

The complaint

Mrs M complains that HCC International Insurance Company Plc turned down her subsidence claim made under her property insurance policy.

Any reference to HCC includes its agents.

What happened

Mrs M owns a flat within a block of flats. She has property insurance cover with HCC, and the other flat owners each have their own building insurance policies with various insurers. In other words, this isn't a block insurance policy.

After Mrs M noticed cracks in her kitchen, she made a claim under her policy. Initially, HCC turned down the claim as it thought the cracks were due to settlement. HCC later said there was differential movement due to the weight of the building on soft ground and so subsidence hadn't taken place. Unhappy with HCC's decision, Mrs M brought a complaint to this service. She provided evidence that other insurers had accepted subsidence claims made by the other flat owners.

Our investigator looked into things and recommended the complaint be upheld. He didn't think HCC could rely on the policy definition of settlement, and thought the evidence supported there had been subsidence. He therefore recommended HCC reconsider the claim. He also recommended that HCC pay Mrs M £150 compensation for the upset she'd been caused by its decision to turn down her claim.

HCC didn't accept our investigator's findings, and so the matter has been passed to me for a 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.

I've only included a brief summary above of what has happened. HCC has submitted detailed arguments to this service and whilst I've taken these into account, I don't intend to address each point made. That isn't meant as a discourtesy, it merely reflects the informal nature of this service.

The policy provides cover when the property is damaged due to an insured event. One such insured event is subsidence, and this is defined as:

'Downward movement of the ground beneath the buildings where the movement is unconnected with the weight of the building.'

The policy says elsewhere that HCC will not pay for normal settlement or bedding down of new structures. The policy specifically defines settlement as:

'Downward movement as a result of the ground being compressed by the weight of the Buildings within 10 years of construction.'

The difficulty with subsidence and settlement is that both involve downward movement of the ground. This becomes more complicated when subsidence is caused by issues with the soil beneath the building, rather than an external cause. So, this can cause some debate over the actual cause of the downward movement – in other words, whether it's subsidence or settlement.

Mrs M (as well as the seven other affected flat owners) arranged a structural survey to be carried out by a company that I'll call N. The person who carried out the inspection and wrote the subsequent report is a chartered engineer.

N made the following main points which I consider most relevant:

- The property was built in the early 1900s.
- All visible cracking to the building's façade was to the rear of the property.
- To the rear elevation there was pronounced cracking of the side wall, with evidence of historic cracking and repointing. It appeared previous cracks had reopened rather than new cracks forming. The wider cracks have had mortar fall out rather than showing substantial recent movement. Though N thought there had been recent movement showing it was progressive.
- The crack patterns to the rear elevation were variable with vertical, diagonal and horizontal cracking across the wall. A vertical crack increasing in width from top to bottom was noted to the junction of the rear elevation, indicating outward movement of the wall away from the return.
- Based on the crack patterns to the rear elevation, N thought there had been foundation movement at the corner of the property and some lateral movement away from the gable return that could indicate a lack of tying back to this wall.
- The stairwell had evidence of diagonal crack patterns which N concluded were indicative of movement of the wall/foundation in that location.
- Mrs M's property had a pronounced dip in the floor in her kitchen. Cracks were also noted to the ceiling and walls (which tied in with the rear elevation vertical crack openings).
- A CCTV drainage survey was carried out and cracks and damage were noted. Though due to the historic movement and the findings of the trial pits, N didn't think the drainage issues were the cause of the movement to the rear of the property.
- N said the cracking was both current and historic, though mortar falling out of mortar beds gave the perception of more movement than there had been, but it was still an ongoing issue.
- Trial pits showed that some of the nearby properties were founded on fractured rock, whereas Mrs M's property (and the others affected by the damage) were founded on shallow overburden. The trial pits demonstrated soft ground at foundation level extending to a depth greater than 2.5m. Some movement of the buildings above would be expected over time, in contrast to those on the rock, as the soft ground compacts.
- The reason for the cracking and structural distress was the result of stress induced at the corner of the building due to the abrupt change in building footprint and foundation strata from rock to poorer soft materials.
- N thought it likely that further areas of the buildings along the rear elevation had settled over time, but said that distribution of structural stress had occurred and therefore it hadn't manifested in a similar manner to the corner of this property, where there was a basement present.
- Significant works were recommended to prevent further movement.

HCC didn't carry out its own site investigations. Instead, it turned down the claim based on N's report. After Mrs M brought her complaint to this service, HCC provided an opinion from Mr M, who is a chartered surveyor and chartered builder. Mr M made the following main points, based on N's report and our investigator's findings:

- Subsidence isn't the effective cause of the movement, and settlement as defined by the policy doesn't apply either.
- N's report mentioned that wider cracks were long-standing and had attributed these to the failure of previous repairs rather than foundation movement. This raises questions about pre-inception damage, non-disclosure and perhaps gradually operating causes.
- Whilst N recorded the crack damage, there was no reference to sloping floors. This made him question the true cause of the cracks and whether or not a subsidence claim could be validated.
- N referred to lateral movement and a lack of lateral tying back.
- He was disappointed not to see the soil test results, as he thought these would affect the interpretation of what the cause of movement may be.
- HCC's reason for declining liability was because the damage was settlement and not subsidence, which he thought was correct.
- The policy definition of settlement isn't entirely correct because settlement can occur over the lifetime of a building.
- Subsidence is not load dependent in most cases.
- In the absence of an identifiable external influence, it would not be subsidence but rather settlement.
- If ground isn't suitable to be built on, that isn't subsidence but rather defective or faulty design.
- There has been differential movement, and the cause of that is settlement. Though as this happened more than ten years after the property was built, settlement as defined in the policy wouldn't apply. So the claim can't be declined because the movement is settlement but also can't be validated because settlement isn't an insured peril. The subsidence definition is movement that occurs unrelated to the weight of the building, but because the movement is associated with the weight of the building, liability should be declined.
- Settlement is not relevant here because it isn't defined in a way in the policy that can be applied to the circumstances in terms of liability.
- It isn't subsidence because the foundation has been forced downward by the weight of the building and there's not movement of the ground away from the foundation removing support.

I've carefully considered the evidence from both N and Mr M and have set out my conclusions below.

Although subsidence and settlement both involve downward movement of the ground, *subsidence* occurs when the foundations of a property move downwards. And subsidence is usually caused by an issue other than simply the weight of the building.

Here, N's view is that there has been foundation movement, and that the cracks and structural issues have happened because the property was partly built on soft ground which has compacted. I think it's fair to say the weight of the building is contributing to this, and that because the subsoil is compacting, it's reasonable to conclude there is downwards movement of the ground beneath the property.

I acknowledge HCC's point that the policy definition of subsidence says the movement would need to be unconnected with the weight of the building. However, it seems to me it would be unfair for HCC to refuse the claim because of this. I say that because I don't think there would be an example of subsidence from any cause where the weight of the building above doesn't contribute towards the movement of the ground beneath it.

Ultimately, the ground beneath the property is moving which has affected the foundations and therefore the property itself. So, I'm satisfied that it's reasonable to say there is subsidence and therefore the claim should be accepted. Whilst the policy excludes settlement, this is only in the first ten years of construction, and this property was built over 100 years ago.

Mr M has referred to a decision issued by one of my ombudsman colleagues where they concluded that a subsidence claim wasn't payable. Though I note in that case the insurer had relied upon a policy exclusion for compaction of infill, so I don't think it's relevant here.

I've noted Mr M's concerns that he hadn't seen the soil test results, but HCC had the opportunity to carry out its own investigations but chose not to do so.

Whilst I appreciate N observed that some of the damage was thought to be long-standing, N said the cracking was both current and historic. Although Mr M has made the point there were questions about pre-inception damage, non-disclosure and perhaps gradually operating causes, HCC had previously acknowledged that Mrs M hadn't been aware of any previous movement when she took out the policy. And as our investigator has pointed out, HCC didn't turn down the claim for any of these reasons.

Our investigator explained that the usual approach of this service is that when movement is ongoing, we think that movement needs to be addressed, and an insurer should then repair any damage that has happened since the policy started (assuming an insurer can distinguish between this and historic damage that happened before the policy was taken out). But that will be for HCC to consider further when the time comes for superstructure repairs to take place.

N started crack monitoring to the property in February 2024. Mrs M has provided us with the results of the monitoring relating to her flat. There were two monitors – one to the east gable end and one in the kitchen. The results showed that between February 2024 and April 2025 there was movement of 1mm to 5mm at the gable end, and movement of 1.5mm to 4mm in the kitchen. This supports N's initial view that the cracking is ongoing.

We shared these results with HCC, and Mr M has raised concerns with the type of monitor that was used by N. Though as N is represented by a chartered engineer, I'm satisfied that he is suitably qualified to decide what type of monitor to use.

Mr M says the monitoring results show a pattern of movement that's consistent with poor lateral restraint and possible foundation movement as a function of inadequate bearing capacity. He says that the monitoring data shows that cracks are moving horizontally rather than vertically, and this supports there is lateral movement rather than anything else.

Though I see Mr M acknowledges that the monitor used in the kitchen is on the ceiling and therefore can't measure vertical movement. It's also the case that N described vertical and diagonal cracking to the building, and as I understand it, diagonal cracking is typically a visible sign of subsidence.

N's report acknowledged there may be some lateral movement away from the gable return. Though given N also thought there had been foundation movement in that area, I think it would be difficult to distinguish between this and movement due to poor lateral restraint.

I accept that the monitoring data only shows a partial picture. We only have the data from two monitors and no commentary from N. However, it's also the case that out of the eight affected flats, I understand HCC is the only insurer to conclude there was no subsidence. As the other insurers have accepted there is subsidence, the monitoring carried out by N has presumably taken place to show that movement is ongoing. And as I've said, HCC had the opportunity to carry out its own investigations, including monitoring, but decided not to do so.

As the other insurers have accepted liability, HCC will need to liaise with those insurers to arrange who will take the lead on dealing with the subsidence.

Although the subsidence itself was always going to be addressed as other insurers have accepted the claims made by the other flat owners, I agree with our investigator that Mrs M has been caused some unnecessary worry due to HCC's decision to turn down her claim. I require HCC to pay her £150 compensation for this.

My final decision

My final decision is that I uphold this complaint. I require HCC International Insurance Company Plc to deal with the subsidence claim in line with the remaining policy terms.

I also require HCC to pay Mrs M £150 compensation*.

*HCC must pay the compensation within 28 days of the date on which we tell it Mrs M accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 11 June 2025.

Chantelle Hurn-Ryan
Ombudsman