

The complaint

Mr E complains that Evolution Insurance Company Limited (“Evolution”) refused to cover the professional fees of his engineer.

What happened

Mr E made a claim to his insurer, Evolution, under his Structural Warranty Policy, for cracking to the internal plaster of the ceiling and walls inside his property. The claim was investigated and it was found that there was a structural defect in the roof which was causing the problem.

The loss adjuster advised that a schedule of works could be put together once various structural calculations had been completed. Mr E appointed his own structural engineer, who suggested that the cracking to the plaster was due to ground movement. Evolution agreed to monitor the cracks, obtain readings and report back to Mr E.

But Evolution didn’t agree to pay for Mr E’s structural engineer, so Mr E complained. In its response, Evolution said the policy didn’t cover fees for architects, surveyors, engineers or other fees incurred by the policyholder unless with written prior consent from the insurer.

Mr E remained unhappy, so he referred his complaint to this service. Our Investigator considered it, but didn’t think it should be upheld. She said the loss adjuster’s ultimate conclusions following the period of monitoring didn’t support Mr E’s engineer’s suggestion that the cracks were due to subsidence, so Evolution wasn’t obliged to pay the engineer’s professional fees.

Because Mr E didn’t accept our Investigator’s view, the complaint has now been passed to me to decide.

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.

Having done so, I’ve decided not to uphold this complaint. I’ll explain why.

This complaint deals with the decision by Evolution not to reimburse Mr E’s engineer’s professional fees. Mr E’s previous complaint with this service related to Evolution’s handling of the claim by offering to replace the roof and not by addressing the structural engineer’s recommendations that the cause of the cracking was downward movement. I will not be commenting on the handling of the claim generally as that was dealt with as a separate complaint, the outcome of which was that our Investigator thought it was fair for Evolution to agree to a period of monitoring before deciding the next steps.

I’ve considered whether it would be fair and reasonable for Evolution to reimburse Mr E for the cost of his structural engineer’s fees – and I’ll explain why I don’t think it would be at this stage.

Mr E appointed the structural engineer himself, which he says he did because Evolution requested it and said it would cover his costs. But there's insufficient evidence that Evolution agreed to cover the costs of Mr E's engineer.

Mr E has sent us numerous photos which he says show that there's an issue with the soil and the foundations as the cracks compared to the initial photos are worsening. But whilst the photos do show there's an issue, they aren't evidence of the cause of the problem. And I'm not an expert in subsidence or a structural engineer so I've relied on the expert evidence that's been provided, in order to form my view of this complaint.

The expert evidence provided includes both Mr E's structural engineer's report and Evolution's loss adjuster's report. The loss adjuster's report indicates that there are significant structural defects with the construction of the roof – and that the consequential damage internally to ceilings and walls was a result of the defective roof.

Mr E's engineer's report however, recommended site investigation works to check the adequacy of the foundations and said this was the contributing factor. Evolution proceeded to carry out site investigation works in line with the engineer's recommendations, including agreeing with Mr E's engineer the precise locations of the trial pits to be excavated and the bore holes, to identify the soil conditions. Ongoing movement was measured. But the results didn't confirm that ground movement was occurring. In some of the monitoring reports, cracks were shown to be closing slightly, and in other reports they showed only minor variation consistent with thermal movement, which I appreciate Mr E disagrees with.

I can see that the foundation depth was said to be insufficient, bearing in mind the ground make-up and tree roots in close proximity. However, despite this, the damage noted at the time did not support the conclusion that cracking to the property was as a result of defective foundations. This is because interim reports produced by the loss adjuster noted cracking to the top left hand front corner of the building, and no other cracking or displacement to the brickwork or external elevations.

Since then, Mr E has provided photos of cracking to the external boundary wall. It's possible that these have been caused by the defective foundations – but I don't have enough evidence to be able to say Evolution has done anything wrong at this point in not covering the engineer's fees. This is because I've looked carefully at both the loss adjuster's reports and the structural engineer's reports, but these do not specifically mention the external boundary wall damage that is evident in Mr E's photos. Mr E's structural engineer's letter does mention some external cracking – but the photos supporting that letter only show external cracking at the higher levels near the roof. So whilst I don't currently think Evolution has acted unfairly by not paying the engineer's fees, I do think it ought to take note of the newer images Mr E has produced and provide its response to these, if it has not already done so. Mr E says he has sent these to the insurer already but I haven't seen evidence of this. So he can send them to Evolution again, and it should provide its response.

Mr E says the cracks that have appeared in the past year cannot be attributed to thermal movement. But I note that he's not, to my knowledge, a subsidence expert or a structural engineer. But I do take his point and think that any new cracks should be investigated, so I see no reason why Mr E should not be able to raise this as a new issue that's not been considered previously by Evolution (unless Evolution can show that it has inspected and commented on the specific damage to the external boundary walls).

I should clarify that Mr E should be entitled to make a further claim under his building warranty (subject to the terms of his policy) for damage which has appeared since the last claim was made, which he believes may be a direct result of defective foundations and unrelated to the roof defect.

If the defective foundations are found to be causing damage, then Evolution should reconsider covering the cost of Mr E's engineer's fees for revealing this problem and deal with any new claim in line with the policy terms – but at this point, whilst the external boundary wall cracks have not yet been addressed and we don't yet know the cause of them, I won't be requiring Evolution to cover the professional fees, and so I will not be upholding this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 25 October 2024.

Ifrah Malik
Ombudsman