

The complaint

Mr W complains about the way Admiral Insurance (Gibraltar) Limited has handled a claim he made on his home insurance policy.

What happened

In Summer 2023 Mr W made a claim under his Admiral home insurance policy. He'd discovered a crack in a ceiling of his property, he suspected it might have been as a result of some building work that had taken place next to his property with a new home being built.

Admiral reviewed the claim but ultimately declined it in August 2023. It said it didn't think there was evidence of recent subsidence damage to the property. It further said that when Mr W had taken out the policy in January 2022, he hadn't disclosed a previous subsidence claim – registered with his previous insurer for the same concerns relating to the neighbouring property – in 2021. So it said the claim was declined for pre-inception damage and non-disclosure.

Mr W complained to Admiral about its decision. He said the cracks in the lounge, reported in 2023 must have been caused by subsidence from between 2022 and 2023, when Admiral was on cover. And as such, it should be handling the subsidence claim. He complained the claim had been declined without investigations taking place.

Admiral didn't provide a response and so Mr W referred his complaint to the Financial Ombudsman Service for an independent review in July 2024. Admiral then provided a final response letter (FRL) in September 2024. It accepted it should've carried out a site visit before declining the claim, but it said this had now been done and its expert ("O") had confirmed there was no current subsidence affecting the property. It thought the cracks were mostly likely as a result of wear and tear. It offered a total of £525 compensation for the unnecessary distress and inconvenience caused by declining the claim without a proper investigation carried out.

Mr W wasn't satisfied with the response, he wanted a structural engineer to be appointed to assess the damage, as well as a reassessment of the compensation offered.

Our Investigator didn't think Admiral had acted unreasonably in declining the claim based on O's report. As such she didn't think it was necessary for Admiral to appoint a structural engineer.

Mr W asked for an Ombudsman to consider matters. He said the findings of O's report were at odds with reports he'd had carried out in 2021, which he said concluded there was progressive subsidence. He also said given his visual impairment, he'd been more significantly impacted by Admiral's errors, and as such a higher compensation award was warranted.

As the matter hasn't been resolved, it has come to me to decide.

I've already provided some provisional thoughts to both Mr W and Admiral. I said whilst reviewing the file, I could see that O had mentioned in its report that, in relation to damage to a path, a claim for accidental damage could be considered. I said I couldn't see that Admiral had actually assessed the path in relation to an accidental damage claim, so I said it should do so, providing Mr W with its response to that.

Admiral didn't respond to my provisional thoughts. Mr W did, he welcomed Admiral considering a claim under accidental damage. But he also said he didn't think Admiral had properly assessed the claim as 'landslip' which was covered under the policy. That isn't something I can comment on as part of this decision, Admiral hasn't, as far as I can see, been made aware of a complaint about that issue. If Mr W wants to raise that point with Admiral, he will need to contact it first.

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 this is an informal Service, I'm not going to respond to every point made of piece of evidence referred to by the parties. But I'd like to reassure both Mr W and Admiral that I've read and considered everything provided.

I also want to set out that I'm only considering matters, in line with our Investigator, until September 2024. I'm aware Mr W has submitted further evidence in relation to the claim to Admiral after this point, there is a further complaint about that with this Service. But I'm only considering here whether Admiral's claim decline was fair and reasonable based on all of the reports and evidence gathered up until September 2024.

Admiral has given differing reasons for declining the claim. Initially it felt the damage was excluded as it had happened before its policy started in 2022. However, it later said it didn't think the damage reported in 2023 had been caused by subsidence. It thought the damage, which was cracks to plaster, was more likely down to wear and tear.

When making an insurance claim, it is for the insured, so in this case Mr W, to show he's likely suffered insured damage. If he can do so, then an insurer will generally accept the claim unless it can fairly rely on a valid exclusion to decline it.

Admiral has considered this as a potential subsidence claim. Subsidence is defined in the policy as "*the ground beneath the buildings moving downwards, other than by settlement*".

Mr W considers his reports, by experts I'll refer to as G and J, show there is active, progressive subsidence at the property as a result of inadequate backfill in relation to a boundary wall of the newbuild property. Having reviewed those reports, I don't think they conclude what Mr W feels they do.

G's report (dated July 2021) says it looked for any signs of movement from subsidence or ground slippage and "*it did not appear that any visual cracking was apparent*". The report does go on to comment "*that is not to say cracks/movement may not reveal themselves, in the near future*". However, there is no finding in this report that Mr W's property is suffering from downward movement of the ground.

Similarly, J's report (dated June 2021) doesn't conclude there is downward movement of the ground affecting Mr W's property. The report comments on a crack at the junction of the ceiling and external wall of the kitchen and concludes "*the vibrations of the building works at [new property] could be responsible for this*." The report doesn't suggest any other likely cause of the crack, such as downward movement of the ground on which the building sits. So I don't think the report supports Mr W's view that the property has suffered, or is suffering, from subsidence damage as defined by the policy.

J's report does say however that without a properly constructed backfill on a retaining wall on the newbuild property, this will lead to the collapse of the land and path on Mr W's property. It says if the backfill issue isn't dealt with immediately "*this will lead to further washing away of the foundations of the path and lead to damage and subsidence at [Mr W's property]*."

I can see Mr W's concern, given J's comments above. But I'm not satisfied that Admiral should treat the claim as subsidence based on the reports he's provided, as they don't show that his property is suffering from the building moving downwards, other than by settlement, when the Admiral insurance policy was in force.

O's report concluded that the cracks in the property didn't follow a pattern which would be commonly seen with subsidence. It said some cracks, such as one behind a TV fixed onto a wall, were likely due to heat imparted by the TV. It noted an external crack but said as it follows the perpend joint, this is a weak point in the masonry and is typically considered thermally related, and "*certainly isn't consistent with foundation related*". It was satisfied, based on using a spirit level and laser level, that there were no distortions in the property, especially the kitchen that Mr W was concerned about, as a result of subsidence.

As such, I don't think Admiral has acted unreasonably in declining the claim based on O's report and those provided by Mr W.

Mr W has concerns over O's report, he says its writer lacks the experience of a structural engineer specialising in geotechnical and foundational impacts, and it relied on visual inspections only. I'm not satisfied these comments mean Admiral was unreasonable to rely on the report. The damage reported by Mr W was cracks to his property, so a visual inspection of those cracks is appropriate. If those cracks had shown likely progressive downward movement, then Admiral would have most likely carried out more investigation into the foundations and cause of the movement. But as I'm satisfied the cracks don't support a claim for subsidence, I consider it reasonable that Admiral didn't take any further action.

Mr W says that the investigator, in her findings, didn't take heed of precedents on previous subsidence cases, especially in terms of the ABI domestic subsidence agreement. But the ABI agreement only applies where there *is* an accepted claim for subsidence damage. So I'm not satisfied that applies here. And I can only reiterate that which our Investigator has already explained; that we consider each complaint on its individual merits. And having considered this complaint, I don't think, as of Admiral's FRL of 30 September 2024, it had made an unfair decision to decline the claim.

O's report did mention accidental damage in relation to the path on Mr W's property, but I can't see Admiral considered a claim for damage to the path as accidental damage. As such Admiral will now need to do so, and give its claim decision on this to Mr W.

Admiral's handling of the claim

Admiral accepts that it shouldn't have declined Mr W's claim without assessing it, so I'm not going to review that further or repeat its failures in that respect. It also accepts not doing so caused Mr W distress and inconvenience and its paid £525 compensation in total for that.

Mr W says the compensation should be higher because due to his visual impairment, his safety has been put at risk, as well as his daily quality of life, and he's seen awards in similar cases of up to £3,500.

If Admiral's follow up review of the claim had resulted in it accepting the claim as subsidence damage, I might have asked it to increase the compensation award it offered. As I'd have considered that its unfair decline had likely caused Mr W to be with a damaged path (which I understand has caused Mr W the most concern for his safety) for longer than he should have been.

However, the distress and inconvenience Admiral has compensated for here is not in incorrectly declining a claim it should've accepted, it is for declining it without fully considering it. But ultimately, I've found that its initial decision to decline the claim was fair. As such I don't think it's reasonable to hold Admiral responsible for Mr W being in the situation he finds himself in, even though I can understand it being difficult for him.

Whilst I think Admiral should've considered a complaint about accidental damage in relation to Mr W's path, I'm not going to award separate compensation for that as part of this complaint. Clearly, if Admiral does accept a claim for accidental damage to the path, I'd expect it to consider an award of compensation appropriate to recognise its delay in reviewing and accepting that claim. But any complaint about that would need to be considered separately by Admiral first, before this Service could become involved.

I can see Mr W is in a difficult position. O's report highlights issues with the newbuild, I can see this would be a worry for Mr W. But ultimately, I consider as of September 2024 Admiral made a reasonable decision to decline the claim, as such I don't think further compensation to reflect the time Mr W has lived with the damage, is reasonable.

My final decision

My final decision is that I direct Admiral Insurance (Gibraltar) Limited to consider Mr W's claim for damage to his path under the accidental damage section of his policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 July 2025.

Michelle Henderson
Ombudsman