

## **The complaint**

Mr and Mrs B, and Mrs G, complain that INTACT INSURANCE UK LIMITED (IIUK) declined a claim made under their home insurance policy.

Where I've referred to IIUK throughout, this includes where they were trading under a different name during the claim and also includes where any agents were acting on their behalf.

## **What happened**

Mr and Mrs B, and Mrs G, are joint policyholders of a buildings and contents insurance policy underwritten by IIUK. In October 2022 a claim was made to IIUK for cracking to the insured property.

Investigations and monitoring were carried out by IIUK, but the claim was ultimately declined in July 2024. IIUK said there was clay shrinkage subsidence and the extension that had been added (prior to Mr and Mrs B, and Mrs G owning the property) had defective foundations which had resulted in the damage being caused. And IIUK relied on an exclusion in the policy for faulty workmanship.

Mr and Mrs B, and Mrs G, complained to IIUK about the claim decision and provided a copy of a certificate issued by the local authority when the extension was added, which they say shows it was built in line with regulations at the time. However, IIUK maintained the claim decline decision. But IIUK recognised a claim decision could have been given sooner, communication had been poor, and paid £1,000 compensation.

As Mr and Mrs B, and Mrs G, remained unhappy, they approached the Financial Ombudsman Service.

One of our investigators looked into things and upheld the complaint. She said IIUK had unfairly relied on NHBC guidelines which weren't relevant, and the extension had been signed off and a completion certificate had been issued, so she said it was unfair to apply the faulty workmanship exclusion. Therefore, she said IIUK should settle the claim. The investigator also said IIUK should reimburse the £3,800 Mr and Mrs B, and Mrs G, had paid to have trees removed and to add 8% simple interest.

IIUK didn't agree so the case was passed to me to decide.

I was minded to reach a different outcome to our investigator. So, I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

### **What I provisionally decided – and why**

In my provisional decision, I said:

*“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.*

*Having done so, I’m minded to reach a different outcome to our investigator. So, I’m issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.*

*IIUK has declined the claim on the basis that they say there is clay shrinkage subsidence being caused by nearby trees, and the extension foundations didn’t take into account the trees when being built. IIUK says that in line with the relevant standards at the time, the foundations should’ve been 2,160mm deep but they were only 1,200mm, and if they had of been the required depth, the subsidence wouldn’t have occurred. So IIUK say the foundations were defective and consequently the policy exclusion for faulty workmanship applies.*

*Our investigator said that IIUK wasn’t acting fairly by relying on that exclusion, as she said IIUK had relied on irrelevant guidelines, and a completion certificate had been issued for the extension. So she said IIUK should settle the claim.*

*However, I’m not minded to agree with either our investigator or IIUK’s position at this stage. And I think there is more IIUK needs to do before considering whether the claim should be covered, or if that exclusion applies or not. I’ll explain why.*

*IIUK has said that subsidence is being caused by clay shrinkage, and due to the extension foundations being inadequate and not in line with relevant standards when the extension was built. However, the starting consideration for this would need to be the lack of depth of the foundations being material to the damage that is occurring. That is, if they were deeper, the damage wouldn’t have occurred. And if that was then shown to be the case, I’d then go on to consider whether they were in line with regulations at the time, and then if it was fair and reasonable in all the circumstances to then apply the faulty workmanship exclusion.*

*However, at this stage, I don’t think IIUK has done enough to conclude that the subsidence is actually being caused by clay shrinkage subsidence. I say this because whilst movement has been determined, and cracks are visible, the site investigations aren’t persuasive in demonstrating this is the cause of the movement and cracking. It seems that this was a view shared by experts internally within one area of IIUK in September 2024, who said further investigations were required:*

*“Looking at the SI (site investigation) I’m far from convinced that the damage has been caused by clay shrinkage either. The ground just doesn’t have the stiffness that I would expect...”*

And:

*"...neither (name) or I are convinced that the damage has been caused by clay shrinkage as the site investigation doesn't support that conclusion. We have agreed that we should monitor the property (crack and level) for a minimum of 12 months and if there is any evidence of significant cyclical movement, undertake another site investigation at the back end of summer 2025."*

*It's unclear why that position then changed a few days later, the agreed monitoring didn't go ahead, the claim decline decision was maintained and IIUK issued the final response to the complaint, as none of the evidence or documents that IIUK has provided support that sudden change. I recognise there are some trees within proximity to the property. But in my view (and that of some experts at IIUK as outlined), the evidence doesn't support that these are causing clay shrinkage subsidence, or by extension, that the allegedly defective foundations are material to the damage being caused.*

*The arborist report completed outlines:*

*"Opinion and recommendations are made on the understanding that (name of agent appointed by IIUK) are satisfied that the current building movement and associated damage is the result of clay shrinkage subsidence and that other possible causal factors have been discounted."*

*So, the arborist reported that it was likely nearby trees/roots causing it, on the basis IIUK had already ruled out any other cause, but the investigations into the cause, including trial holes, didn't actually take place until several months later. And when it did, there was a root found at a depth of 1.2m, but the root analysis determined the root found was dead. A dead root being present doesn't persuade me that it's been shown the ground in that area was moving due to the presence of those trees/roots, or that the alleged lack of foundation depth was material to the damage occurring.*

*Furthermore, the investigations that were carried out were limited, and only one of the two planned trial holes was completed:*

*"Trial Hole 1*

*In TH1, water was encountered at 1.5m, the footing was revealed and soil and root samples were taken*

*Trial Hole 2*

*Our engineer began to excavate in the proposed location for TH2, a large amount of concrete within the ground caused the dig to be difficult. However the footing was found to project beyond the size of our trial hole, the ACO channel was also found to run in this location, water was encountered within out (sic) excavation.*

*A quote has been included for (name of agent appointed by IIUK) to return to carry out a larger trial pit with 2 engineers to attempt to break through the concrete, we will look to replace a section of the ACO channel to complete this trial pit."*

*The second trial hole further investigation wasn't then carried out. And the investigation report also said:*

*“Our engineer carried out a water mains listening test, this did not reveal a potential escape of water however the ESV was noted to be filled with water. The client may therefore wish for (name of agent appointed by IIUK) to return with one of our specialist water mains engineers to carry out a water mains investigation, a quote for this may be provided upon request.”*

*But this wasn't carried out by IIUK either.*

*The fact that there was water detected in the trial hole at 1.5m, and the ESV (a drain) was filled with water, could indicate another cause of the ground movement which isn't due to clay shrinkage, but that wasn't investigated further by IIUK.*

*In a phone call with IIUK, the notes indicate Mr and Mrs B, and Mrs G, also suggested the cracks could have occurred due to other causes too:*

*“The 2 main walls have vertical cracks are wider at the top and done (sic) reach the base. Some other are lesser and horizontal The brickwork seems there is lateral movement. There is a natural pond 10m away It is an old shell and there is where the extension meets the main property. There is also an old chimney on that area on the roof. There may be an RSJ which has heated up as sometimes the log fire (sic) gets lit from time to time”*

*But this also doesn't appear to have been considered or explored further by IIUK either.*

*So, at this stage, based on the available evidence, I'm not persuaded IIUK has determined what is causing the cracking and/or subsidence or that it is actually due to clay shrinkage subsidence, or by extension due to defective foundations. But I'm also not satisfied at this stage that it's been shown that Mr and Mrs B, and Mrs G, have a valid claim that should be covered either.*

*Therefore, unless anything changes as a result of the responses to my provisional decision, I'll be directing IIUK to carry out further investigations into the cause of the cracking. I don't intend on directing IIUK how exactly they should do this, but I'd expect them to carry out thorough investigations to determine the cause and obtain evidence to support the conclusions. Once conclusions have been reached, IIUK will then need to consider whether the claim is covered under the terms of the policy, or an exclusion applies. And after this, if Mr and Mrs B, and Mrs G, are unhappy with the claim decision IIUK reaches based on the new evidence, they'd be free to bring a new complaint to this service.*

*What I will note here though, is that because IIUK said clay shrinkage subsidence was being caused by the trees and defective foundations and then declined the claim (which I don't think was fair - at this stage based on the current evidence), Mr and Mrs B, and Mrs G, have paid £3,800 to have the trees removed to mitigate potential further damage. At this stage, I'm not persuaded this has been shown to be necessary, and if it does, after investigation by IIUK, transpire there is another cause of the cracking/subsidence, then IIUK will need to consider reimbursing this cost to Mr and Mrs B, and Mrs G. But I'm not going to direct that here, as for the reasons outlined, further investigation is required to determine the cause, and after that, Mr and Mrs B, and Mrs G, could bring a new complaint to this service about IIUK's decision, including IIUK's decision whether to reimburse this cost or not based on the new evidence.*

*IIUK has paid Mr and Mrs B, and Mrs G, £1,000 compensation for poor communication and delays in reaching a claim decision. However, given that I don't think IIUK has fairly declined the claim (at this stage), and further investigations are needed (which should have been carried out a year ago when IIUK discussed this internally before changing position a few days later), there is clearly an avoidable delay here. This will prolong matters further and cause additional inconvenience to Mr and Mrs B, and Mrs G on what is a claim that has already been running for several years. So, unless anything changes as a result of the responses to my provisional decision, I'll also be directing IIUK to pay Mr and Mrs B, and Mrs G a further £750 compensation for this, in addition to the £1,000 they've already paid."*

So, I was minded to uphold the complaint and to direct IIUK to carry out further investigations into the cause of the cracking and to pay a further £750 compensation.

### **The responses to my provisional decision**

IIUK responded and said they agreed with the provisional decision and had nothing further to add.

Mr and Mrs B, and Mrs G provided a response to the provisional decision. They said there had been no mention of the weather conditions at the time of the trial holes and the engineer said he would return at a later date and didn't. Mr and Mrs B, and Mrs G also made various comments on what they think might, and might not have, caused the cracking and additional comments on the changes in the cracking. They also said the claim had progressed slowly and they said they didn't understand how an insurer can produce advisory best building practices and override the local authority certification of the foundations.

Mr and Mrs B, and Mrs G also said they thought what I was provisionally intending on directing IIUK to do needed 'tightening and extending'. They suggested the following should be included in the final decision direction so they don't have to come back to the Financial Ombudsman Service in the future:

- If IIUK haven't made a credible case for the cause of subsidence they had no reason to withdraw cover, and it should still be valid.
- IIUK should be given six months to complete a reinvestigation and then either –
  1. Assume validity and repair the damage
  2. Prove the claim isn't valid because of what's been found
  3. If no cause has been found by that point, assume it's valid and repair the damage
- Reimburse the tree removal cost of £3,800 now, with 8% interest as recommended by the investigator
- Provide a named and contactable project manager to communicate and negotiate with them
- Increase the compensation as a total of £1,750 is insufficient

### **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.

Having done so, whilst I appreciate it may come as a disappointment to Mr and Mrs B, and Mrs G, my final decision (and direction) remains the same as my provisional decision, and for the same reasons.

Firstly, I should explain that withdrawing cover doesn't form part of my consideration here, as this complaint point hasn't been addressed by IIUK or a final response issued in relation to that. So, if Mr and Mrs B, and Mrs G are unhappy with their cover being withdrawn, they'd need to raise that with IIUK in the first instance for them to have the opportunity to address this, before referring a new separate complaint to this service if they remain dissatisfied with IIUK's final response.

I also acknowledge Mr and Mrs B, and Mrs G have given additional comments and views on what may or may not have caused the cracking, and what happened when the trial holes were partly carried out. But as I've already outlined in my provisional decision, in order to determine what is actually causing it, as that hasn't been determined (by either party), I'll be directing IIUK to carry out further investigations into the cause of the cracking.

I recognise that Mr and Mrs B, and Mrs G have asked for a time limit to be set for investigations, with specific remedies when that expires depending what is/isn't found, to avoid needing to return to this service in the future. However, I'm afraid that's not something I'm going to direct in my final decision. Whilst I recognise Mr and Mrs B, and Mrs G say they want a six-month time limit to be set, investigations into cracking can take time (and can take longer than six-months), this is because, for example, ground conditions and associated movement can occur at different times of the year. So, I don't think it's reasonable to say IIUK must complete investigations in six months, as this might not actually be sufficient to determine the cause or whether the policy provides cover. And for the same reasons, I won't be directing specific options that include IIUK simply accepting the claim if they haven't completed investigations by a specific point either.

As outlined in my provisional decision, I don't intend on directing IIUK how exactly they should carry out investigations either, but I'd expect them to carry out *thorough* investigations to determine the cause and obtain evidence to support the conclusions. And as explained, once conclusions have been reached, IIUK will then need to consider whether the claim is covered under the terms of the policy, or an exclusion applies. And after this, if Mr and Mrs B, and Mrs G, are unhappy with the claim decision IIUK reaches based on the new evidence, they'd be free to bring a new complaint to this service. This would also be the case if Mr and Mrs B, and Mrs G are unhappy with how long investigations are taking, then they'd be free to raise a new complaint about that too.

I note Mr and Mrs B, and Mrs G have said in response to my provisional decision that the tree removal costs of £3,800 should be reimbursed now (with 8% interest), but I've already explained why I wouldn't be directing this in my provisional decision, I won't revisit that again as my view on that remains the same.

Whilst I acknowledge Mr and Mrs B, and Mrs G's additional comments in relation to the foundations, I already explained in my provisional decision why I hadn't specifically commented on that, so I won't repeat that in full here. But in summary, I explained that the starting point for consideration would be if it had been shown by IIUK that the foundation depth was material to the damage occurring, before then going on to consider whether they were in line with the regulations, and whether it was fair and reasonable to apply the exclusion. But in the absence of the cause of cracking being identified, it also hasn't been shown by IIUK that the foundations, regardless of depth, are linked, or material to, the cracking (at this stage).

Once further investigations have been completed, IIUK will then need to consider whether the same, or another, exclusion applies. And Mr and Mrs B, and Mrs G could refer a new complaint to this service once that's concluded and if they are unhappy with the position reached by IIUK based on the new evidence on the cause. But I'm not going to make a hypothetical finding on the foundations, and/or whether they are defective or poor workmanship, when the evidence (at this stage) doesn't conclude the foundations are linked or material to the cracking.

I also recognise that Mr and Mrs B, and Mrs G have said the claim has moved slowly, and they don't think the compensation outlined in my provisional decision is sufficient. But I've taken into account what has happened, and the timescale, when reaching my provisional decision on suitable compensation for what's happened, and I'm still satisfied that amount is fair, so that's what I'll be directing in my final decision.

### **My final decision**

It's my final decision that I uphold this complaint and direct INTACT INSURANCE UK LIMITED to:

- Carry out further investigations into the cause of the cracking
- Pay a further £750 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B, Mrs B and Mrs G to accept or reject my decision before 4 November 2025.

Callum Milne  
**Ombudsman**