

## The complaint

Mr H has complained about the way West Bay Insurance Plc trading as Zenith Insurance (“West Bay”) handled a subsidence claim he made under his home insurance policy.

References to West Bay in this decision include its appointed agents.

## What happened

In 2022, Mr H made a claim under his policy with West Bay, when he noticed cracks at his property. Loss adjusters visited the property and carried out inspections, and it was confirmed in subsequent correspondence that the damage was considered to be caused by foundation-related movement.

West Bay agreed to carry out further investigations, which involved trial pits, bore holes and crack monitoring to determine if there was ongoing movement. A scope of works was later produced which included strengthening work such as lateral restraints for the gable wall and extensive repairs. West Bay said some of the subsidence was historic and wouldn’t be covered. Mr H got his own independent engineer’s report as he was unhappy with the conclusion reached. His expert recommended more work than West Bay had agreed to.

West Bay said as there was a significant difference between the opinions of the two experts, a third expert should provide an opinion on the matter. It offered to let Mr H select an independent expert for a further opinion on the scope of works.

The independent expert agreed with Mr H’s engineer that the proposed repairs weren’t adequate, that the property was severely distorted and that additional works would be required to put things right. But West Bay said this was a simplistic view of the situation. It maintained that whilst the property was distorted, it was only liable for the distortions that had occurred during the latest episode of subsidence and not historic issues.

Mr H made a complaint. He said the damage wasn’t historic and only appeared in 2022 – and that West Bay had ignored the opinion of two chartered structural engineers and their reasonable proposals to rectify the property. He also complained about the overall service he’d received.

In its responses to his complaint, West Bay acknowledged that the service Mr H had received wasn’t up to the standard he was entitled to expect. So it offered him compensation for this, but maintained its position in relation to the proposed works, saying it wasn’t liable to rebuild the gable wall. So Mr H brought his complaint to the Financial Ombudsman Service for an independent review.

Our Investigator considered the complaint and thought it should be upheld. She said as the third engineer agreed with Mr H’s expert, and even if some of the movement was historic, West Bay had an obligation to carry out a lasting and effective repair.

West Bay didn’t accept our Investigator’s recommendations, so the complaint has now been referred to me for an Ombudsman’s 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 this is an informal service, I'm not going to respond here to every point raised or comment on every piece of evidence Mr H and West Bay have provided. Instead, I've focused on those I consider to be key or central to the issues in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm upholding this complaint. I'll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a claim. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

I've considered the three key reports regarding the nature and extent of the subsidence damage at the property and the recommended work. The preliminary report, provided by West Bay, said the following:

*"The information gathered by our inspector has been reviewed by our technical team who consider that the damage which centres around the left hand side of the property has most probably been caused by foundation movement.*

*The cracking is stepped in nature and is tapered which suggests a downward rotation of the footing.*

*Further investigations will be arranged so that a full assessment can be undertaken to determine the cause of the movement."*

Following investigations, West Bay recommended *"removing the render and repairing the cracks with heliairs to strengthen, patch render the affected areas to the left elevation"* among other works and repairs. But the overall scope of works was disputed. Mr H said in his complaint that initially, no representatives from West Bay had visited the property to carry out a site inspection, and when they did eventually visit, the course of action had already been decided and Mr H was told the damage to the gable wall was historic and it wouldn't be rebuilt. He didn't agree and didn't therefore consider the scope of works adequate.

West Bay also added, in its subsequent correspondence, that *"it is normal practice to repair, not rebuild, with insurance works. Historic distortions are common and would not fall within the limit of liability"*. It expressed the view that the scope of works was adequate as it included extensive strengthening repairs including lateral restraints for the gable wall, and that as there was no evidence of recent structural repairs at the property, the distortions were longstanding.

The second report, by Mr H's structural engineer, said:

*"From inspection of the wall between the lounge and the rear left bedroom, there is clearly vertical and rotational settlement of the gable wall leading to diagonal cracking up through the internal dividing wall"*.

It went on to say the flank gable wall had *"lent out onto the adjacent property, and [formed] a*

*bulge in the gable wall, pulling the roof of the house with it and look[ed] to be cracking the opposite end gable wall”.*

And the engineer recommended, *“having the adjacent property drain fully pressure tested to confirm it is now fully repaired and the roof propped up and releveled. The lounge and back left bedroom floors removed, the left-hand flank gable wall, including the chimney, the internal lounge to bedroom wall and the rear wall of the bedroom taken down and rebuilt off new footings to ensure the wall is on good firm non water affected soil”.*

The third report, by the independent engineer, also confirmed:

*“The flank wall requires to be taken down and reconstructed to vertically. This will require temporary propping of the roof structure within the front living room and rear bedroom to facilitate the reconstruction of the walls and the lifting of the roof structure on completion”.*

As the latter two reports recommended the rebuilding of the gable wall, and the recommendations were made by suitably qualified experts who had both inspected the damage, I'm satisfied that they're reliable and the gable wall should be rebuilt in line with those recommendations.

Whilst I've considered what West Bay has said about historic distortions, the third engineer did consider and comment on this point and concluded that the nature and location of the cracking damage was consistent with the rotation of the walls. He went on to explain that some internal repairs were completed prior to the claim being submitted, which could account for why some of the cracking was less than expected for the rotation of the wall.

Even if some of the damage is historic, I consider West Bay to be obliged to carry out a lasting and effective repair, which from the evidence and reports I've seen, cannot be done without following the recommendations of the structural engineers. I don't consider it fair for West Bay not to follow those recommendations, and it can get in touch with Mr H's previous insurer if it considers the damage historic. I'm also satisfied West Bay has offered fair compensation for the service issues Mr H experienced.

### **Putting things right**

West Bay Insurance Plc trading as Zenith Insurance should:

- Reimburse Mr H for the cost of his expert report dated 29 May 2024, together with 8% simple interest from the date he paid for the report until the date of reimbursement.
- Follow the recommendations made by the independent structural engineer in the report dated 31 October 2024 in respect of the gable wall.

### **My final decision**

My final decision is that I uphold this complaint and I direct West Bay Insurance Plc trading as Zenith Insurance to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 April 2026.

Ifrah Malik  
**Ombudsman**