

The complaint

Mr and Mrs W complain West Bay Insurance Plc unfairly declined a claim they made for damage caused by subsidence on their home insurance policy.

What happened

In late 2019, Mr and Mrs W noticed a drop to the floor in a bedroom. They contacted a structural engineer, R, who said there were some deep depressions in random places of the floor and an external wall was bulging outwards. It said the walls to the property needed underpinning. So Mr and Mrs W made a claim on their West Bay policy. West Bay carried out some investigations – including monitoring – but in 2021 it said it didn't think subsidence was the cause of the damage, or anything else covered by the policy.

In March 2022, West Bay responded to a complaint about its decision to decline the claim. It was satisfied it had done so fairly. Mr and Mrs W didn't bring this complaint to the Financial Ombudsman Service to consider.

Later in March 2022, Mr and Mrs W provided another report – carried out by P, a structural engineer - which concluded the damage could only be down to eccentric loading of the foundations or ground movement. It said the ground floor construction was inadequate in its current state and underpinning was needed to stabilise the foundations.

As a result, West Bay appointed a further engineer – O - to consider the cause of the damage. The report done in May 2022 concluded the damage wasn't typical of damage caused by subsidence. It said the issues with the floor in particular were more likely to be due to defective or inadequate build-up of the floor. And it thought this was causing issues with the walls. It recommended further investigations be carried out, to rule out progressive movement. This included drilling bore holes to understand how the floor had been constructed and what the ground underneath was made of.

In November 2022, West Bay responded to a further complaint from Mr and Mrs W, relating to delays following O's report carried out in May 2022. West Bay accepted matters hadn't progressed as quickly as they should have done, it paid £200 compensation to apologise for the distress and inconvenience those delays had caused. It said following the investigations, further monitoring had been recommended, which would start in before the end of November 2022. Again Mr and Mrs W didn't refer this complaint to our Service for an independent review.

In early 2023, after the further monitoring period and bore hole investigations West Bay ultimately declined the claim. It said the monitoring, and investigations, hadn't supported that there had been movement to the foundations, so it wasn't covered under the subsidence peril.

Mr and Mrs W complained to West Bay about its decision to decline the claim. They said it had dismissed all of their experts who'd confirmed subsidence as the cause of the damage. They also complained West Bay had cut their carpet to do the bore hole investigation and had left the property dusty and damaged. It thought West Bay should pay for this. West Bay

provided a further final response letter, in June 2023. It didn't agree to change its position on the claim, and it didn't accept it's engineer's caused damage when carrying out the investigations. So Mr and Mrs W referred this complaint to this Service, which was considered by an Investigator.

Our investigator thought based on the reports, West Bay had made a reasonable decision to decline the claim. She said whilst Mr and Mrs W's report concluded subsidence to be the likely cause, West Bay had carried out monitoring and further investigation since that report and she was more persuaded by its findings that any damage wasn't covered under the policy.

She wasn't persuaded West Bay had caused unnecessary damage to Mr and Mrs W's property. She said the carpet had to be cut to determine the cause of the damage, but because that turned out to be something West Bay didn't need to cover, it also didn't need to cover the cost of any repairs to the carpet.

Mr and Mrs W didn't accept that. They said in summary that the monitoring was inadequate and neighbouring properties had experienced the same issue and been underpinned. They provided some comments on West Bay's reports from their own engineer. It said West Bay hadn't adequately explained how it had come to such a conclusion.

They also said whilst they did agree to the carpet being cut, they had to in order to facilitate the claim. They say it took them three weeks to clear the ash that had come into the house from the trial pits given the open-plan nature of their home.

Our investigator still thought West Bay's claim decision was reasonable and so as the matter wasn't resolved, it has come 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.

As this is an informal service, I'm not going to respond to every point or piece of evidence Mr and Mrs W and West Bay have provided. Instead, I've focused on those I consider to be key to determining the complaint. But I would like to assure them I have considered everything provided.

When making a claim on an insurance policy, it is for the insured – so in this case Mr and Mrs W – to show they have suffered damage covered by the policy. If they can do so, then the insurer must meet the claim unless it can rely on a valid exclusion to decline it.

Given the complex nature of subsidence claims, this Service would expect an insurer to assist its policyholder to determine if there is a valid claim. West Bay says it has done that, but it says its reports show that the damage to Mr and Mrs W's home hasn't been caused by an insured event. So it says the damage isn't covered under the policy.

There have been several reports carried out on the property. It seems to me there are two issues identified, the bulging of the external wall, and the dropping of the floor internally. I'll consider the walls first. I've thought it helpful to separate these out somewhat as West Bay at one time thought there might be two issues occurring – subsidence to the foundations, as well as separate and unrelated issues with the flooring.

The issue with the external wall bulging, from what I can see from the reports, seems to be a

longstanding issue. West Bay has said there has been distortion to the external walls that pre-dates the policy inception, and so isn't evidence of a subsidence event happening now that causing foundations to move, but a longstanding issue that is worsening.

Mr and Mrs W's report, carried out by P in March 2022 concluded the only possible explanation for the distortion in the walls was "*rotation of the footing at the base of the wall*". It said there were only two possible causes of that; eccentric loading of the foundation, or ground movement. It concluded that the monitoring undertaken between December 2019 and December 2021 indicated "significant seasonal movement to be an ongoing issue", so it felt there was progressive ground movement.

O's report didn't agree the monitoring did show such significant seasonal movement. It said the readings from 2020 needed to be discounted as they were unreliable. In March 2021 it says a deep datum was installed to ensure the accuracy of the monitoring. It's conclusion was "*the timing of the damage is also difficult to pin-down. Crack-width monitoring has shown no progression of damage and level monitoring has shown some slight seasonal movement.*" It recommended further monitoring to assess whether the damage was progressive. But its overall conclusion was "we consider the movement in this case is as being atypical of ground subsidence, and we consider that on the balance of probabilities, distortions are longstanding, but we cannot rule out progressive movement".

So because O's report said progressive movement – subsidence – couldn't be ruled out, further monitoring was started to see if the foundations had been impacted by the summer months.

West Bay has said the monitoring point fixed to the floor internally showed downward movement of around 11mm, whereas the external points in the same location showed minor seasonal upward movement of up to 2mm. West Bay says this indicates issues with the floor, rather than subsidence of the foundations, as more movement would have been noted on the external monitoring point if the foundation movement was progressive.

Mr and Mrs W say they have other reports which support their position, and they say the data from 2020 shouldn't be discounted; West Bay is only doing so as it doesn't support its argument. It says West Bay is relying on monitoring from when the weather conditions were more favourable to it.

Where there is a difference of opinion as to the cause of damage, my role is to decide what evidence I'm most persuaded by. Having weighed up all of the reports, I think West Bay has reached a reasonable position in discounting the monitoring from before March 2021. Its expert said the readings before that point were erratic. I haven't seen any persuasive evidence from any of Mr and Mrs W's experts that persuades me those readings should be taking into account. And having reviewed the monitoring from 2021, I think West Bay has reached a reasonable position that it doesn't show significant movement. So that means I'm satisfied West Bay has reached a reasonable position that there is no evidence of progressive downward movement of the foundations (subsidence) is happening. And so the policy doesn't have to respond.

I note Mr and Mrs W have provided other reports, but they don't persuade me the damage should be covered by their insurance policy. R's report, for example, says "*Due to the known ground conditions in the area and the suspected minimal foundations to the property, coupled with the known inadequate ground floor structure, it is clear that all walls to the property, both external and internal, require underpinning*". I accept that the property might need some underpinning, P's report supports this too. But West Bay only needs to cover the cost of this if the need for underpinning has arisen as a result of an insured event. R's report doesn't persuade me that West Bay has made an unreasonable decision on the claim.

Turning to the issues with the floor, I can't see that P's report makes any separate findings on this, it's view is that the walls subsiding is bringing down the floor too. But O's report said "with regard to the floors themselves, the apparent unevenness is unlikely to be associated with subsidence of the site but is rather more likely to be due to a defective or inadequate build-up of the floor."

West Bay says this is shown by the downward movement of the floor that doesn't correspond to downward movement externally, which I've set out above. When it dug trial pits to investigate the floor, it said it found the flooring was made up of wooden board overlying compacted black ash fill which is inadequate and prone to settlement. So having reviewed all of the evidence, I'm not satisfied that the issues with the internal floor are being caused by foundation movement.

West Bay's view is that the issues with the floor could have caused some lateral movement of the wall at a lower level, which has pushed it out, causing the bulging of the wall that is evident. Mr and Mrs W's engineer, P, says West Bay hasn't explained how it's come to this conclusion, P finds it a strange suggestion. West Bay says it doesn't consider that with the weight of the building and made ground underside of the internal floor, the strip foundation could rotate and lift the inner edge without showing horizontal cracking, which it doesn't. It says the only damage is the bulging of the brickwork, which it says supports that lateral movement is the cause, not foundation movement. And therefore, it is more likely that issues with the floor are causing this lateral movement.

Having weighed up the points on all sides, I'm not persuaded that the property is suffering from any current subsidence damage, and that the most likely cause of the issues Mr and Mrs W have is as a result of inadequate flooring. There is clearly a difference of opinion between experts in this case, all of whom are suitably qualified to make findings on the damage. However, given the monitoring, the intrusive investigations to determine the makeup of the floor and the explanations, I'm more persuaded that West Bay has been reasonable in relying on its experts to decline the claim, as there is no insured peril. Mr and Mrs W complain that having carried out the intrusive investigations into the flooring, West Bay left their property in a poor state. They said ash from under the floor had come into the property and given its open plan nature had spread widely and was difficult to clean, their carpets were also cut, but West Bay didn't offer to reinstate them.

Having seen the photos of the trial pits, I can see it would be upsetting for Mr and Mrs W, there is a large hole in the floor and their carpet had to be cut to access it. I can understand that, given the ash under the floor, mess would have come into their home. But I can only reasonably expect West Bay to cover the cost of reinstating the carpet if either 1) the claim was accepted or 2) I thought West Bay had caused unnecessary damage by not carrying out the investigation properly. I've already set out that West Bay can fairly decline the claim. So I've considered the work carried out by West Bay when it attended the property. It seems they were able to peel away carpet in one area, but it couldn't be done in another, and it had to be cut. And whilst I accept ash will have got into the property, I'm not persuaded this could have been avoided however the work was done. It's not clear whether West Bay explained that it would only reinstate any damaged carpets if the claim was accepted. I think it should have. However even if it didn't, Mr and Mrs W have said they had no choice but to go along with the investigations, as they wanted their claim to be paid. So the outcome would have been the same – the carpets would have been for Mr and Mrs W to repair - even if West Bay had communicated more clearly.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 13 June 2024.

Michelle Henderson
Ombudsman