this shows the extent of P's involvement in the claim, on behalf of West Bay. And in view of that involvement I'm satisfied it would be fair for West Bay to issue a certificate of structural adequacy. I'll explain why.

The key points in relation to the repairs include the following:

- Although at one point not involved, P was re-instructed in May 2020 to conduct the monitoring of the building. P then advised on the extent of structural damage and said underpinning wasn't needed but recommended other remedial measures.
- There was some discussion about whether C could appoint structural engineers but West Bay said it would engage P to specify the structural repairs to the property, and to check on completion that they had been carried out in accordance with their specifications.
- P produced the specification for the structural repairs, while C prepared the specification for the decorative works. P remained involved throughout, though its involvement towards the end was limited.

The correspondence I've seen shows that P was responsible for the schedule of structural repairs, and said it would need to supervise the work. For example, P sent an email saying, *"We will need to have attendance during the works not only to direct the operatives on placement of Helibars etc but also to records that repairs (structural only) have been carried out in accordance with our Standard Specifications."*

In later correspondence, C said they were “*not the structural engineers on the project designing the subsidence repairs...*” West Bay’s loss adjusters acknowledged that P was the structural engineer, and also acknowledged C’s statement that “*The property needs to be signed off by your appointed Structural Engineer accordingly.*”

P prepared the schedule of structural repairs. I don’t think there’s any doubt that P was to supervise the structural works and ensure they were completed in line with that schedule. P said it needed to supervise the works, so it should have kept in contact and checked on progress.

I appreciate West Bay says P wasn’t kept informed of the progress of the works, and didn’t inspect them on completion, as it wasn’t told they had been completed. But I don’t think it’s reasonable just to say P wasn’t informed. P had made it clear it would supervise the structural works and ensure they were completed in line with the specification it had prepared. The onus was on P (as West Bay’s agent) to do this. Otherwise, West Bay would not be able provide appropriate information on the progress of the claim, or confirm that an effective and lasting repair had been carried out.

So West Bay (or P on its behalf) should have taken all reasonable steps to supervise the work and ensure compliance. It hasn’t provide evidence showing it wasn’t able to do this, or that it made reasonable attempts to do so but C prevented this. P may not have supervised everything or inspected the completed works, but it could have done so. It wouldn’t be fair for T to be prejudiced because West Bay or its agents failed to do what they should reasonably have done (and said they would do).

West Bay has said there’s nothing in the policy terms requiring it to issue a certificate of structural adequacy, but it’s widely accepted that once repairs have been completed, the insurer should provide this. This certificate provides reassurance that the subsidence problem has been dealt with, and is something the policyholder can use if they intend to sell their property, remortgage or find a different insurer. This is good industry practice, and West Bay hasn’t provided any persuasive argument why I should not take account of industry practice in relation to this.

A certificate of structural adequacy explains briefly what caused the subsidence, what was done to resolve it and what type of repairs have been completed. Insurers will usually provide a copy of the schedule of work alongside it. I think West Bay should be able to provide this. It should take the necessary steps to put T in the position that it should be in.

### **My final decision**

I uphold the complaint and direct West Bay Insurance Plc trading as Zenith Insurance to:

- take any steps needed to issue a certificate of structural adequacy; and
- provide the certificate of structural adequacy to T.

Under the rules of the Financial Ombudsman Service, I’m required to ask T to accept or reject my decision before 16 April 2025.

Peter Whiteley  
**Ombudsman**