

The complaint

Mrs H complains about the way Highway Insurance Company Limited has settled a claim on a home buildings insurance policy following a subsidence claim.

What happened

Mrs H made a claim after noticing damage in her home. The claim was made in 2020 and was initially considered as a potential storm damage claim, due to water coming into the property, but investigations indicated there was subsidence. It was suspected the problems were contributed to by work on a neighbour's property. Mrs H obtained her own structural engineer's report.

A previous complaint was made about the way the claim was investigated and dealt with separately. Our investigator recommended that Highway review an engineer's report and put forward proposal for works.

This complaint concerns further steps taken by Highway to deal with the claim since March 2023.

Highway appointed new loss adjusters to deal with the claim following a complaint from Mrs H about the way the claim was being handled. Revised schedules of work were prepared. In its final response to the complaint, Highway said

- This was a complex case where the cause of the damage had not been confirmed for some time, but it had finally been able to confirm the position in October 2023.
- The level of movement recorded was minimal and it was confident the property was now stable.
- There was historic movement and not all the problems were due to an insured risk – in particular, the roof was leaking due to defects or a lack of maintenance. But it had led her to believe this would be covered so offered £25,000 based on the estimated cost to replace the roof. That represented compensation for the distress, inconvenience and loss of expectation due to the incorrect advice provided previously.
- As Mrs H had a preference for a cash settlement, it had made an offer of £35,428.27 for subsidence, £9,052.88 for water damage and £25,000 (as a goodwill gesture) for the roof. The total after deducting the excess was £68,481.15.

Highway paid the settlement into Mrs H's bank account in December 2023 but she wasn't happy with the settlement. She's concerned there is still movement and said the proposed schedules of work are not consistent with the schedule of work originally agreed.

Our investigator's view was that

- It was unlikely the roof damage was caused by subsidence but Highway led Mrs H to believe it would be covered. In view of time that has passed it would be difficult to arrange any further reports but Highway had agreed to pay for the damage.

- The kitchen floor and other floors slope and she didn't think Highway had shown this was not made worse by the subsidence, so these should be covered.
- The property would not be habitable while repairs were being done, so Highway would need to consider alternative accommodation.
- The claim has been handled poorly but Highway had agreed to pay for the roof replacement as compensation, so there was no need for anything further.

Highway didn't agree that the floors should be included or that all of the works would require alternative accommodation to be provided, though it acknowledged that if the floors were included that might be necessary.

Mrs H still had some concerns, including that Highway hadn't done any stabilisation work and about whether all of the roof had been included. She was also concerned about agreeing to the settlement if that prevented her raising further issues and was unhappy that Highway had not offered to renew her policy.

The investigator didn't change her view so, as no agreement had been reached, the complaint was passed to me.

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.

There's a long history to this claim and we have received a lot of information about it. But I'm only considering the actions taken more recently. We were set up to provide an informal alternative dispute resolution service and our role is to provide an impartial review, quickly and with minimal formality. So I won't comment in detail on everything that has been raised but will focus on the key points that are relevant to the outcome I've reached.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly, and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

I'd expect the settlement to put the customer, as far as possible, back in the position they were in before the loss or damage. Where repairs are being done, that means carrying out an effective and lasting repair.

The policy provides cover for subsidence and that's not in dispute. The policy terms allow Highway to choose whether to arrange for repairs to be done or make a payment for the cost of the repairs. Mrs H said she preferred to arrange the repairs herself so Highway made a cash settlement, which was reasonable in the circumstances.

The key issue is whether the settlement paid to Mrs H was enough. She's concerned there is other damage that still needs to be put right.

Our investigator said Highway should also cover the cost of putting right the kitchen and other floors. I agree that's appropriate and will explain why.

Mrs H is unhappy that re-levelling the floors was removed from the schedule of works. Highway has referred to historic issues with the floors and say this is not caused by the subsidence so is not covered.

I've considered what the expert reports say about this. The report Mrs H obtained says there are significant falls to the floors and, while less significant in the kitchen, still noticeable there. It also refers to the leaning of the gable end wall (which Highway agreed to cover) being a likely cause of distortions in the floors.

A report Highway obtained also recommended repairs to the gable end wall and levelling of floors, along with other repairs including the kitchen and a number of other rooms.

It was noted that *"in addition to the above it is evident that a section of the original left gable and a small portion of the left wall of the rear kitchen extension has dropped more recently causing cracking. This is in addition to the outward lean of the gable wall, which appears to correlate with the sloping of the floors to this portion of the property."*

Mrs H says the kitchen, lounge, first left bedroom and back left bedroom are the floors that are attached to the gable end wall and are the floors that are sloping.

There was some sloping in the kitchen floor already present, but on balance I think the evidence is that this has likely been made worse. And based on the expert reports, the other floors were made worse by the subsidence. Highway hasn't provided further evidence to counter this. On that basis, I don't think it was fair to remove the floors from the work being covered.

The evidence about the roof is not entirely clear. An initial schedule of work done in 2021 included this but later advice was that the problems were due to the roof failing over a period of time, due to age or lack of maintenance. It doesn't appear to have been caused by subsidence. But Highway left Mrs H believing for a long time it would be covered. Highway should have been clear about this from the outset. If Highway had been clear this wasn't covered, Mrs H would have been able to address it; instead, it was allowed to continue deteriorating.

This way this was dealt with was poor. However, Highway included the cost of roof repairs as a goodwill gesture, by way of compensation for the poor claims handling. I think that was fair. And given the size of the payment for this I don't think any further payment is needed.

Mrs H has mentioned the roof over the gable end. Highway has confirmed this was included in its settlement.

The policy covers the cost of alternative accommodation, where the property *"cannot be lived in because of an insured event, but only for the time needed to repair your home..."*

Highway said alternative accommodation wasn't needed as the property could be lived in, but has since acknowledged this might be necessary if the floors are included.

Mrs H has two elderly relatives living at the property. It wouldn't be realistic for them to be there due to the extent of the work needed. So Highway should cover the reasonable cost of alternative accommodation while the work is done.

Mrs H has raised concerns about possible further problems, including due to issues with the neighbour's property and with sewage problems. And she's raised concerns about how the level monitoring was carried out. I'm not persuaded the monitoring was unreliable. It's possible there will be further movement at some point in the future and I understand her concern about what might happen. But the policy isn't designed to prevent future issues; Highway's responsibility is to deal with repairs needed due to damage caused by an insured event.

Highway has put the neighbours on notice for any damage caused by their retaining wall and the water company on notice for any damage caused by the sewer. If there are any further problems in future they will need to be dealt with as they arise.

Any issues relating to the renewal of the policy would need to be dealt with separately as a fresh complaint.

Mrs H has recently indicated she would prefer Highway to arrange the repairs. As I've explained, the policy terms allow it to do this or to make a cash payment. Mrs H can discuss with Highway the arrangements for the repairs to be done.

My final decision

I uphold the complaint and direct Highway Insurance Company Limited to

- include the cost of the kitchen floor and levelling the other floors in the schedule of works and cover this
- pay for alternative accommodation while the repairs are done.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 19 September 2024.

Peter Whiteley
Ombudsman