

complaint

Ms B and Mr D have complained about CIS General Insurance Limited's handling of their subsidence claim, made on their home insurance policy.

background

In September 2011 Ms B and Mr D reported a subsidence claim to CIS in relation to cracks in the kitchen extension of their property. CIS instructed an expert to assess and deal with the claim.

CIS' expert concluded in its report of September 2011 that the damage was not due to subsidence or the operation of any other insured peril. However, it discovered damaged drains and dead trees/shrubs close to the house. It, therefore, recommended that the damaged drains should be fixed and the dead trees/shrubs be removed.

Ms B and Mr D were concerned about the accuracy of the expert's report, they, therefore instructed their own surveyor and structural engineer to assess the damage to their kitchen extension. A report was produced by this expert in February 2012 and I have summarised this below:

- Drainage problems were detected in 2005, though in the expert's opinion "*...Neither of these problems related to drains under the kitchen extension*". Further drainage problems were addressed by the local water authority and it confirmed the drains were in a satisfactory condition.
- In early 2011 Ms B and Mr D noticed cracks in the kitchen extension and the concrete yard surrounding the extension. In an attempt to prevent further movement, they inserted stainless steel helical wall ties to tie the extension to the main building.
- Ms B and Mr D also contacted the local water authority again, suspecting that the movement may be related to drainage problems. The local water authority conducted a drainage survey and concluded the condition of the drains was not bad enough to cause the damage and movement experienced.
- After this, further movement was noticed in the concrete yard around the extension. Suspecting subsidence of the extension, Ms B and Mr D reported their claim to CIS (which was declined as detailed above).
- In respect of the damage it was found that:
 - There was no foundation to the walls of the extension.
 - The concrete to the yard was no thicker than between 50mm to 75mm.
 - "*the movement experienced between the kitchen extension and the main house is because of the lack of foundations to the walls and, therefore movement will continue until suitable work can be carried out. The cracks to the concrete yard are a combination of poor concrete and movement of the kitchen extension.*"

The likelihood is that movement will continue to take place because of subsidence –

the lack of suitable foundations.

In order to remedy this situation I see no option but to underpin the 3 external walls of the extension if it is to be retained..."

The above report was forwarded to CIS and it was concluded that further investigations were needed. Following some further investigations CIS wrote to Ms B and Mr D, informing them that the extension was constructed on 700mm thick foundations and that the drains at the property were defective. CIS' expert said that there was no subsidence at the property but it would continue to monitor the situation (at that time it had only taken one monitor reading, in June 2012).

Ms B and Mr D then set up a complaint with this service as they did not agree with CIS' findings. They wrote to the business explaining the inaccuracies of the findings. In this letter they pointed out that at the beginning of the claim they had told CIS' expert that they intended to put the property up for sale and they could not do this until the repairs had been completed. They expressed their intention to follow their own expert's advice and underpin the extension so repairs could be completed before the end of the summer.

Underpinning was then completed and despite being advised of this, CIS sent its monitoring company to their home on two further occasions to take movement readings. The monitoring company concluded that no movement had occurred.

Our adjudicator upheld the complaint based on Ms B and Mr D's expert's report. She felt CIS' expert's report could not be given much weight because it clearly contained inaccuracies. She also noted that the last two monitoring readings had been taken after the property was underpinned. She reminded CIS of the industry agreement on subsidence damage. She said that CIS should deal with the claim and pay Ms B and Mr D £600 compensation for the distress and inconvenience they had been caused by its poor handling of this claim.

CIS did not agree with our adjudicator's view. It said the lack of foundations did not mean subsidence was occurring and Ms B and Mr D's expert had said no movement had occurred between his two visits to the property (Dec 2011 and January 2012). It said underpinning would only be necessary if continued movement had been established and the lack of foundations (or insufficient foundations as it still did not accept there were none) would likely mean the extension had been designed defectively, which would mean the damage was excluded from cover. It also said that if the lack of, or insufficient foundations, was the cause of the problem, significant movement and distortion of the extension would be present because it would have been moving since it was built, this was not the case.

In May 2014, I assessed this complaint and, like the adjudicator I concluded that it should be upheld. However, while I also found that some distress and inconvenience had been suffered by Ms B and Mr D because of CIS' actions, I felt that £250 would be a fair and reasonable compensation award. As such I issued a provisional decision to explain my findings and I have reproduced those below, in italics.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

claim

Based on the evidence I have been provided with, I am not persuaded the CIS dealt with Ms B and Mr D's subsidence claim in a reasonable manner. I say this for the following reasons:

- CIS' expert's conclusion regarding the claim is based upon its assessment of the foundation thickness, the drainage problem and the age of the cracks.*
- CIS' expert's conclusion regarding the foundation thickness (700mm) of the extension appears to be inaccurate. I say this because Ms B and Mr D's expert's report and supporting photographs show that the extension had no foundations.*
- Ms B and Mr D's expert's report confirms the lack of foundation to be the cause of the subsidence - and that movement would continue unless the property is underpinned.*
- Ms B and Mr D's expert report is more persuasive and contains supporting photographs.*
- CIS' expert identified problems with the drains, but this contradicts the independent evidence from the water authority.*
- There is insufficient evidence to demonstrate Ms B and Mr D's expert's conclusions regarding the drains and the foundations are inaccurate.*
- CIS' final conclusion that there was no movement of the property was based on its monitoring readings. However, the second and third monitor readings were taken after the property had been underpinned – as such no movements were recorded which is to be expected. CIS could have taken more readings since the claim was first made and before underpinning occurred, but it did not.*
- CIS concluded that the cracks are longstanding because there was paint within one of them. However, the photographs provided by CIS which are meant to show this do not clearly evidence that this is the case.*
- In any event, one crack having paint in it does not evidence that either it or any of the other damage at the property predates this policy's period of cover.*

Overall then, I am satisfied that Ms B and Mr D have done enough, on the face of it, to show that they have a valid claim for subsidence. Furthermore, nothing CIS has done or said has persuaded me that no insured event has actually taken place. As such, I intend to order CIS to consider Ms B and Mr D's claim for subsidence.

CIS will be able to consider the claim in line with the policy's terms and conditions and it will be up to it to determine what settlement, if any, is appropriate here. Because Ms B and Mr D have already carried out work, any settlement made by CIS will have to be in the form of cash. Because this complaint was raised about CIS not accepting the subsidence claim that had been made and I have found that it was wrong to do this, the resolution for that is for CIS to consider the claim; I cannot at this stage assess or determine what the fair and reasonable settlement for the claim should be.

If, once CIS has considered the claim and chosen what settlement it feels it is appropriate to make, if any, and Ms B and Mr D are dissatisfied with that, they will be able to raise a further complaint if they wish to. I recognise that they may feel that this is far from ideal, but I can only assess the complaint as placed before me, I cannot decide on what a fair and reasonable outcome for something may be that the insurer has not even yet considered itself or had a chance to resolve.

For clarity, while I am satisfied that CIS now needs to consider this claim, this service will often find it unfair for an insurer to rely at a later stage on a term of the policy to defeat or limit its liability for a loss that it could reasonably have used before. Prior to Ms B and Mr D bringing their complaint to this service, CIS maintained that no subsidence to the property had occurred. CIS had had Ms B and Mr D's expert's report for some time and so it knew the reason submitted as the cause of the subsidence. While I note it has never accepted the claim it could have reserved its right to rely on the exclusion for defective design, in the event that its decline of the claim could not be sustained. It did not and so it would not, in my view, be fair or reasonable for it to attempt to use this now.

expert costs

Ms B and Mr D have paid for an expert to provide evidence to support their claim. Without this evidence it is unlikely that their complaint here would have succeeded. CIS knows that where an expert opinion has a material effect on the outcome of a claim/complaint, this service will often find that any costs met in obtaining that evidence should be reimbursed to the policyholder, plus interest. I see no reason why that should not be the case here.

compensation for distress and inconvenience

I am not satisfied that the claim was handled by CIS (and/or its experts) in a reasonable manner:

- Ms B and Mr D forwarded their report to CIS on a number of occasions, but little import seems to have been given to it.*
- CIS had more than one opportunity to amend/address the inaccuracies identified by Ms B and Mr D, but did not do so. It did eventually address the findings of their expert's report, but it could have done this earlier.*
- Ms B and Mr D feel that the overall handling of the claim delayed its resolution, which in turn delayed the property from being put in the market for sale – which was Ms B and Mr D's intention and which they made CIS aware of during the early stages of their claim.*
- Some of the mishandlings were unacceptable and could have been easily avoided, e.g. not taking monitoring readings earlier and then taking monitor readings after the property was underpinned.*

The manner in which the claim was handled by CIS has understandably caused Ms B and Mr D some distress and inconvenience. However, I am mindful that a large part of the frustration they have felt has stemmed from their claim not being met (not just the way in which the claim was handled). At this stage, I have not found that CIS must meet their claim, rather I have said it should consider it. Therefore, I do not know if it will be met and so

cannot, reasonably make any award for distress and inconvenience that has to date been caused by CIS not meeting it. If CIS does meet the claim, it may like to consider at that time whether any further compensation for not having done this earlier would be appropriate.

Furthermore, I note that within eight months of this claim being made, Ms B and Mr D had had their property underpinned and I am mindful that when subsidence claims are handled well there is often a period of monitoring that occurs before any plans for reinstatement are made. It is not unusual for such monitoring periods to last twelve months. Therefore, it is likely that the claim itself would always have had an impact on Ms B and Mr D's plans to sell the property and for potentially far longer than was actually the case here.

Having weighed all of these facts up, I consider that a fair and reasonable compensation award for the distress and inconvenience CIS caused Ms B and Mr D, beyond that they would always likely have experienced as a result of the claim is £250. I intend to award this to them.

CIS sent some further information in response to the provisional decision and said its loss adjuster wanted me to consider this. It also said that my decision should be about whether or not subsidence had taken place as it would be very difficult for it to carry out any further assessment on this because the work had already been done and the property likely sold.

Ms B responded to my provisional decision and stated that she was disappointed by it. She said that CIS' surveyor did not discover damaged drains, that rather she provided this detail to him. Ms B believes that the surveyor jumped to conclusions about this and used these in his report to create an inaccurate and untrue assessment of the property.

Ms B said that they did not just underpin the property in order to prepare it for sale; they also did this because they were very concerned about the state of the property. They felt they could not leave the property to deteriorate while their claim/complaint was resolved.

Ms B explained that there may have been movement in the property in between their expert's visits in late December 2011 and early January 2012 but this may not have caused immediately apparent changes to the cracking already present. However, as the extension had been strapped to the side of the house by this point it was likely that movement had been minimised. This though was only a short term solution which, in the long run, would cause further damage if the extension was not underpinned or demolished. She said that CIS' argument about flawed design was irrelevant as the building had been built to standards appropriate at the time of its construction.

Ms B said that the complaint she and Mr D had originally made had been about more than just CIS' refusal to accept the claim. They had hoped that a complaint to this service would address the serious concerns they had had about the way they felt CIS had handled the claim in order to make it change the way it behaved in the long term. Ms B said they believed that CIS had blatantly fabricated evidence and consistently refused to acknowledge proven facts.

That being said, Ms B said they were grateful that I had found that CIS' refusal of their claim had been unfair and unreasonable. She said she hoped the claim would progress smoothly from here. However, she explained that she had suffered a lot of distress and inconvenience because of CIS' handling of their claim and that she felt it was not appropriate to leave it to decide later as to whether further compensation would be due.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. As both parties have replied to my provisional decision in some detail, I have dealt with their comments separately below.

CIS' response to my provisional decision

I have considered the other evidence provided by CIS but I am surprised that its response was to say its loss adjuster wanted me to consider this. CIS has not explained the reason for the provision of this evidence or what it believes that it shows. It is up to CIS to respond to complaints made against it, not its loss adjuster. That being said, I am not convinced that the evidence provided gives me cause to think that my provisional decision was unfair or unreasonable in any way.

As to the outcome I have suggested; CIS knows that it is not part of my role to determine or handle claims for it; that is its job. That being said, I did provisionally find that Ms B and Mr D had done enough to show that, on the face of it they had a valid claim for subsidence and that CIS had not shown, to my satisfaction, that no subsidence had occurred. Nothing CIS has said in response changes my view on that and so CIS will now have to consider the claim on that basis.

It will likely be difficult to assess the claim further at this stage but there are many aspects to take into consideration when assessing a claim, not just whether an insured event, in this case subsidence, has occurred. Only if CIS can show that no insured event occurred or, if one may have done, that an exclusion or term exists that limits or removes its liability will it be able to fairly and reasonably decline the claim. If CIS cannot do this it will have to accept the claim and decide, given the situation currently at hand, what resolution is due to Ms B and Mr D.

Ms B and Mr D's response to my provisional decision

While I note Ms B's comments about the surveyor's findings, I do not believe these materially change the conclusion I came too. However, I do accept that Ms B's view on this has added to her negative opinion on how CIS has dealt with this claim as a whole and I will deal with this shortly.

I had taken into account in making my provisional decision that the extension had been strapped to the main building as a short term method of preventing further loss. I accept that this strapping would likely have slowed down the crack damage that had been occurring to the building. However, in assessing a complaint I set out the background to it before coming on to deal with the findings I have made. Part of the background here was that no further crack damage had been identified between late December 2011 and early January 2012.

It may well be that CIS' argument regarding faulty design is not relevant here. CIS' certainly knows that this service expects it to show that a building's design was faulty at the point it was built in order to be able to rely on any such exclusion to cover that may exist. However, I am not yet assessing that aspect and so cannot comment on it any further.

It is not the role of this service to punish insurers or make them change the way they do business. Rather I have to assess the complaint before me and determine whether the actions of the insurer in this instance were fair and reasonable or not. If I find they were not

then I have to determine what redress is due because of that. Here I found that CIS' had not shown that its conclusions about this claim had been justified. I was aware of the serious allegations made by Ms B and Mr D about the specific conduct they considered had occurred which lead to CIS' flawed conclusions but, for me, these did not add to or change the fact that I felt CIS needed to consider their claim.

This service has an established approach to considering claims that involve the type of serious allegation made by Ms B and Mr D here. It is often an insurer that makes this type of allegation and this service expects an insurer that is seeking to do this to show strong, compelling evidence that such has occurred. I would expect no less of a complainant. The fact that CIS did not agree with Ms B and Mr D's expert and the fact it did not, in my view, handle the claim well, does not mean it acted in a deliberately obstructive and dishonest way. However, none of this changes or impacts upon the fact that I am satisfied that CIS must now consider Ms B and Mr D's claim for subsidence.

In respect of compensation; I know that Ms B and Mr D suffered a lot of distress and inconvenience here but I remain satisfied that much of their upset was related to the fact that CIS declined their claim. As such, I do not intend to change the award I suggested for compensation.

Furthermore, I cannot make any award at this stage for things that have not yet happened and that is why, at the moment, I can only suggest that CIS considers whether making such would be appropriate later on, when the claim's outcome has been reached. If it does not give any consideration to this, or Ms B and Mr D are dissatisfied with whatever it does decide, then they would be able to complain again; to it in the first instance and then this service. I know this is not ideal but it would be unfair and unreasonable for me to try and make any further award at this stage.

my final decision

My final decision is that I uphold this complaint as I am satisfied that CIS General Insurance Limited's decline of the claim was not fair or reasonable. Therefore, I order CIS General Insurance Limited to do several things to put matters right:

- Consider Ms B and Mr D's claim subject to the remaining terms and conditions of the policy and in line with my comments above.
- Reimburse Ms B and Mr D's expert's fees, plus interest. Interest is at 8% simple per annum (minus taxes where properly deductible) from the date the fees were paid by Ms B and Mr D until the date of settlement.
- Pay Ms B and Mr D £250 compensation for the distress and inconvenience it has caused them in handling their claim poorly.

I make no further award against CIS General Insurance Limited.

Fiona Robinson
ombudsman