

complaint

Mr B has complained about Zurich Insurance PLC's handling of a home insurance claim he made for subsidence at his property.

background

I issued a provisional decision on this complaint in January 2020. Here's what I said in my provisional decision:

background

There are several businesses involved in this complaint who acted on behalf of Zurich. For ease of reference I'll refer only to Zurich by name in this decision, even when referring to the actions of its agents/representatives.

There is extensive background to this complaint as Mr B's claim for damage caused by subsidence has been ongoing since 2011. Our investigator set out a detailed timeline of the key events in her opinion and from what I've seen, these events aren't in dispute. So, I'll only specifically cover the events and issues I consider to be materially relevant to Mr B's complaint. But in coming to this decision I have considered everything that has happened.

Mr B first made a claim about subsidence damage in 2011. It was established that subsidence was being caused by roots from vegetation in his neighbours' property affecting the moisture levels in the clay subsoil beneath both properties. Zurich attempted to contact the neighbour and get him to deal with the vegetation but received no reply.

Repairs were completed to Mr B's property in 2012, but because no action was taken to remove the vegetation, damage soon reoccurred. Further monitoring was carried out and in 2015, Zurich obtained permission from the neighbour's mortgage provider to access the property and remove the offending vegetation. At this point Zurich wanted to carry out new repairs to Mr B's property, but Mr B didn't agree because he didn't believe his neighbour would maintain the vegetation and so thought the damage was likely to reoccur.

In 2016 Zurich appointed solicitors to pursue Mr B's neighbour for mitigation – the removal and upkeep of further vegetation. But they were also unsuccessful in obtaining a response.

In 2017 Zurich proposed underpinning Mr B's property to stabilise it and protect it from further movement. It also proposed installing a movement joint between Mr B's and the neighbour's property – to protect Mr B's property from damage caused by continued movement of the neighbour's property.

Mr B wasn't happy with the proposed solution. He didn't feel Zurich had properly investigated its suitability as he said it hadn't carried out site visits. He was also unhappy that Zurich hadn't followed through on threats of legal action it had made to his neighbour. Mr B said when Zurich decided to remove the vegetation, it gave his neighbour the impression that it wasn't his responsibility to sort it out. Based on all of this, Mr B brought his complaint to our service.

Our investigator didn't think Mr B's complaint should be upheld. She didn't think Zurich had caused unnecessary delays as she felt these had been caused by the neighbour. She said it carried out monitoring and instructed experts and solicitors to obtain reports and pursue the neighbour – which is what she would have expected it to do. She said Zurich's proposed solution was the best way forward as it would protect against further damage without requiring Zurich to carry out work on the neighbour's property. She said it wouldn't be fair to expect Zurich to carry out work to the neighbour's property as it wasn't his insurer.

Mr B wasn't happy with our investigator's assessment. He said he felt Zurich should utilise the Party Wall Act to get permission to underpin both properties. He said this was the only way of insuring further damage wouldn't occur – because his neighbour will not maintain the vegetation which means his property will continue to move. He said movement joints are for managing seasonal movement, but the movement at his neighbour's property is much more severe than that.

Our investigator considered Mr B's additional points, but she still felt that Zurich's proposed resolution was both suitable, and fair and reasonable in the circumstances. She said it was the most feasible and effective solution given the situation.

So, because no agreement could be reached the complaint was passed to me to decide.

Following this, Mr B provided a report from a surveyor he had instructed. This surveyor made several comments about the suitability of Zurich's proposed resolution. I shared this report with Zurich, and it arranged for a site visit to take place between its surveyor and Mr B's surveyor. This was completed in July 2019.

Based on the meeting it was agreed that Zurich would extend the underpinning around the perimeter of Mr B's property. Both surveyors agreed that a movement joint was needed, but Mr B did not want it on his side of the boundary wall as it would reduce the size of two of his rooms. It was agreed that Mr B's surveyor would design their own scheme to compare to Zurich's for cost, suitability and Mr B's satisfaction. But up to now, no report or design from Mr B's surveyor has been received.

Mr B has suggested that the only way to fully resolve the issues with his property is to gain consent from his neighbour to access his property to fully underpin both properties. Otherwise he says the vegetation will continue to grow and cause damage to both properties – which will affect the resale value of his home. Mr B has suggested that Zurich should instruct a process server to ensure his neighbour gets the letters and that this person should explain to him what is enclosed. Mr B also feels that Zurich should get his neighbour to sign a legal declaration that he will maintain the vegetation moving forward, and that it should consider recovering the costs of any repair work from the neighbour if he doesn't agree.

Zurich says that based on the history of the claim it is highly unlikely to get permission, or even any contact, from the neighbour. It says it cannot simply undertake work to the neighbour's property without permission, so it has sought to create a solution which is solely in its control and doesn't require access to the property. Zurich says its design scheme will prevent root incursion and protect against further movement, both from the soil and the neighbour's property. It has also highlighted that it's down to Zurich whether it wants to proceed with any recovery

action against the neighbour. Zurich says its responsibility to Mr B is to cover the loss, and it believes it has put forward a reasonable solution.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It isn't in dispute that Mr B's property has suffered damage due to subsidence or that his policy provides cover for this. What remains for me to decide is whether Zurich's offer of settlement is in line with the terms of the policy, and whether it is fair and reasonable in all of the circumstances.

Zurich has proposed to underpin Mr B's property around the full perimeter. It says the depth of the underpinning isn't definitive as if it discovers roots at the depth highlighted on the proposal, it will continue deeper until no roots are present. It says this is the same as if a new property were being built, so it believes this is a suitable proposal to stabilise Mr B's home.

Zurich also proposes to install a movement joint between the two properties, on Mr B's side. This will result in Mr B losing some space in his property, which is one of the reasons he doesn't want to accept this solution. He also doesn't believe it is a suitable solution for the amount of movement at his property.

I fully appreciate Mr B's wish for a solution that will prevent his neighbour's property from moving and to protect the resale value of his home. But I think it's important to point out that his insurance policy doesn't provide cover for his neighbours' property. It also doesn't provide cover for pro-actively preventing future subsidence, or for the impact his neighbours' actions could have on the value of his home. Mr B's policy is designed to cover the damage to his property caused by the subsidence.

In repairing damage caused by subsidence, it's our services' view that any repair would need to be lasting and effective. Typically, insurers and our service would recommend that the cause of the subsidence is identified and corrected before repairs are carried out, rather than having a property underpinned – which in itself could be deemed a preventative measure. But in some circumstances, underpinning is the only viable solution to deliver a lasting and effective repair. And in the circumstances of Mr B's complaint, underpinning appears to be the most suitable solution because Mr B's neighbour is unlikely to maintain the vegetation. So, without the underpinning and movement joint, Mr B's property would continue to move, and any repairs wouldn't be lasting or effective.

Mr B has suggested that Zurich ought to do more to pursue his neighbour through legal channels, such as the Party Wall Act or by instructing a process server to deliver letters. He wants Zurich to get the neighbour to agree to removal of the vegetation and to maintain it going forward. Alternatively, he wants Zurich to underpin both properties and/or install any movement joint on the neighbour's side. Mr B would also like Zurich to pursue recovery of its outlay from his neighbour if he doesn't agree to the above suggestions.

Zurich has said that installing the movement joint on the neighbour's side, and/or underpinning the neighbour's property is only an option in theory. But in reality, even

if it considered that either was necessary, it would need permission from the neighbour to access his property, both to plan and carry out those works. And given the history of the case, it doesn't believe it is likely to be successful in obtaining a response from the neighbour, let alone obtaining the neighbour's consent.

From what I've seen, Zurich has made numerous attempts to contact Mr B's neighbour over several years. It has done this both through a loss adjuster and through a firm of solicitors. But Mr B's neighbour hasn't responded to any attempted contact. So, I think it's unlikely that any further attempts at contact, at this stage, would be any more successful. And while I fully understand that Mr B would like to see his neighbour held accountable, I agree with Zurich that it is its decision whether to seek reimbursement from the neighbour or not. Zurich's responsibility to Mr B is to accept the claim and provide a solution which will deliver a lasting and effective repair – to his property only.

Mr B is concerned that the proposal won't fully stabilise his property or protect it from the movement of his neighbour's property. But from what I've seen, Zurich's proposal has been designed by suitably qualified experts who believe it will. And although Mr B's surveyor was due to provide alternative designs, none have been received. I also haven't seen any evidence from Mr B's surveyor to support his view that Zurich's updated proposal isn't suitable. So, in these circumstances I see no reason to doubt the expert view of Zurich's surveyor.

Ultimately, Zurich has put forward an offer that expert opinion confirms will stabilise the property and protect it from further movement of the neighbour's property. I appreciate Mr B's concern that he'll lose some space in two of his rooms, and I do sympathise. But the proposed solution can be carried out without any need to make contact with Mr B's neighbour – and I think this is crucial in this case. So, based on everything I've seen, I think Zurich's offer is fair and reasonable in the particular circumstances of Mr B's complaint.

It follows that I'm not currently intending to direct Zurich to do anything more than it has offered to do."

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Mr B provided a detailed response, explaining the reasons he didn't agree with my findings. To summarise, he said:

- I have incorrectly stated that his disagreement with the movement joint proposal is aesthetics. His objections are actually on the grounds of structural integrity and his objections are backed up by professional opinion.
- The movement joint is only designed to deal with seasonal movement and is not sufficient to cope with the amount of movement at his neighbour's property. He believes it will fail, resulting in further damage.
- He would like me to visit his property as he believes the issues would become instantly clear if I did.

- I've placed a great deal of faith on the fact that Zurich's loss adjusters and surveyors are the experts. Mr B feels he is better placed to comment on the situation because he has learned a great deal about the proposal and has local knowledge of the two properties.
- Zurich is ignorant of the level of movement on the neighbouring property as they have only ever monitored his property.
- It's untrue to say that his surveyor agreed that movement joints were needed.
- Zurich should employ another independent surveyor to provide a second opinion on its plans, as he has already done at great personal expense.
- He would attempt to speak to his neighbour and obtain permission for Zurich to carry out underpinning a short way under his side of the boundary. But if no agreement could be reached and I still felt Zurich's proposal was reasonable, that Zurich should proceed with the underpinning of his property, but not with the movement joints. He will not accept movement joints on his side of the boundary as he is sure it will result in further damage.

Following this response, Mr B made contact with his neighbour. He says he convinced his neighbour to agree to Zurich partially underpinning his property. He requested that Zurich draft a letter to formalise this which he was, in his words, fairly confident his neighbour would sign.

I shared Mr B's responses with Zurich and asked that it comment on the technical concerns he raised with respect to the movement joints. Zurich forwarded the request to its loss adjuster who said:

- If Zurich were to agree with Mr B's suggestion, and partially underpin the neighbour's property, it's likely that a movement joint would still be required somewhere along the neighbour's wall. The only way to prevent there being a movement joint at all would be to fully underpin both properties – which he understood to be something that Zurich would not pay for under the policy.
- The idea of the movement joint and cutting the foundations is so that the underpinned property is disconnected from the non-underpinned property, which will protect it from movement of the non-underpinned property.
- Installing the movement joint on the neighbour's side is more practical than partially underpinning. But he suspects this will not be possible based on the history of the claim. The proposed solution has been put forward as it doesn't require contact with or approval from the neighbour.
- He doesn't agree with Mr B's comments about the joint site visit with Mr B's surveyor. He says Mr B's surveyor had no idea about the history of the claim, so he talked them through it. The agreement was that Mr B's surveyor would put forward an alternative proposal and both would be submitted to Zurich. But despite chasing for this several times, no alternative has been provided.

Zurich added to these comments by explaining that it will not consider carrying out underpinning to the neighbour's property as his property is not covered by Mr B's policy. It says its proposed scheme was approved in principle by Mr B's surveyor and that his surveyor hasn't provided any alternative suggestions.

Zurich says the only real option is to proceed with its proposal to underpin Mr B's property and install a movement joint.

my findings

I've re-considered all the evidence and arguments already sent to us to decide what's fair and reasonable in the circumstances of this complaint. I've also carefully considered the additional evidence and arguments put forward in response to my provisional decision.

Firstly, I think it will be helpful to address Mr B's request that I visit his property. I should explain our service is here to provide an informal, alternative dispute resolution service to the courts. And we reach our decisions by reviewing evidence and arguments supplied by both sides. When reviewing technical arguments, we rely on the opinions of industry professionals and/or independent expert reports. It is not within my remit to carry out a site visit.

Mr B has put forward several technical arguments for why Zurich's proposal isn't suitable. He says his concerns are supported by professional opinion – by which he seems to mean the surveyor he instructed previously.

Zurich and its loss adjusters have assessed the comments of Mr B and his surveyor. They also met on site in July 2019 where discussions took place over the suitability of Zurich's design. During this meeting a different surveyor, from the same firm, attended because Mr B's original surveyor had left the firm. Based on this meeting Zurich amended its proposal to extend the underpinning around the full perimeter of Mr B's property and specified how it will support the chimney breast. It also answered the concerns expressed about the depth of the underpinning.

There seems to be a dispute over what was stated at this meeting regarding the movement joint. Zurich's loss adjuster says Mr B's surveyor agreed that a movement joint was needed. But Mr B says this isn't the case. He says it was clear from the meeting that an alternative to the proposal of a movement joint on his side of the party wall was needed, so the focus was on finding an alternative. He says alternatives were suggested – either to partially underpin his neighbour's property and/or to install a movement joint on the neighbour's side of the party wall.

Both sides agree that Mr B's surveyor was tasked with creating an alternative design, which would be shared with Zurich alongside the current proposal. But, to this date, no alternative design, report or comments have been able to be obtained from Mr B's surveyor.

I've carefully considered Mr B's arguments. Mr B says that Zurich's proposal has been designed remotely. But from what I've seen there have been a number of site visits across several years. Zurich says its proposal has been developed by a qualified structural engineer, reviewed by the national engineering manager of its loss adjuster and signed off by building control. It also says the required works will be subject to the Party Wall Act, meaning an independent surveyor will also need to be appointed to review and agree the scheme.

I've also thought carefully about Mr B's argument that he has both local and specific knowledge of the two properties and the way they're moving. While I don't doubt that Mr B has carried out extensive research, I don't think it would be fair to ignore the fact that Zurich's proposal has been created and designed by suitably qualified experts. I'm not disregarding Mr B's comments. But as I'm not a structural engineering expert, I need to decide which testimony and evidence I find more persuasive. And in the absence of further technical evidence from Mr B's surveyor, I'm more persuaded by the evidence put forward by Zurich and its experts.

Zurich has put together a proposal for fully underpinning Mr B's property, to prevent further movement on his side. It proposes to sever the connection between the properties along the party wall and install a movement joint to protect Mr B's property from further movement of the neighbour's property. Mr B says a better solution would be to extend the underpinning beneath his neighbour's property. He says he has successfully gained verbal consent from his neighbour for this. And he is, in his words, fairly confident his neighbour will sign a document confirming his consent if Zurich can provide one.

Zurich has stated that it will not consider paying to underpin the neighbour's property as Mr B's policy doesn't provide cover for that. It says its proposed scheme will stabilise and protect Mr B's property from further movement.

I think Zurich is correct to say that Mr B's policy doesn't provide cover for his neighbour's property. So, I don't think it would be fair to expect it to carry out such works unless the only way to stabilise Mr B's property was to carry out this uninsured work. But the evidence I've seen suggests that Zurich's proposal can achieve this result without the need to carry out uninsured works or gain contact or consent from the neighbour. And as I said in my provisional decision, I think that is key in this case, given the history of the claim.

Mr B has suggested that Zurich should pay for an independent firm of surveyors to review both properties and Zurich's design proposal, in order to find a way forward. I've thought about this but, as it stands, I don't think it would be fair to expect Zurich to pay for further structural reports or designs as I don't have any clear expert evidence from Mr B to suggest that Zurich's current, updated proposal won't deliver a lasting and effective repair.

Zurich has made numerous attempts over several years to get the vegetation removed – with no success. It has sought legal advice on its options and decided that the best and most appropriate way forward is to design a scheme to stabilise Mr B's property without needing to gain access to the neighbour's property. And it has had this scheme designed by suitably qualified experts and amended following the meeting with Mr B's surveyor. In the circumstances of Mr B's case, I don't think Zurich has acted unfairly or unreasonably in reaching its proposed settlement.

Mr B has stated that if I don't agree with his alternative proposals, he would prefer to move forward with the underpinning solution – but without the installation of a movement joint. Zurich has stated that a movement joint will be needed unless both properties are fully underpinned, which isn't covered under the policy. It says the idea of the movement joint is to effectively create two detached properties that can move independently of one another. It says that if no movement joint is installed, the neighbour's property will continue to pull on Mr B's property causing further damage. So, it won't consider underpinning Mr B's property without installing the movement joint. I think this is a reasonable position to take.

I do appreciate Mr B's strength of feeling about the movement joints and his worry that they will result in further damage. But I should explain that Zurich's responsibility here is to deliver a lasting and effective repair. I think it's unlikely Zurich would suggest a course of action that it believed would result in further damage, as doing so wouldn't be in its' interest. Ultimately, Zurich has obtained designs from qualified experts which support that the proposed scheme will deliver a lasting and effective repair. So, I don't think it would be fair or reasonable to direct it to do anything different, based on the evidence available.

my final decision

Zurich Insurance PLC has offered to settle Mr B's claim by underpinning his property and installing a movement joint on his side of the party wall. I think this offer is fair in all the circumstances.

So, my decision is that Zurich Insurance PLC should settle Mr B's claim in line with its offer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 April 2020.

Adam Golding
ombudsman