

## **The complaint**

Miss T complains that Allied World Assurance Company (Europe) plc failed to deal with a subsidence claim on her buildings insurance policy.

## **What happened**

Miss T owns a property which she inherited from a relative. She took out a buildings insurance policy, which is underwritten by Allied World Assurance.

Miss T contacted her broker to say she had discovered there were mineworks under the property. She became aware of this after speaking to an estate agent about possibly selling the house. The estate agent said the property might be affected by mining works that had been carried out in that area in the past and suggested she look into this.

Miss T provided a copy of a report she obtained on the condition of the property. The broker contacted Allied World Assurance and asked if it was happy to continue cover.

Allied World Assurance said it was happy to continue with the policy, but this would need to be treated as a mid-term adjustment, and it wouldn't cover subsidence. It also said there would be a small additional premium, although that was later waived.

Miss T complained that no action had been taken to look into the issue; she said the report confirmed the presence of mining features below the house and possible subsidence, but this had not been investigated.

She received a response to the complaint from the broker, which said:

- The report had been referred to Allied World Assurance, who had said it was happy to continue providing cover, but with a small additional premium.
- As the report confirmed the underground mining had been present before the property was built, any damage caused would be considered a pre-existing issue.

When Miss T referred the complaint to this Service, our investigator said:

- It wasn't fair to charge an additional premium for the increased risk and then say the risk wasn't covered, but the additional charge had been waived.
- It was fair to make an adjustment to reflect the fact it was now known there had been mining works.
- Although the policy includes cover for subsidence, there wasn't evidence of damage to the property and the existence of mining activity in itself wasn't an insurable risk.

Miss T disagreed and provided further comments. She said there was evidence of subsidence damage and this should have been investigated, but no action was taken. And she said it wouldn't be fair to say any damage was pre-existing when she hadn't known anything about it before she bought the policy.

The investigator didn't change her view, so Miss T requested an ombudsman's decision.

I issued a provisional decision saying I was minded to uphold the complaint and direct Allied World Assurance to consider the claim, and pay compensation of £250. I set out my reasons as follows:

### **My provisional decision**

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly, support a policyholder to make a claim, and not unreasonably reject a claim.

The policy includes subsidence cover as follows:

*“loss or damage to buildings caused by:*

- a) Subsidence;*
- b) ground heave;*
- c) landslip.”*

So the starting point is that if Miss T shows there is damage caused by subsidence then it should be covered, unless Allied World Assurance can show an exclusion applies and it would be fair to rely on that exclusion to decline a claim.

Allied World Assurance has raised a number of points during the investigation, including:

- Miss T made an enquiry to see if cover would be offered as mining activities were discovered under the premises. There was no claim, so a claim file was never created.
- Insurers don't get involved in risks when there has been no damage. A report was received and an additional premium was charged as the material facts of the risk changed.
- Miss T appears to believe it should have acted on the basis of the report despite no claim or damage being reported. Insurers can only cover damage that has occurred and there is no damage.
- If a claim was made, it would likely be declined on the basis that if there was any damage, it was pre-existing.

I've considered these points carefully but don't think it is fair to say Miss T didn't make a claim or that there's no evidence of damage.

The policy terms say if Miss T wishes to make a claim, she should contact her broker. She did that, provided an expert's report and said she wanted action taken to investigate the problem and confirm if it was covered. I don't think she was just asking if there would be cover for subsidence, she was asking for an investigation and repairs to be carried out in relation to damage highlighted in the report.

This was dealt with as simply an update to the policy. Although Allied World Assurance agreed to continue cover it said an additional premium would be charged for the increased risk, only to say the risk wasn't covered. I don't think that was fair, but note that the additional charge was later waived. And it was fair to make an adjustment to reflect that it was now known there had been mining works.

But I think Allied World Assurance should also have treated this as a claim. Even if Miss T didn't specifically say she was submitting a claim, that is what she was trying to do – she wanted an investigation into the cause of the damage. Even if this wasn't clear at the outset, it should have been by the time Miss T complained; she said the report confirmed there was damage and made it clear she wanted this dealt with.

I'm satisfied the report she provided did include evidence of damage – there are several references to cracking, possibly related to the mining features below the property; ground movement; a risk of collapse; and remediation work needed to prevent further subsidence. The reference to “further” subsidence indicates there was already some subsidence.

Miss T had provided evidence of damage and said she wanted this investigated, but nothing was done.

Allied World Assurance says even if it did consider this to be a claim, it would likely be excluded as it was pre-existing.

There's an exclusion for pre-existing damage, which is described as “*Loss, damage or legal liability arising out of any accident or incident that happened before this policy started.*”

I appreciate pre-existing damage might be excluded, but I don't consider it fair to say any claim would be excluded due to pre-existing damage without first investigating that. Allied World Assurance would need evidence about the nature of the damage, what caused it, and when it happened. It hasn't carried out any investigation into this. If the damage only came to light after Miss T's policy started, it might not be fair to treat it as pre-existing.

It's not for me to say at this stage whether the claim should be covered, as that will need to be considered by Allied World Assurance. Once it has done that, if Miss T is unhappy with any decision made on the claim that would need to be the subject of a fresh complaint. But I don't think it was fair to say there was no claim and say any damage was pre-existing, without carrying out any investigation. Miss T wanted this to be investigated but instead of supporting her with this, barriers were put in the way of her making a claim.

Miss T has explained how distressing it was for her to be told there was no cover. Communication wasn't always very clear and it was confusing to be told the premium would be increased but there would be no cover for subsidence. She was left not knowing if a claim would be covered. In the circumstances, I think some compensation would be reasonable to acknowledge the distress caused.

### **Replies to the provisional decision**

Allied World Assurance says it accepts the provisional decision, though no claim was formally made, so it will be difficult to consider this. It's happy to make the compensation payment on confirmation Miss T also accepts the decision.

Miss T says:

- She appreciates the understanding of her situation and the award of compensation, though there's no quantifying the distress and stress she has been through, or the financial loss caused.
- Her policy also covers loss of rental income and she would like Allied World Assurance to arrange this as well.
- She would like to have a time frame for this to be resolved, to avoid it dragging on any further than necessary.

### **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.

Allied World Assurance says no formal claim was made, but as I explained in the provisional

decision I think it should have been clear that's what Miss T was trying to do. She provided a report that indicates there may be subsidence damage and asked for that to be investigated. Allied World Assurance will need to arrange its own investigations into this and make a decision on whether there is subsidence damage that's covered by the policy.

Miss T has referred to the difficulties she has faced and the distress the situation has caused her. Dealing with the problems identified at her property was upsetting for her. I can't say at this stage whether Allied World Assurance is responsible for putting that right. But it has delayed things and that will have made a difficult situation even worse. So it's fair that some compensation is paid to recognise that.

She has also raised an additional point about the loss of rent she has suffered. The policy includes cover for rent that should have been paid to her until the property is fit for habitation again. But this is only where the property is "*uninhabitable due to damage covered by this section 1.*" So she can claim for this if the property damage is covered.

If the investigation of the claim confirms there is subsidence damage that's covered by the policy, then Allied World Assurance will also need to consider the loss of rent.

I appreciate Miss T's concerns about how long this may take but I can't set a specific timescale for the claim to be resolved, as that will depend on the investigations to be carried out. What I can say is that Allied World Assurance is required to deal with claims promptly and fairly, and to support a policyholder with their claim. So it needs to bear these duties in mind.

Once Allied World Assurance has made a decision confirming whether the damage is covered (and any loss of rent) – or if there is further delay dealing with this – it's open to Miss T to make a fresh complaint.

### **My final decision**

I uphold the complaint and direct Allied World Assurance Company (Europe) dac to

- consider the claim in line with the policy terms; and
- pay compensation of £250 for the distress and inconvenience caused to Miss T.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 12 August 2025.

Peter Whiteley  
**Ombudsman**