DRN-4960227

The complaint

Ms C complains about the way Highway Insurance Company Limited ("HICL") handled a claim she made on her home insurance policy for damage caused by subsidence.

What happened

Ms C has had a subsidence claim ongoing with HICL for a number of years. Unhappy with how HICL has handled things, Ms C has made complaints which she's then referred to the Financial Ombudsman Service in February and July 2023. Those complaints were resolved by an Investigator at this service. Across the two complaints he recommended HICL pay £2,000 compensation for service issues. And he said in his recommendations on the July 2023 complaint that Ms C should be able to attend the property to inspect the works carried out, given the schedule of works (SOW) hadn't been shared with her before repairs started.

Ms C undertook that visit to the property in January 2024. As a result, she raised a further complaint with HICL and on 28 March 2024 she received a letter from it with referral rights to this service. HICL said whilst it was considering her further complaint, it hadn't finished its review, but given the time limit rules, Ms C was entitled to refer her complaint to this service. It did say it was trying to organise a site visit to inspect repairs and discuss concerns. And around the same time as issuing this letter, HICL said it would only pay for alternative accommodation (AA) until 7 May 2024 as it considered the property was habitable with the insured works complete.

Following Ms C's referral to this Service, HICL said a joint visit was taking place between it and Ms C's engineer. Ms C provided her engineer's comments on the meeting on 14 May 2024, he maintained – as he'd previously recommended – the property should be underpinned. HICL said it didn't agree the property was still moving but it could carry out a period of monitoring to resolve any concerns around this.

Our Investigator said, as part of this complaint, he'd consider issues from November 2023, when the previous complaint was concluded, until 11 July 2024 when he issued his recommendations.

In his recommendations, our Investigator said HICL hadn't communicated well with Ms C in relation to the claim. However, he thought HICL had been reasonable in saying the property was habitable and so AA was no longer needed beyond May 2024. To resolve the complaint our Investigator recommended HICL pay a further £1,000 compensation for the unnecessary distress and inconvenience it had caused Ms C. But he didn't think he could recommend that HICL underpin the property. He thought HICL's suggestion to carry out a period of monitoring was reasonable to establish the stability of the property.

HICL didn't provide a response to the Investigator's outcome. Ms C didn't accept it. She said HICL were trying to offer the monitoring instead of appointing their own experts to counter what hers had said about the property moving. She said all of this, as well as HICL's refusal to issue a guarantee for the works, means her house isn't saleable for a value that would allow her to settle her mortgage.

Ms C asked for the complaint to be referred for a final decision, so 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.

Dispute as to the works needed on Ms C's property

Central to Ms C's complaint is that HICL haven't shown the property to be stable. HICL considers the property is stable as any further movement would show in new cracks opening on the property, which it didn't think had happened since the mitigation works and redecoration had taken place.

This Service doesn't decide how claims should be settled, so we rely on reports carried out by experts. Where there is a dispute between experts as to how to resolve matters, it is the role of this Service to decide what evidence we're most persuaded by.

I've reviewed the letter from Ms C's structural consultant, B in January 2024. In relation to movement, it says there is a gap noted of 15mm between the skirting board and the floor. B says this hasn't been observed in its previous visits (in 2022 and 2023) and so concludes this *"appears to be recent movement".* B notes there are no cracks in the property but says this is likely due to the fact it's only been recently decorated. It concludes *"what is clear is that movement of the property is ongoing".* It reiterated its previous stance that the property needs to be underpinned.

HICL's response, in relation to the floor, was that the gap between the flooring and skirting board has only become visible since the carpet that had been there was removed. It said it wasn't, therefore, evidence of progressive movement.

Following the joint visit in May 2024, B issued these further findings:

"In the absence of any evidence that movement has ceased and with an abundance of evidence that movement has occurred, I am unable to say with certainty that the movement in the house has been arrested. The onus is not on us (or you) to prove that the house should be underpinned, but rather on your insurer to prove that it does not need to be. Their position is based on anecdotal evidence and not evidential proof."

It seems to me that B is making separate findings here, he considers it likely the property is still moving, he also considers it needs to be underpinned. I consider that these are separate things, so I've reviewed them in turn.

Having reviewed what I've briefly set out above, I consider it's possible the property is still moving, based on the floor noting to have dropped. But it is also possible that the drop happened before the mitigation works, and as HICL says, it was simply never noticed because of the presence of the carpet. However, I'm persuaded based on what I've read that the best way to determine if the property is still moving is to monitor it, so I think HICL made a reasonable offer to do so. I note Ms C's point that monitoring should have been done years ago, but as this has already been considered as part of an earlier complaint this service resolved, I'm not going to reconsider previous findings made on this.

It seems to me that irrespective of whether its moving or not, B considers it needs to be underpinned. His argument for that is:

"Underpinning is a recognised method widely adopted of futureproofing a structure that has suffered from subsidence. Underpinning is not the only remedy and is often utilised alongside other repairs and preventative measures (e.g. injection grouting, removing trees, repairing drains, crack stitching and so on)."

This is disputed by HICL as not being needed.

Whilst underpinning might be widely adopted to futureproof a structure, that isn't what Ms C is entitled to under the terms of her home insurance policy. The insurance policy is there to carry out a lasting and effective repair to damage, which returns the property to its previous state. So I don't agree HICL needs to carry out further works to 'futureproof' a property if it can show a lasting and effective repair can be carried out without incurring the costs of underpinning. And unless the property is still moving, it's unlikely the repairs won't be lasting and effective.

I'm not satisfied based on the evidence I've seen on this complaint that underpinning is necessary to carry out a lasting and effective repair, so I'm not going to direct HICL to do so. If Ms C agrees to a period of monitoring and it is found the property is still moving, I'd expect HICL to consider what further mitigation measures were needed, but it isn't my role to direct it on what a suitable repair solution would be, if the property was found to still be suffering from progressive movement. That sort of technical resolution would need to be considered and decided upon following relevant assessment and advice, on the relevant data, including the new monitoring details, from suitably qualified experts.

Ms C says she hasn't been provided with a guarantee for the works carried out on her property, so she cannot sell it for what it is worth. I consider HICL should, once works are completed, issue Ms C with something to confirm this. I think this is generally referred to in the insurance industry as the 'certificate of structural adequacy'. But I don't think HICL has been unreasonable in not providing one as of 11 July 2024, as it seems Ms C disputes that repairs are complete, and that the property is stable.

Alternative accommodation (AA)

Ms C says it was unfair of HICL to stop the alternative accommodation in May 2024, as this was done with various issues remaining with the property, and without even the joint site visit taking place.

I understand Ms C's AA is quite far from her home, as she's supporting a family member living elsewhere. But I don't think its unreasonable for HICL to cease paying for AA if it can show the house is habitable. Habitable doesn't mean the property is free from issues – Ms C has mentioned some snagging issues – a property is generally considered habitable when there are basic necessities, such as washing and cooking facilities, available. I'm satisfied there were no issues with those by the time AA payments were stopped. I can see that due to Ms C's personal circumstances, AA was likely also given for other reasons, but I'm not satisfied, based on everything I've reviewed, that it was unfair of HICL to end the period of AA in May 2024.

Service issues

Whilst I consider HICL was reasonable in ending the AA in May 2024, I'm not satisfied it handled the claim well for the period I'm considering. Ms C wasn't updated as she should have been, and responses to her were either slow or didn't happen at all. With everything she'd experienced previously, and the previous recommendations from this service, this is disappointing to see. I also consider HICL took too long, having received Ms C's concerns in January 2024, to arrange a joint site visit with B, I think this caused Ms C further distress as she was aware the AA was coming to an end.

I also find HICL caused significant unnecessary distress to Ms C during this time in not communicating with her properly. It also seems to have told her landlord it was ending AA payments before it told her, causing a great deal of worry.

I'm in agreement with our Investigator that HICL should pay a further £1,000 compensation for service issues up to 11 July 2024.

My final decision

My final decision is that I direct Highway Insurance Company Limited to:

- Carry out a period of monitoring to determine if Ms C's property is stable.
- Pay Ms C £1,000 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 16 December 2024.

Michelle Henderson
Ombudsman