

The complaint

Miss M has complained on behalf of C, a limited company, about the way ERGO Versicherung Aktiengesellschaft handled a claim made under C's buildings insurance policy.

What happened

The circumstances aren't in dispute, so I'll summarise the background:

- In 2016, Miss M found crack damage to the building and made a claim. ERGO appointed a loss adjuster, S, to handle the claim.
- S said the damage had been caused by subsidence and was covered by the policy. It arranged for a neighbour's tree to be removed and for a local authority tree to be reduced in size. After monitoring, S said the building had been stabilised and was ready to be repaired.
- In early 2020, external repairs were carried out. And, in early 2021, S got back in touch with Miss M to make arrangements for the internal repairs. They were carried out in May 2023.
- In July 2023, Miss M complained about the way the claim had been handled. She made the following main complaint points:
 - Miss M understood she'd receive her £1,000 excess back as the damage wasn't her fault – but that hasn't happened.
 - Miss M thought the shower tray had been damaged by subsidence and reported this. When no action was taken by S, she had the damage repaired and asked to be reimbursed the cost of nearly £2,000. S didn't agree to do so.
 - In November 2021, S and Miss M agreed repairs could proceed – but they didn't start until May 2023, around 18 months later.
 - Miss M said contractors involved in carrying out the repairs had caused damage to the building and contents.
 - Miss M noted cracking in the external areas that were repaired in 2020. She questioned whether more robust repairs should be carried out. S didn't agree to carry out any further repairs, but said it would pay Miss M a sum as a gesture of goodwill so she could carry out some work.
- ERGO acknowledged the complaint but didn't respond. So Miss M referred her complaint to this Service.
- Our investigator considered those main complaint points. In summary, she said:
 - Miss M is required by the policy terms to pay her excess.
 - ERGO should review the bathroom damage matter and let Miss M know its position.

- Much of the time was spent monitoring the property, which was unavoidable. But there was a lack of communication, which meant Miss M often had to chase for updates. ERGO should pay £400 compensation as a result.
- Damage caused during repairs had been put right, so there was nothing further for ERGO to do on this point.
- By September 2023, S agreed to cash settle this crack damage in line with Miss M's quote, so she could carry out the work she thought was needed. It was open to Miss M to accept the cash settlement offer, although ERGO should let her know how much it will pay, including redecoration.
- ERGO said it had paid Miss M £755.60 in July 2024 to cash settle the matter. This was made up of the £600 quote Miss M had provided for the more robust repair, and the remainder for redecoration. Miss M said she hadn't received this payment.
- An agreement wasn't reached on how to resolve the complaint, so it's been passed to me.

My provisional decision

I recently shared my 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.

- When considering what's fair and reasonable in the circumstances I've taken 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. Whilst I've read and taken into account everything said by both parties, I'll only comment on the points I think are relevant when reaching a fair outcome to this dispute. That's a reflection of the informal nature of this Service.
- Like our investigator, I'll focus on the main complaint points raised by Miss M and consider each in turn. But first I'll set out a few broader points.
- When handling a claim, ERGO is required to do so promptly and fairly. It's also required to provide reasonable guidance and appropriate information on the progress of a claim.
- ERGO is responsible for carrying out repairs in a lasting and effective manner. That means putting the damage right for a reasonable period of time. In a subsidence claim, that means stabilising the property before carrying out repairs.
- In this case, S says it's stabilised the property. I know Miss M has her concerns about this, given the local authority tree remains. ERGO remains responsible for providing a lasting and effective repair. So if Miss M notices damage which makes her think ERGO hasn't met that responsibility, she's entitled to let it know and I would expect it to consider the matter.
- On this point, and others I'll consider below, Miss M is entitled to take professional advice if she disagrees with ERGO. If she shares any such information with ERGO, I would expect it to consider the matter.

Excess

- The policy requires Miss M to pay an excess for an accepted claim. In this case it's £1,000 for the subsidence claim. Miss M has paid that.
- The policy includes a 'right to recovery' term. It says, in summary, that ERGO can take action to recover costs from a third party.
- This is a common policy term. In practice, it means that if an insurer considers a third party is responsible for some or all of the claim costs, the insurer is entitled to take action to seek recovery of those costs from that third party. If it does so, it's good practice for an insurer to include the policyholder's excess as part of that recovery action. If the insurer is successful in its recovery, it can choose how much to pass onto the policyholder.
- As S thought the damage was, at least in part, caused by a local authority tree, I understand they took action to seek recovery of claim costs from the local authority.
- It's unclear what the result of this action was – or whether there is a result yet. I think Miss M is entitled to know the result if there is one, or to be kept updated if not, and ultimately to find out whether she will receive any of her excess back. So this is what ERGO should do.

Bathroom damage

- In June 2021, Miss M told S the shower tray had become damaged, and she thought that may have been caused by the subsidence movement. She said the tray was very close to other areas that S had accepted were damaged by subsidence.
- S said it would arrange to inspect the damage but, by October 2021 it hadn't done so. As Miss M had been unable to use the shower in the meantime, she paid for a local contractor to carry out the repairs.
- The contractor's invoice said: "remove cracked shower tray and screen caused by building subsidence". I haven't seen any further professional opinion or comments to say the damage was caused by subsidence – or to explain what the contractor's opinion was based on.
- I don't think S inspected the damaged tray, although it had plenty of opportunity to do so. But in June 2022, S inspected the area and said the tray hadn't been damaged by subsidence as there was no other damage nearby. This opinion was given by a chartered engineer. S arranged monitoring in the area and said there was only minor movement, which wasn't indicative of subsidence.
- Overall, I'm more persuaded by what S has said about the cause of the damage than the contractor. S had a highly experienced and qualified engineer consider the matter and relied on monitoring data to inform its opinion. It's unclear what the contractor's opinion was based on. Whilst I know the tray was near to areas S accepted were caused by subsidence, I don't think that alone means the tray was likely damaged by subsidence – and doesn't outweigh the engineer's opinion in my view.
- Based on the available evidence, I'm satisfied ERGO, through S, acted fairly when it declined to cover this damage.
- But I don't think the way it handled this point was fair. S was very slow to act when Miss M first reported the problem and, despite having several months to carry out the

inspection to see the damage first hand, it didn't do so. The eventual inspection of the area was around a year later. So it took a very long time to respond meaningfully to Miss M about this point. And its communication in the meantime was lacking. I'll factor this into my compensation award.

Damage caused during repairs

- Miss M said the contractors involved in carrying out the repairs caused damage to her building and contents. In summary: freezer contents, table parts, the hallway, and two water leaks.
- Each of these matters were resolved directly with the contractors, so there's no outstanding damage to resolve. But I think Miss M's point is that the damage, and the steps required to put it right, caused her distress and inconvenience – as did S' reaction to it, which largely involved asking her to deal directly with the contractors, rather than taking the lead to resolve it for her.
- Some of these problems are part and parcel of carrying out work at a property and had minimal impact. For example, I understand Miss M accepted the defrosted freezer contents was a genuine oversight by the contractor and the financial loss was quickly put right. But I understand she thought other problems showed a lack of care and respect – and could have been resolved more quickly. For example, without her permission, one of her towels was used to absorb a leak and left in a cupboard for her to find. And another leak meant the newly laid kitchen floor had to be repaired. So I can see why she may have found this a distressing experience.
- Whilst S asked the contractor to negotiate directly with Miss M on this matter, it remained involved and ensured the matter was resolved. So I think it provided a reasonable level of support in the circumstances. But I'm satisfied some of the distress and inconvenience caused by the damage was avoidable. So I'll factor this into my compensation award.

External repairs and cash settlement

- As noted above, when carrying out the external repair, ERGO was responsible for doing so in a lasting and effective manner. Miss M said damage returned in the same area in 2021 – so she wasn't convinced ERGO had met that responsibility.
- S considered the damage and said some of it wasn't caused by subsidence or the result of poor repairs. And the damage which was caused by subsidence was slight cracking and didn't require a robust repair. It agreed it would pay her a sum so she could carry out crack repair and redecoration.
- A dispute arose about the appropriate nature of the crack repair. But, ultimately, S agreed to pay £600 for the crack repair. It later agreed to pay an extra amount for redecoration, making £755.60 in total. This offer is in line with Miss M's quote for the crack repair and I haven't seen anything to suggest the remainder is insufficient for the redecoration work. I'm satisfied that's fair and reasonable in the circumstances.
- Based on the available evidence, I'm satisfied ERGO, through S, acted fairly when it offered £755.60 for this damage. Whilst ERGO says it's made this payment, Miss M says she hasn't received it. So I understand it remains outstanding.

- Overall, it took a long time to resolve this point. Miss M raised it in June 2021. But it wasn't until September 2023 that ERGO, through S, made an offer to settle it. This is an extraordinary amount of time to deal with this point. And S' communication was lacking during this time. I'll factor this into my compensation award.

Timescale and communication

- Our investigator set out a detailed timeline of events relevant to this point. Neither party challenged it, so I don't see a benefit in me repeating it. Instead, I'll summarise the points I consider to be key.
- Miss M's complaint about this point begins in early 2021, when S got in touch with her to say it could arrange the internal repairs. At Miss M's choice, it was agreed to take the next steps in November 2021.
- As Miss M had reported potential continued movement, S arranged for monitoring, and that continued for most of 2022. In late 2022, a schedule of repair was prepared. After much discussion in early 2023, a start date was arranged for May 2023. That went ahead and repairs were completed later that month.
- On the one hand, S had said the property was stable prior to external repairs in 2020, yet it spent most of 2022 monitoring to confirm stability. On the other, I don't think it would have been right to disregard Miss M's concerns about continued movement and proceed with internal repairs regardless.
- So I consider much of the problem here was about communication, rather than an avoidable delay. S had given Miss M the firm expectation internal repairs could proceed in 2021 – but that didn't happen until 2023. Given the claim began in 2016, it had already been ongoing for many years by 2021 and it's clear Miss M was greatly relieved when she thought the claim might finally be reaching a conclusion. So when the claim was extended significantly, she was naturally very disappointed.
- Throughout this time, communication with Miss M was inconsistent and often unclear. I can see she often had to chase for updates, or even mere acknowledgements to her emails, but rarely received clear communication, with timescales, to help her understand the next steps and how long they'd likely take.
- Even when Miss M expressed how deeply the ongoing claim was impacting her, things didn't change. It was clear the prolonged timescale and poor communication was having a significant detrimental effect on her, but that didn't prompt a change.
- I've noted instances above in other complaint points where S' communication and claim handling avoidably exacerbated Miss M's distress and inconvenience.
- Whilst I think communication was the primary problem, there was also some avoidable delays in early 2023 making arrangements to begin work.
- In these circumstances, it's clear ERGO, through S, didn't meet the requirement to handle the claim promptly and fairly and provide information about its progress. As a result, I think it's right it pays compensation.
- The policyholder is C, a limited company, but to all intents and purposes it is Miss M and she was living in the building during the relevant time. So I think it would be

appropriate to consider the avoidable distress and inconvenience caused to her, rather than to C.

- Overall, I consider £750 compensation would be fair and reasonable in the circumstances.

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.

- Miss M acknowledged receipt of my provisional decision and provided some comments. I think she largely agreed with it and didn't challenge any of the key points or provide further evidence. So I understand she broadly accepted it.
- ERGO didn't respond to my provisional decision.
- As neither party has challenged it, I don't see a need to reconsider my provisional decision in detail. I remain satisfied it provides a fair and reasonable outcome to the complaint, for the reasons given.

My final decision

I uphold this complaint.

I require ERGO Versicherung Aktiengesellschaft to:

- Communicate the present position of the recovery to Miss M, including what this means for recovery of her excess.
- Pay £750 compensation*.
- Pay £755.60 for crack repairs, if not done so already*.

*ERGO must pay these amounts within 28 days of the date on which we tell it Miss M accepts my final decision. If it pays any later than this it must also pay interest on the compensation, at 8% simple per year, from the deadline date for settlement to the date of payment.

If ERGO considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss M how much it's taken off. It should also give Miss M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 20 May 2025.

James Neville
Ombudsman