

The complaint

Mr B and Mrs B are unhappy Casualty & General Insurance Company (Europe) Ltd (C&G) declined a claim they made under their Structural Warranty Policy.

Any references to C&G include its agents.

What happened

Mr B and Mrs B purchased a flat in a converted building comprised of 10 leasehold flats (the building). They moved in during 2018, not long after the building had been converted into flats. Shortly after, concerns were raised about the cementing of the stonework undertaken during the conversion. The property manager said they would arrange for a survey to be carried out and quotes for repairs would be obtained. Mrs B says the residents didn't hear very much else in relation to this, despite various attempts to gain an update.

In August 2023 Mrs B contacted the property manager. She expressed concern that a piece of stonework had fallen from the building. Concerns about the stonework had initially been raised in 2021, but the residents weren't clear what, if any, action had been taken because of these concerns. In September 2023, the residents were passed a service charge invoice for repairs to the stonework that had been identified as being necessary following a survey – this appears to have been arranged by the property manager. In addition to a survey being arranged, a claim under the warranty had been raised with C&G as well.

In February 2024, C&G sent a surveyor to inspect the property, but by this point the repairs had already been carried out. The surveyor concluded the damage reported wasn't structural but instead had occurred because of wear and tear. The claim was declined but Mrs B was unhappy with this decision and complained.

C&G issued what it said was its final response in December 2024. This said the claim had been declined on the basis the damage to the stonework had occurred because of wear and tear and a lack of maintenance. C&G said there wasn't any evidence to support the conclusion the works undertaken by the developers were the cause of the damage. However, C&G said there had been delays in providing its answer and offered £200 compensation in respect of this.

Mr B and Mrs B remained unhappy so referred their concerns to the Financial Ombudsman Service. They were considered by one of our investigators who said she didn't think C&G had acted unfairly when declining the claim. This was because there wasn't any evidence to show the property had experienced major damage as a result of a defect, which was required for cover to engage under the warranty. However, the investigator considered C&G's offer of compensation fair.

Mrs B disagreed with the investigator's conclusions. She said had C&G had inspected the property a long time after they raised their concerns, by which time the repairs had been carried out. And there hadn't been consideration of any other issues raised such as the damp and mould mentioned in some flats and uneven floors. As our investigator wasn't minded to reach a different conclusion, this matter has been passed 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.

First, I want to set out that I'm not intending to comment in detail on every argument or piece of evidence provided. Instead, I'll focus my findings on what I consider to be the key evidence which is material to reaching a fair and reasonable decision. This isn't meant as a discourtesy to either side, rather it reflects the informal nature of the Financial Ombudsman Service and my role within it. But I want to reassure both sides that I've carefully considered everything they've said and provided, even if I haven't directly commented on it.

However, having considered the available information, I've reached the same conclusion as our investigator and for largely the same reasons.

The structural warranty began in October 2017 and, like most insurance policies, didn't set out to provide cover for any and all damage to the building. The terms say the warranty will provide cover under the structural defects section where the building has been the subject of major damage. The warranty terms go on to define major damage as:

“Any of the following which is discovered and notified to the Insurer during the Structural Damage and Contamination Insurance Period:

- Destruction of or physical damage to a load bearing element of the Residential Property caused by a defect in the design, workmanship, material or components of the Structure which adversely affects the structural stability or compromises the effectiveness or the waterproofing elements of the Waterproofing Envelope; or*
- A condition requiring immediate remedial action to prevent damage to a load bearing element of the Residential Property which adversely affects the structural stability of the Residential Property or compromises the effectiveness of the waterproofing elements of the Waterproofing Envelope; or*
- A condition requiring immediate remedial action to prevent imminent danger to the health and safety of the occupants caused by a defect in the design, workmanship, material, components of the Structure or failure of the Developer to comply with Building Regulations in respect of chimneys and flues; which is discovered and notified to the Insurer during the Structural Damage and Contamination Insurance Period.”*

A defect is defined as:

“A failure to comply with a functional requirement in the CRL Technical Requirements in respect of the Construction Works which will or is likely to cause damage to the Residential Property.”

So, as our investigator set out in her conclusions, for the warranty to provide cover it needed to be shown that major damage had been caused by a defect for the period covered by the warranty. For completeness, the damage has been reported during the Structural Damage and Contamination Insurance Period.

I've considered the surveyor report provided by Mr B and Mrs B – this is the most detailed of all expert reports provided. Though I note this report was instructed in relation to the intended sale of another flat in the building. The findings of this report identified *“a significant amount of dilapidation to the stonework was noted. We consider this to be due to the use of*

cementitious pointing.” The recommendation was to cut out the pointing and repoint using a lime-based mixture. Mrs B says this cementitious pointing ought to have been identified by the developer when the property was surveyed or the conversion works were being carried out and put right at the time, but this didn’t happen.

I’ve also considered the findings of the surveyor who said the cause of the damage was wear and tear. Essentially, C&G considered the damage caused by the cementitious pointing was already in place before the development of the building began and continued to deteriorate because of a lack of maintenance.

The exclusion C&G relied on to decline the claim is ‘defects in existing works’:

“4. Defects in existing works

Loss or damage due to or arising out of any defect in the design, workmanship, materials or components of the Residential Property that was installed or constructed prior to the Construction Works (that are the subject of this insurance).”

Having considered the evidence provided, I’m not persuaded that C&G unfairly declined the claim. I accept there is damage to the stonework, and that the residents have had to pay to put this right. In addition to this, some of the flats were noted to be damp and had mould. But I can only consider damage to the flat owned by Mr B and Mrs B in this decision. And if needs be, the owner of another flat impacted by damp and mould could bring their own complaint.

However, neither report made available during this investigation concluded that the building has experienced major damage caused by a defect as defined by the warranty. I also haven’t seen any evidence to show that the use of cementitious pointing is a breach of the technical requirements, though I don’t dispute it’s recognised this wasn’t the most appropriate method of pointing for the building involved in this claim. However, this doesn’t, in itself, mean the pointing was a defect. And I’d note that the information available on the file indicates much of the cementitious pointing predated the start date of this warranty, so wasn’t part of the conversion works – which is what the warranty was taken out to provide cover for.

I appreciate this matter has been difficult for Mr B and Mrs B. It’s not in dispute there was a problem with the cement mortar used before the conversion was carried out. And this matter has been impactful. However, for the reasons I’ve set out, I’m satisfied C&G has clearly shown it can fairly rely on the above exclusion when declining the claim, and I’m also not persuaded it’s been shown major damage was caused by a defect. So, it follows, I’m not going to require C&G to take any further action to put things right.

It’s not in dispute that C&G could have done better in its handling of the claim. The delay in sending out a surveyor was avoidable and it’s inevitable that this delay caused Mr B and Mrs B distress and inconvenience at a time when they were already worried about the condition of their building. However, I’m satisfied the offer of £200 is fair compensation for this and I’m not going to require C&G to increase this payment.

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 Mr B and Mrs B to accept or reject my decision before 7 October 2025.

Emma Hawkins

Ombudsman