

## **The complaint**

Mr D complains that West Bay Insurance Plc (WBI) won't consider new subsidence damage under a previous claim on his home insurance policy.

Reference to WBI includes its agents.

## **What happened**

The background of this complaint is well known to both parties. So, I'll summarise the points I've focused on within my decision.

- Mr D first made a subsidence claim to his garage in 2011, with the cause being attributed to the surrounding vegetation impacting the soil around the garage's foundations.
- WBI's contractors conducted works to remove the necessary vegetation, and the property was monitored for any further movement.
- WBI closed the claim in February 2015 and the garage was deemed stable.
- In September 2022, Mr D reported further cracking to the garage and feels that the earlier repairs hadn't been adequate.
- WBI didn't identify that its works in 2011-2015 were not adequate or had failed; it noted that there was still vegetation present at the property which was the likely cause of the further subsidence. Mr D's own surveyor has also commented on the surrounding vegetation.
- As such, WBI felt it reasonable that a new claim would have to be started and investigations conducted.
- Our investigator agreed with WBI, saying that the garage had stood for nearly eight years without issue, therefore she was satisfied that WBI had conducted an effective and lasting repair and that on the evidence to date the repairs hadn't failed.
- Mr D disagreed with our investigator. In summary saying that the repairs should've lasted much longer than seven to eight years and he questions whether the property was correctly monitored for stability. Therefore, the complaint has been passed to me, an Ombudsman, to make a final 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.

In the 2011 claim, I would have expected WBI to have removed the offending vegetation, monitor the property to confirm stability and conduct the necessary repairs caused by the subsidence. From what I've seen, this was all conducted as part of the 2011 claim.

Had there still been subsidence occurring whilst the monitoring was being done, or after it had finished, I'd have expected the property to show signs to indicate this. However, Mr D

didn't notice anything untoward until nearly eight years later, which is a significant length of time. If the repairs were inadequate, I would've expected signs to materialise that there was still an issue much sooner.

I've carefully considered Mr D's chartered surveyors' comments, of which he has noted that his inspection was limited. The surveyor's professional opinion is that the roots from nearby vegetation are more than likely impacting the garage and this needs to be taken into consideration. The report doesn't comment on *which* vegetation may be the cause and/or whether that ought to have been identified and removed in 2011 beyond saying it was 'reasonably foreseeable' that some vegetation would cause a problem. But it's not clear why the insurer ought to have recognised that in 2011 – for example, the surveyor hasn't commented on any site investigations, tree reports and/or monitoring that may have been conducted. Also, the surveyor says previous works have failed, are likely to have been insufficient in their extent and possibly flawed by design, I've seen no evidence to support these comments. So, I don't find the report very persuasive.

I have looked at the monitoring and the Arborist's reports from the 2011 claim. I've seen there were ten types of vegetation identified that was affecting the garage in 2011 and these were all removed, and the monitoring results showed significant improvement in the ground recovery before the repair works were conducted.

Other vegetation in close proximity to the garage is certainly going to be a future risk to it but it's not the responsibility of an insurer to future proof a property against future risk of subsidence occurring. In this case I would've expected WBI to deal with the live roots identified that were undermining the garage in 2011 and complete management works or remove the implicated vegetation to stabilise the structure and from what I've seen that is what occurred in 2011 claim.

So, in summary given the length of time that's passed, I'm not persuaded that the issue Mr D has recently reported can be linked to the same subsidence claim in 2011. I only think it would be a continuation if:

- The repairs were inadequate
- The building hadn't been stabilised
- It was otherwise the same underlying problem continuing

But the available evidence doesn't persuade me any of those things has happened. So, as it stands, it is reasonable for WBI to treat it as a new claim. If when further investigations take place, it is found the repairs have failed or were inadequate then I would expect WBI to reconsider its position.

I appreciate that a new claim will most likely have implications regarding increased premiums and loss of a no claim's bonus. However, based on the evidence I have seen I don't consider it unreasonable that WBI treat this as a new claim, therefore any impact of a new claim would have to be reviewed by Mr D and raised as a further complaint if necessary to WBI. If Mr D is unhappy with its response to that complaint, he can refer it to our service if needed.

**My final decision**

For the reasons given above, I don't uphold this complaint.

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

Angela Casey  
**Ombudsman**