

The complaint

Mr M complains about how INTACT INSURANCE UK LIMITED (IIUK) have handled the subsidence claim made under his home insurance policy, and that his claim has only been partially covered.

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

What happened

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

Mr M has a buildings and contents insurance policy underwritten by IIUK. In September 2018 a claim was made to IIUK for cracking to the insured property. IIUK initially accepted Mr M's claim for subsidence damage, but later advised him that policy exclusions applied so most of the damage wasn't covered. After this he raised a number of complaints, one of which was escalated to our service.

The previous complaint Mr M brought to our service was upheld on the basis that IIUK should carry out more thorough site investigations to establish the cause of the damage to Mr M's home.

On completion of the further investigations IIUK advised Mr M that the cause of the damage to his property was due to faulty workmanship as his conservatory had inadequate foundations. And that changes to the structure of his roof accounted for the internal damage to the ceilings and walls within his property. So they said his claim wasn't covered.

Mr M was notified of this after many delays and IIUK have now confirmed that his claim is partially covered, so he believes he's not been kept fully informed.

Mr M raised a further complaint with IIUK and they issued their final response on 30 August 2024. In this they said that as his policy excludes damage due to structural changes to his property, they couldn't consider his claim for internal cracking to his ceilings and walls, as the majority of these were due to Mr M's new roof.

Regarding Mr M's conservatory and extension IIUK said it wasn't entirely accurate to say the damage wasn't due to subsidence. And it appeared that removal of certain trees had been successful in mitigating the effects of subsidence. (A cherry tree in Mr M's garden and trees on adjoining land identified as the potential cause of the damage to his property had been removed). But they said the foundations were inadequate to withstand the effect of the cherry and sycamore trees.

During the investigations IIUK said the foundations to the conservatory were noted to be 0.6 metres deep. When to allow for the effects of root induced clay shrinkage the foundations should have been at least 0.9 metres deep, and Mr M's own engineer (Report dated 2021)

suggested the foundations should have been 1.7 metres deep.

IIUK said that Mr M's policy contains an exclusion for damage due to faulty workmanship. And as the foundations didn't comply with the design standards prevailing when the conservatory was constructed, they said the damage was due to poor workmanship in not allowing for adequate foundations. So they were unable to consider this aspect of his claim.

But they said there was damage to the rear left hand corner of the main building around the lounge window which had been overlooked. IIUK said they considered the damage was caused by subsidence and was a valid claim. Trees identified as a potential cause of the damage had been removed and this should have helped the property to recover. So they were arranging for a scope of works for this area to be prepared subject to the terms and conditions of Mr M's property including his policy excess.

IIUK accepted that despite the ongoing dispute over the internal damage and that to Mr M's conservatory they could have handled the matter better. And they could have clarified the areas they accepted as a valid subsidence claim far sooner. This would have prevented the confusion around the subsidence to the main property which had been accepted. And while the policy excess was still applicable for the insured damage, they said they should have returned it until they were in a position to proceed with the repairs.

IIUK apologised for failing to dealing with Mr M's claim appropriately and the distress and inconvenience this had caused and awarded him £1,500 compensation which they arranged to pay to him.

Unhappy with IIUK's response Mr M complained to our service.

One of our investigators looked into things and said that we could only consider the partial decline of Mr M's claim which IIUK had previously told him would be covered and the withholding of his policy excess.

IIUK had said the damage to Mr M's conservatory and extension had been caused by faulty workmanship due to inadequate foundations, and that changes to the roof structure had caused the internal damage. And that both of these were excluded under the terms of the policy cover for subsidence.

For an insurer to rely on a policy exclusion our investigator said the onus is on them to show the exclusion applies, so she'd considered the evidence they've relied on to consider whether applying the exclusion was fair.

The evidence she considered was a letter from IIUK's loss adjustor's dated 8 March 2024, a site investigation report dated 6 October 2023 and Mr M's structural engineer's report dated 22 November 2021.

Having considered this evidence she upheld the complaint saying that IIUK couldn't rely on the NHBC standards which weren't relevant. She said the building regulations code of practice for foundations in force at the time of the build, British Standards 8004 (BS8004), required a minimum foundation depth of 0.9m in clay soils. And Mr M's conservatory foundations were built to a depth of 0.6m and the ground strata was moist brown fine to medium gravelly silty clay.

But while she accepted that the depth of the foundations didn't adhere to the regulations she said conservatories are exempt from building regulations and builders only had to follow best practice. So BS8004 didn't strictly apply to Mr M's conservatory.

She also said that Mr M's conservatory had been standing since the early 2000's and the damage was only recent. So she was satisfied the depth of the foundations hadn't caused the movement, as if this was the cause the movement would have occurred much sooner. And IIUK had confirmed that they accepted the damage to rear left-hand corner of the main building was caused by subsidence. As this was the same side as the conservatory damage, she was persuaded that the conservatory was also damaged by subsidence.

IIUK had said that the damage to Mr M's extension was caused by significant changes to the roof structure. Our investigator wasn't satisfied that they'd shown this was the case, as there was no expert evidence to confirm this, just the opinion of the loss adjusters. So she said IIUK should cover this part of Mr M's claim as they hadn't done enough to show that the exclusion in respect of structural changes applied.

She then considered Mr M's policy excess and said that he paid this on 20 November 2020. She didn't feel it was fair that IIUK had held it for so long without doing any work. So she recommended that they pay 8% simple interest on the £1,000 excess up until the decision was made to start the repairs IIUK said are covered.

Finally she said that IIUK had undoubtedly mis-managed Mr M's expectations which had caused him distress and inconvenience. They'd initially told him his claim was covered, and then issued a full decline in March 2024, failing to tell him that the rear left-hand corner of the main building was covered. But she thought the £1,500 compensation was more than fair so she didn't ask IIUK to pay any more.

Mr M accepted our investigator's opinion but IIUK didn't. They disagreed with our investigator saying that Mr M's conservatory would have been subject to building regulation approval as it was open plan to the main house, rather than a self-contained room. And that the foundation design had to take into account stability for the life of the structure, not just a short period early in its life.

IIUK said they didn't dispute that the damage to the conservatory was caused by subsidence, but they maintain the damage is a direct result of the inadequacy of the foundations, which is an excluded cause under the policy. And they said our investigator's opinion that the depth of the foundations wasn't the cause of the subsidence, goes against the expert evidence, including that of Mr M's engineer, that the subsidence was an inevitable result of the growing trees and shrinkable clay.

And while they accepted that the NHBC standards are not the standards by which any build other than a new build by an NHBC contractor should be judged, IIUK said that where NHBC guidance is referenced within a British Standard which underpins building regulations it shouldn't be ignored. So they said Mr M's engineer was correct in concluding that the foundations were inadequately designed, and this shouldn't be ignored.

So unless Mr M can show compliance with the minimum standards required by building regulations IIUK said that the foundation design should be considered as faulty, as it doesn't comply with Building Regulation A2, which requires the building to be constructed so it's not damaged by ground movement.

They said issues regarding construction defects should be a matter for a consumer to resolve with the builder or designer, rather than something they're expected to cover, which is the approach they say our service has taken in the past.

IIUK also said that it's not disputed that the roof structure of Mr M's property has been fundamentally changed and cracks to the ceiling are widespread throughout the property. But they say our investigator's opinion that the damage is due to subsidence ignores the

independent roof report which stated: -

“The roof covering to the rear of this property has in recent years been replaced with a breathable roofing felt & for the most part is in exceptional condition however, the detail around the chimney stack has not been finished & has been letting water into the roof space for some time. It is clear this is not related to the subsidence.”

Finally IIUK said that Mr M's policy excess was payable, as part of his claim was accepted, and the amount of time they'd held this for had been taken into account in the compensation they'd awarded, so awarding interest on the money he'd paid wasn't appropriate.

Our investigator considered IIUK's comments and issued a further opinion, but she didn't change her mind about upholding Mr M's complaint and saying that IIUK should cover his claim.

She said that she was persuaded that building regulations didn't apply to Mr M's conservatory as it's less than 30 square metres in area (4.3 metres by 3.8 metres) and has three separate doors connecting it to the lounge, dining room and garden, so is exempt from regulation.

Our investigator said that as there was no dispute that the damage to Mr M's property was caused by subsidence, the issue was whether IIUK could rely on the faulty workmanship exclusion in his policy. To do this she said IIUK had to show that the main cause of the loss was the builders failure to adhere to building standards, and she said to do this they couldn't rely on building regulations that the conservatory wasn't subject to. So she said IIUK should cover Mr M's claim for the damage to his conservatory.

She agreed that there's no dispute that there have been changes to the structure of Mr M's roof. IIUK say that this has caused widespread cracking throughout the property, not just in the extension. Our investigator said that this was based on their loss adjustor's opinion, but wasn't supported by an expert's report, or technical evidence. So she didn't change her opinion that IIUK couldn't rely on the exclusion relating to structural changes.

IIUK had provided a copy of an expert's report on the roof. This says that the detailing around the chimney stack hadn't been completed and had been letting water into the roof space for some time, and this wasn't related to subsidence. So our investigator said she was persuaded that the water ingress was caused by defective flashing and she couldn't ask IIUK to cover any damage due to this.

And she accepted that as Mr M had a valid claim for subsidence, and his policy excess would always have been applicable it wouldn't be fair to ask IIUK to pay 8% interest.

IIUK didn't accept our investigator's further opinion. They said the approach taken by our service, even if building regulations didn't apply, which they don't accept, is that we'd still expect the foundations to be fit for purpose and satisfactory to support the structure throughout its lifespan, taking into account any hazards that were reasonably foreseeable by a competent contractor at the time of construction. So we'd assess the adequacy of the foundations against the requirements of the building regulations and British Standards applying at the time of construction even if compliance wasn't required. Which is what they say they've done.

IIUK also said that the design of the build had to take into account the life of the structure. In respect of the main house they say the contractor couldn't reasonably be expected to predict the influence of trees yet to be planted, but with the conservatory they're looking to exclude damage which was inevitable and it was just a question of when it would occur.

IIUK referred to the findings from the trial holes in 2023 which showed roots at 0.6 and 0.8 metres and say that had the foundations of the conservatory been built with the correct foundation depth of 0.9 metres then the damage wouldn't have occurred.

And they don't accept that they haven't provided expert evidence relating to the ceiling in the main house. They say their loss adjustors are experts in construction and subsidence, so it's Mr M who hasn't provided any expert evidence.

The case then came to me and I issued a provisional decision on 30 September 2025. In it I said: -

Mr M's property is a single storey bungalow to which an extension was added in around 2000. IIUK accept that the left hand corner of the main building and the conservatory have been affected by subsidence. But in respect of the damage to the conservatory they say this has occurred because the foundations are too shallow.

In the event of a subsidence claim Mr M's policy excludes cover for:

"Faulty workmanship, poor design or the use of defective materials or damage caused by any of them."

IIUK say that the building regulations applicable at the time the conservatory was built required the foundations to be built at a depth of 0.9 metres. And that Mr M's own engineer's report while agreeing that the property had been affected by subsidence stated that to take into account the nature of the soil and nearby trees, the foundations of the conservatory should have been built at a depth of 1.7 metres in accordance with the relevant NHBC guidelines.

It wouldn't be fair to expect the conservatory to comply with NHBC guidelines. Almost all extensions would have required building regulations approval at the time Mr M's conservatory was built. Conservatories could be exempt if they were under 30 square metres, were unheated and separated from the main house by an external quality door. But even if the conservatory was exempt from building regulations we'd generally expect the build to comply with the spirit of the regulations.

Root samples found during the investigations identified tree roots at 0.6 and 0.8 metres so I'm satisfied that had the foundations been built at a depth of 0.9 metres to allow for the effects of root induced clay shrinkage, rather than 0.6 metres, the conservatory should have been protected from the effects of subsidence. And as the trees identified as the likely cause of the damage were present when the conservatory was built, that their proximity, likely growth and the impact of these on sub-soil and the structure should have been taken into account in the design, including the depth of the foundations.

So I'm persuaded that IIUK can rely on the policy exclusion as I'm satisfied that the foundations of the conservatory were inadequate to withstand the likely impact of trees that were present when the conservatory was built.

Mr M's policy also excludes claims for "Loss or damage caused by demolition or structural changes to your home."

Mr M's roof has been replaced in recent years and a report on its condition states: -

"For the most part it is in exceptional condition however, the detail around the chimney stack has not been finished & has been letting water into the roof space for some time. It is clear that this is not related to subsidence."

IIUK say that it's not disputed that the roof structure has been fundamentally changed and cracks to the ceilings are widespread throughout the property, rather than restricted to the areas where there's confirmed subsidence. IIUK's loss adjustors say that this damage is most likely caused by the structural alterations to the roof truss that has caused internal movement and damage within the property.

While I don't dispute that the loss adjustors have expertise in property damage and subsidence claims. But at this stage I don't think IIUK has done enough to conclude that the internal damage is due to the alterations to Mr M's roof.

The only opinion I've seen regarding the cause of the cracking is in the letter from the loss adjustors to Mr M dated 8 March 2024. This letter contains two photographs of Mr M's property showing an aerial view of the old and new roof structure. And the letter states: -

"We note that the roof structure of your home underwent a significant change in design when the rear right side extension and rear left conservatory were formed. We consider the change within the roof structure to be significant and on this basis, likely accounts for the internal movement/damage within the property, particularly to the ceiling/internal wall areas. Therefore the damage is not consistent with foundation movement due to ground movement and is highly likely due to the significant structural alteration associated with the roof truss."

And

"Over and above, we should highlight that the rainwater penetration affecting the lounge ceiling is likely due to the flashing detail and is not considered due to subsidence."

And

"In this case we consider the significant truss alteration will have undoubtedly resulted in a change in dead and live loads being transmitted down through the structure, consequently resulting in damage to the internal ceiling and walls."

So at this stage, based on the available evidence I'm not persuaded that IIUK has determined what has caused the cracking to the internal walls and ceilings, or the extent of the damage caused by the faulty detailing around the chimney stack. But I'm also not satisfied that Mr M has shown he has a valid claim that should be covered either.

So, unless anything changes as a result of responses to my provisional decision, I'll be directing IIUK to carry out further investigations into the cause of the cracking to the internal walls and ceilings. I don't intend to direct IIUK how exactly they should do this, but I'd expect them to carry out further investigations to determine the cause and obtain evidence to support the conclusions. 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 M is unhappy with the claim decision IIUK reaches based on the new evidence, he'll be free to bring a new complaint to this service.

IIUK had accepted that Mr M's claim has not been handled as it should have been and as a result he's been misadvised at times and they have been considerable delays. They agreed and paid him £1,500 compensation for this which I think, taking everything into account is fair and reasonable so I'm not asking them to pay anymore.

So I said I was minded to partially uphold Mr M's complaint and direct IIUK to carry out further investigations into the internal cracking to the walls and ceiling of Mr M's property, which they've said has been caused by structural alterations to his roof.

IIUK indicated that they accepted my provisional decision. Mr M didn't accept my provisional decision as he said his claim hadn't been declined by IIUK, it had been accepted by them, in 2020 and he was told on 6 November 2020 that they were in a position to start repairs. But other some minor interim repairs the work was never started.

And it was only after further investigations were carried out after Mr M brought his earlier complaint to us that IIUK said that while they accepted the damage to his conservatory was due to subsidence, but rather due to faulty workmanship as the foundations were too shallow.

Mr M has told us that the construction of his conservatory was carried out by a reputable builder and the plans and construction were signed off by the Local Council. And he was issued with a certificate to confirm that the build complied with the Building Regulations in force at the time.

He recalls an inspection being carried out and the foundations being signed off. He's tried contacting the builders, but after the time that has passed they have no record of the work.

Unfortunately Mr M was unable to locate a copy of the final certificate that was issued to him. He's provided copies of correspondence with about the work and a copy of an initial notice relating to a single storey side and rear extension and loft conversion at his property dated 23 July 2007. This relates to a proposal to erect a building over a sewer or drain. But it makes no reference to foundations.

Mr M was able to contact the company who issued the initial notice and following an inspection a final notice was issued in respect of his building work on 8 January 2026.

We provided a copy of this certificate to IIUK and they've said that it relates to a Single storey side and rear extension and loft conversion not the conservatory. And even if it was for the conservatory it doesn't change what they've already said, and it doesn't assess the adequacy of the design.

I issued a further provisional decision on 29 January 2026 and in it I said: -

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

I understand Mr M's frustration about how his claim has progressed but having considered the further evidence he's provided it doesn't persuade me that the foundations of his conservatory were inspected and signed off as complying with the building regulations in force at the time it was built.

It's not disputed that the damage to Mr M's conservatory has been caused by subsidence but I remain of the view that IIUK are entitled to rely on the defective workmanship exclusion in his policy. I say this because all the evidence I've considered indicates that the foundations should have been at a depth of 0.9 metres but were only 0.6 metres. And given the depth at which tree roots were located I think that if the foundations had been 0.9 metres, then the conservatory should have been protected from subsidence.

If Mr M is able to provide evidence that the conservatory foundations were approved and signed off on behalf of the Council when his conservatory was built, then he can provide this to IIUK and I'd expect them to review his claim in light of this. And if he's not satisfied with their response to any complaint he raises he can bring a new complaint to our service.

IIUK have accepted that there is subsidence damage to the rear left hand corner of the main

building around the lounge window and that Mr M has a valid claim for this. They've apologised for this damage being missed and I expect them to deal with this part of his claim without further delay.

Regarding the internal cracking and damage I've said that I'm not satisfied that IIUK have shown the damage is related to structural alterations to the roof truss. Mr M has said that initially IIUK accepted the damage as part of his subsidence claim. So I remain of the opinion that IIUK should carry out further investigations into the cause of the cracking to the internal walls and ceilings.

I previously said that I didn't intend to direct IIUK how exactly they should do this, but I'd expect them to carry out further investigations to determine the cause and obtain evidence to support the conclusions. But given the history of Mr M's claim I think they should obtain an independent structural engineer's report to determine the cause of the internal damage.

When this report is received IIUK will then need to consider whether the claim is covered under the terms of the policy, or if an exclusion applies. And after this if Mr M is unhappy with the claim decision IIUK reaches based on the new evidence, he'll be free to bring a new complaint to this service.

So my further provisional decision was that I was minded to partially uphold Mr M's complaint and direct INTACT INSURANCE UK LIMITED to:

- Arrange to deal with the repairs to the rear left hand corner of Mr M's main building which they accept has been caused by subsidence and is covered by his policy.
- Carry out further investigations into the cause of the cracking to the internal walls and ceilings of Mr M's property, including obtaining an independent structural engineers report.
- Once the report is available IIUK need to consider whether Mr M's claim for this damage is covered by his policy, or if an exclusion applies.

Mr M hasn't responded to my further provisional decision. IIUK have confirmed that they agree my provisional decision and have nothing further to add.

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.

As Mr M hasn't responded and IIUK have confirmed that they accept the findings in my provisional decision I'm not minded to change my opinion on this complaint.

Putting things right

To put things right I require IIUK to do the following: -

- Arrange to deal with the repairs to the rear left hand corner of Mr M's main building which they accept has been caused by subsidence and is covered by his policy.
- Carry out further investigations into the cause of the cracking to the internal walls and ceilings of Mr M's property, including obtaining an independent structural engineers report.
- Once the report is available IIUK need to consider whether Mr M's claim for this damage is covered by his policy, or if an exclusion applies.

My final decision

For the reasons stated above my final decision is that I partially uphold Mr M's complaint about INTACT INSURANCE UK LIMITED and I require them to take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 March 2026.

Patricia O'Leary
Ombudsman