DRN-5214380

The complaint

Mr B has complained about his property insurer Haven Insurance Company Limited because it has declined his claim made for subsidence damage to his porch.

What happened

Mr B bought his home in 2019. A home survey was completed, noting some issues with the porch. In June 2022 Mr B arranged cover with Haven. He was asked to tell it if the home had ever had any cracks on its external walls, with Haven also giving an explanation about how the question should be answered. The explanation given was: “we only need to know if cracks have affected the main structure of your wall. You don’t need to tell us about minor cracks that have affected render or plaster only”. Mr B answered ‘no’.

In September 2022 Mr B made a claim for damage to the porch. Haven said it required Mr B to provide a cause of damage report. Mr B did so. Haven subsequently appointed a surveyor to assess the porch. It noted trees in the vicinity and that Mr B’s house survey from 2019 identified concerns with the porch, and also signs of previous movement to the main part of the house. It reviewed what Mr B was asked when insurance was arranged and the answers he had given. Haven decided that if Mr B had told it that there was cracking in the house, it would have offered cover for the property in general but not for subsidence – at least until further investigations were completed. It declined Mr B’s claim telling him that was because the damage had been there prior to cover being arranged.

Mr B felt the decision was unfair. He felt Haven hadn’t handled the claim well either – communication had been poor and there had been delays. Haven, in a final response, accepted that it hadn’t handled the claim well and it apologised. But it maintained the decline was fair.

When Mr B complained to the Financial Ombudsman Service, Haven said it would offer £200 compensation for the upset caused by its communication and delay issues. But it maintained its decision on the claim decline.

Our Investigator felt Mr B likely hadn’t known, when he’d arranged the cover with Haven, that his porch was subsiding. She felt he’d likely thought only minor cracking was occurring, which she was satisfied Haven hadn’t wanted to be told about. She was also satisfied that the home survey showed that any other cracking in the property was historic in nature and not indicative of the property moving. So she felt Haven should be accepting the claim and considering it in line with any remaining policy terms (those not related to pre-existing damage). She said Haven should pay a total of £400 compensation for upset.

Haven said it was not happy with that outcome. So the complaint was referred for an Ombudsman’s decision.

I reviewed the complaint. I found I wasn’t minded to require Haven to consider the claim. But I also found that the compensation award suggested by our Investigator was fairly and reasonably due on account of upset caused to Mr B by Haven’s poor communication and claim handling. I issued some provisional findings:

“Why the claim was declined

When Haven issued its final response, it was explained that the underwriters had declined the claim on the basis the damage had already been in place prior to the insurance being arranged. I think that was an oversimplification on the part of the drafter of the final response letter. From what I have seen, the claim decline by the underwriters was really based on what it saw as an incorrect answer given by Mr B to the question he had been asked about cracking when the cover was arranged. The underwriters' email explains that 'yes', in the underwriters' view, would have been the correct answer – and if Mr B had said 'yes', it wouldn't have been on risk for subsidence cover when the claim was made. So Haven's position is that Mr B misrepresented his risk when arranging cover.

Misrepresentation

There is legislation which sets out the rights and obligations of both parties when arranging policies of insurance and at renewal. The legislation is designed to level the playing field between both parties and to set out what each can expect from the other. For example, a policyholder can expect an insurer to ask clear questions about important things it wants to be told about and an insurer can take any answers given (or the fact of detail not given) at face value as being likely correct. The legislation also sets out what insurers can do if incorrect information is given.

If a policyholder makes a mistake when answering an insurer's questions, that is known as a misrepresentation. The legislation – the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) – requires a prospective policyholder to take reasonable care to not make any misrepresentation to the insurer when applying for cover. If a misrepresentation is made which is a qualifying misrepresentation, then the insurer will be allowed to take certain action. Of relevance here is that one of those permitted actions is that the insurer can do what it would have done if the correct answer had been received.

Whether or not a misrepresentation is seen to be a qualifying one depends on two things. First, did the prospective policyholder take reasonable care when they gave the answer they did. Second, can the insurer show that if correct/full detail had been given, it wouldn't have entered into the insurance contract, or it would but only on different terms. What the insurer would have done is often a matter of fact – and I have seen evidence in that respect here which I'll come onto shortly. Whether the prospective policyholder took reasonable care will depend largely on whether the question asked by the insurer was clear and/or specific enough to elicit from the reader what it really was the insurer wanted to know.

The question

I think the question asked by Haven is somewhat vague. But I think it was clear enough to put the prospective policyholder on notice about the types of cracks Haven wanted to be told about – ie any structural cracks. And whilst it gave an indication of minor cracks it would not want to know about – in render or plaster – it was specific in that respect. "Render and plaster" were not given as merely examples of materials within which cracks can be discounted, rather the exception for 'minor cracks' was limited to those affecting "render and plaster only".

Was Mr B's answer correct and did he take reasonable care?

Mr B said 'no', the house had not ever had cracks on external walls. The house survey suggests that was not the case for the main house – where it identified previous repairs. But, most importantly it identifies current cracking to the brickwork of the porch where the porch

joins the house. The report explains the gaps are wider on one side than the other, with the widest gap being 5mm at its widest point, with those cracks evident internally, which was indicative of the porch rotating away from the house. Based on that detail, I think Mr B's answer was incorrect.

In terms of reasonable care, I've considered whether Mr B reasonably dismissed the porch cracking as not structural and only an issue of 'mortar shrinkage'. I'm not persuaded that dismissal was reasonable. As I noted above, the explanation Haven provided was specific in respect of any 'minor cracks' it did not want to be told about. The term 'mortar shrinkage' was not one of the two instances given. And nor do I think Mr B's view on the porch cracks being 'mortar shrinkage' was a reasonable assumption for him to draw having had sight of the home survey. Not with the home survey talking about the porch as a whole moving away from the house and possibly needing restraint. The home survey did not suggest the cracks had just been caused by mortar shrinking. I think a reasonable interpretation of the home survey was that the porch had some structural cracks.

The home survey did not use the word subsidence. But Mr B was not asked to identify 'subsidence cracks'. Just structural ones. Given the detail available to him, I think Mr B didn't take reasonable care when he gave an incorrect answer to Haven's question.

Has Haven shown what it would have done?

Haven's underwriter has said that if the correct answer had been given, further enquiries would have been undertaken, with cover for subsidence withheld. It hasn't been clear about what would have happened once those enquiries concluded. But I bear in mind it would be unusual for an insurer to want to take on liability where it's likely active movement is occurring at a property. I also bear in mind that any enquiries might have taken some time, and Mr B made his claim within only a few months of the policy starting. So I'm not convinced that, even if, having completed enquiries Haven would have been minded to re-introduce cover for subsidence (which, as I say, I think is unlikely), that would have happened before the claim was made.

Qualifying misrepresentation

So I think Mr B did make a qualifying misrepresentation to Haven regarding cracks at his home. I'm satisfied that the incorrect answer Mr B gave caused Haven to be on cover for subsidence when it otherwise wouldn't have been. CIDRA, in this type of situation allows the insurer to 'wind back the clock', effectively resetting things to how they should have been had reasonable care been taken to give a correct answer.

The effect on Mr B's claim

I'm satisfied that Haven, if it had been told "yes" there had been cracks, would have offered a policy but without subsidence cover. I'm satisfied that would likely still have been the case when Mr B made his claim just a few months after the policy started. All of which means that, unfortunately for Mr B, Haven can reasonably decline his claim. As such I can't reasonably require Haven to consider Mr B's claim.

Claim handling

I think Haven accepts its claim handling here was poor, it's identified several months of delay and poor communication. What it hasn't noted is that it required Mr B to obtain a report to identify the cause of damage of the reported cracking. In situations like this, this Service usually expects the insurer to undertake those initial enquiries. I've seen nothing here which makes me think it was fair for Haven to pass that over to Mr B to do in the way it did here.

However, in the circumstances, I think Mr B would always have been left in the position of him ultimately not having cover for this damage. So I think he would always likely have needed to obtain his own report at some stage. As such I can't reasonably blame Haven for the upset caused to or costs incurred by Mr B in obtaining the report. Similarly for any quotes for repair.

I do think though that this whole matter took far too long to progress to the point of Haven's decline. I think the decline would have come a lot sooner if Haven had engaged much sooner (rather than sending Mr B away to get his own report). I think Haven's surveyor would likely have gone out and reported back relatively quickly after the claim was notified in September 2022, with enquires flowing from there. Enquiries which required Mr B to provide his home survey, and underwriters to consider what would otherwise have happened, would always have taken some time. But I've seen nothing which makes me think this claim should have taken longer than a maximum of five months to progress to a point of it being reasonably declined. I understand Mr B's frustration then when it took ten months for that decision to be reached. I appreciate the additional frustration he was caused by the prolonged process and the poor communication which occurred throughout.

Having taken everything into account I'm satisfied that £400 compensation is fairly and reasonably due. Making a claim, particularly one which is later declined, will often result in some distress being suffered and some inconvenience being caused. But here the delays and poor communication caused Mr B additional distress and inconvenience. My award allows for the upset caused occurring over several months longer than it should have done, as well as for that caused by poor communication throughout."

Haven said it agreed to my provisional decision. Mr B did not reply.

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.

I note Haven has agreed and Mr B did not reply. As I've received no objections to my provisional decision, I've no need to either comment further on what I said or make any revisions. As such, my provisional findings are now those of this, my final decision.

Putting things right

I require Haven to pay Mr B £400 compensation.

My final decision

I uphold this complaint. I require Haven Insurance Company Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 January 2025.

Fiona Robinson
Ombudsman