

The complaint

Ms G is unhappy with how Lloyds Bank General Insurance Limited (Lloyds) has handled a claim for subsidence under her home insurance policy. She says Lloyds unfairly declined part of her subsidence claim. And she doesn't consider the compensation it offered to be reasonable. Any reference to Lloyds includes the actions of its agents.

What happened

The events of this complaint are known to both parties, so I've summarised what's happened.

- Ms G has a home insurance policy which is underwritten by Lloyds. In 2016, Ms G made a claim because she noticed cracks in her property.
- Lloyds initially declined the claim saying the cracks weren't caused by subsidence. So, Ms G instructed her own engineer - who concluded the damage was caused by subsidence.
- Lloyds subsequently accepted the claim having arranged for another engineer to assess the damage and who agreed it was caused by subsidence. It also awarded £750 compensation for the poor service Ms G had received.
- Ms G's property was subsequently monitored for movement. Vegetation in her neighbour's garden was identified as the cause of the subsidence and this led to a tree being cut down and another heavily cut back.
- Having conducted further monitoring, Lloyds deemed Ms G's property stable and said substructure repairs could begin. It produced a schedule of works and offered to cash settle the claim.
- Unhappy, Ms G complained to Lloyds saying: because the vegetation remained, it would likely cause further problems; monitoring showed the cracks were worsening; the cash settlement wasn't fair because it was only the amount Lloyds would have paid its contractors.
- She subsequently brought a complaint to this Service. In May 2020, an Ombudsman decided Lloyds had dealt with the subsidence as monitoring showed the property had stabilised. The Ombudsman said Lloyds' cash settlement was reasonable, and she wasn't persuaded Lloyds needed to cover Ms G's engineer's fees. Nor did she think it was reasonable to consider Lloyds as being at fault for any increase in future premiums.
- In January 2022 – whilst carrying out repairs to the property – Ms G contacted Lloyds to say there was evidence of further damage. She provided photographs of the damage for Lloyds to consider.
- Lloyds said the damage wasn't caused by subsidence and was instead due to mechanical root ingress. It said because the damage wasn't caused by subsidence there wasn't cover under the policy.
- Ms G complained about Lloyds' having not physically visited her property to inspect

the damage.

- Lloyds arranged for an engineer to attend Ms G's property in May 2022. Following the visit, Lloyds maintained its position. But it acknowledged its handling of Ms G's claim since January 2022 could have been better and offered compensation totalling £400.
- Unhappy with its decision to decline her claim, Ms G complained to this Service. She also said: the compensation didn't reflect the difficulties she'd experienced; Lloyds are responsible for devaluing her property since it diagnosed it as having subsidence; she wants the premiums refunded as she's paid for a service she hasn't received; Lloyds wrongly advised her to cut back her neighbour's tree which could have had legal implications for Ms G.
- An Investigator considered it but didn't uphold the complaint. Because Ms G disagreed, the complaint has been passed 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.

Having done so, I'm not upholding it and I'll explain why. But before I do, I need to make it clear this decision is only focussing on events from January 2022 (when Ms G told Lloyds about the damage she'd discovered) to October 2022 - the date Lloyds issued its most recent final response letter. I won't be commenting on any aspects considered by the Ombudsman under Ms G's previous complaint.

I'm aware Ms G had also complained about the cash settlement amount – saying it was too low because it didn't account for the increased cost of building materials and labour following the pandemic, and because value added tax (VAT) had been omitted. Lloyds has since paid the VAT element and an additional sum to reflect the increase costs. As this is no longer in dispute, I won't comment on this further other than to say I will keep in mind the difficulties Ms G said she experienced in obtaining these additional payments.

Cause of damage

The crux of Ms G's complaint is that she considers the damage discovered in January 2022 to be caused by subsidence and therefore, covered under the policy. Furthermore, because Lloyds didn't assess the damage when it was first reported, she considers the engineer's findings to be unreliable.

From what I've seen, Ms G provided Lloyds with photographic evidence of the damage to her property. It considered this and concluded the damage hadn't been caused by subsidence. On the face of it, Lloyds' conclusion doesn't seem unreasonable as whilst some photos show cracking – which may or may not indicate subsidence – Lloyds' engineer has explained:

“I highly doubt the growth of this vegetation would result in pushing over a masonry building, however, in any case, this is not downward subsidence movement and therefore, the policy cannot respond to this.”

“Clay shrinkage subsidence is caused by the moisture extracting influence of vegetation roots on clay soil, which causes the clay to shrink, resulting in downward movement. This mechanical growing action in this area has not caused any subsidence to occur, and as such unfortunately there is no policy cover.”

And when I consider this - in combination with the photos which shows physical root ingress - I consider the engineer's conclusion that the damage appears to be unrelated to subsidence to be reasonable and fair for Lloyds to rely on.

As to whether Lloyds should have sent an engineer earlier on – it's arguable it should have. But I don't think it would have made a difference as ultimately, Miss G hasn't provided timely expert evidence which says the cause of the latest damage is subsidence.

Whilst I understand she considers her surveyor's report from 2016 to be sufficient evidence of this, this report pre-dates the latest damage by six years. Without expert evidence from the time, which confirms the cause of the latest damage to be subsidence, I don't think it's reasonable to rely on findings from 2016 to say the later damage was caused by subsidence. If Ms G can provide contemporaneous expert evidence which says the damage was caused by subsidence, I'd expect Lloyds to consider this.

Ms G is also unhappy Lloyds sent its own engineers to reassess the damage in May 2022 as opposed to instructing an independent one – and so, she thinks the engineer's findings are bias and shouldn't be relied upon.

With regards to whether Lloyds ought to have appointed an independent engineer to assess the damage, I'm not persuaded this was necessary at the stage Ms G's claim was at. I say this because a reasonable next step – after reviewing the photographs – would be for Lloyds' engineer to physically attend themselves. It's important to keep in mind that whilst Ms G considers the damage to be connected to the first claim – where subsidence was identified – Lloyds' position is that the damage is distinct from this, and so it doesn't necessarily follow that an independent survey should be carried out.

I also haven't been provided with evidence which persuades me Lloyds' engineer's report shouldn't be relied upon. So, having considered everything, I'm not persuaded there's sufficient evidence to show the damage in question is as a result of subsidence – and it follows that I consider Lloyds' decision to decline the claim to be reasonable.

Refund of premiums

Ms G says Lloyds should refund the premiums she's paid since first logging a claim in 2016 – her reason being that it hasn't provided a service she's paid for. Whilst I appreciate Ms G might be frustrated with Lloyds' decision to decline her most recent claim for damage, insurance policies aren't designed to cover every eventuality and risk, and so, an insurer's decision to decline a claim isn't reason alone for refunding premiums.

In any event, Ms G has benefited from the policy as her initial claim for subsidence was covered. A refund of premiums would lead to Ms G benefiting twice from the policy – which would lead to an unfair result. And so, I won't be asking Lloyds to refund the premiums in this instance.

Compensation

I can, however, consider Ms G's concerns about the lack of service she's received from Lloyds when determining whether the £400 compensation it's paid is fair and reasonable in the circumstances.

It's not in dispute that Lloyds hasn't acted as promptly as it ought to have from January 2022. I note Ms G has had to initiate much of the conversation between the two parties to

progress her claim and seek clarification on Lloyd's position. Understandably, this has been a stressful time for Ms G and having to chase for updates no doubt compounded this.

It seems Ms G would like to be compensated for the time it took Lloyds to visit her property having been notified in January 2022 of the further damage. Having looked at events during this time, it appears Lloyds didn't consider it necessary to visit Ms G's home to assess the damage as she'd provided photographs which it was satisfied enabled it to assess the damage. There's clearly a difference of opinion between the parties as to whether this was a reasonable approach. I've explained above why I'm not persuaded Lloyds' approach was unreasonable. It did subsequently visit Ms G's home after she expressed her dissatisfaction with its decision to decline her claim, which I consider to be fair.

Ms G says Lloyds incorrectly advised *her* to cut back her neighbour's vegetation to prevent future problems. She said this could have had negative legal repercussions for her. Lloyds has acknowledged it could have been clearer with its advice and has apologised – which is what I'd expect it to do. It's since confirmed the onus to maintain the vegetation is on Ms G's neighbour. Whilst I appreciate Ms G was upset about being given misinformation, I must keep in mind that Lloyds clarified things and the repercussions she was concerned about, ultimately, never materialised. So, I consider Lloyds' mistake to have had minimal impact.

Ms G considers Lloyds' declination of the most recent damage to mean there was never subsidence in the first place. She says her property has now been unfairly stigmatised as having had subsidence - which she says will have an adverse impact on its value. But Lloyds haven't said the original damage wasn't caused by subsidence, rather it's said the *latest* damage wasn't caused by subsidence. So, I don't think it's fair to say Lloyds has incorrectly diagnosed Ms G's property as having subsidence and that it's therefore, responsible for any depreciation in value. In any event, both Lloyds and Ms G's engineer said in 2016 the damage was caused by subsidence – which Ms G didn't dispute at the time.

Overall - having considered Lloyds' handling of the claim since January 2022 – I'm satisfied the £400 compensation is fair and reasonable in the circumstances of this complaint and so, I won't be asking Lloyds to pay an additional amount.

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 Ms G to accept or reject my decision before 3 August 2023.

Nicola Beakhust
Ombudsman