

## **complaint**

Mrs B and Miss B's complaint is in relation to a claim for subsidence damage made under their CIS General Insurance Limited buildings insurance policy. They consider the claim has been going on too long and CIS is avoiding completing repairs.

Mrs B and Miss B are represented by Mr S.

## **background**

Mrs B and the late Mr B bought their home in 1978 and insured it with CIS. In 1997 they made a claim for subsidence damage to the front right corner of the house. The claim was accepted and after a period of monitoring it was determined the property could be repaired without stabilisation works being done. Repairs consisting of stitching the brickwork together in the area (and adjoining areas) of the cracking, plastering and decorating were done.

The engineer consulting for CIS said at the time the foundations to the property were *'extremely poor and suspect and that further movement in the future could not be ruled out given the nature of the peaty fill encountered within the trial holes.'* It was detailed that the repair would need to be sufficiently robust to minimise further cracking in the event of further minor movement. It was also confirmed that *'... this is a far from ideal solution, but would seem to be the most appropriate and that no further movement has taken place and that partial underpinning would in reality worsen the situation, as this would make one part of the property stiffer than the rest and may induce differential movement in the future.'*

CIS' current loss adjuster confirmed in an early report from the current claim that the masonry reinforcement was installed from the centre of the front wall around to the rear right-hand corner. Some floor levelling was also undertaken to reduce the slope of the floors, although it didn't make them completely level.

In 2002 another claim for subsidence damage was made for cracking in the same area as previously. In addition, the subsidence also affected the kitchen floor at the rear of the property, which was dug out and replaced. The plaster that had been repaired as part of the 1997 claim was repaired again, with additional reinforcement added. Some external drainage was replaced at that time too. Mr S confirmed during the course of the current claim that this included installing new soakaways.

The certificate of structural adequacy issued by the loss adjusters in 2003 stated the cause of damage was consolidation of peat substrata. It confirmed the property had been monitored between the spring of 1998 and summer of 1999 and it had been found to be stable. The repairs were detailed as stitching and reinforcement of masonry cracks and redecoration.

In 2009 a further claim was made for cracking to walls and movement to the floor of an outbuilding which was thought to have been caused by an escape of water from a damaged drain. The claim was again accepted and the property was 'written-off'. Mr S has confirmed that the building was demolished and a new one built on a piled raft foundation.

In March 2014 another claim for subsidence damage to the main house was made. The damage was again mainly in the area of the front right of the house which had been affected in 1997 and 2002, although there was some cracking elsewhere in the property. CIS instructed a firm of loss adjusters to investigate the claim.

The loss adjusters' initial engineering report was produced in March 2014 and detailed that the subsidence damage had returned to the same previously repaired areas. It stated the movement had been ongoing for a number of years but had been very gradual, however it appeared to have progressed more rapidly recently and so another claim had been made. It was documented there was damage in the snug, main living room (both at the right of the property), the right hand bedroom, middle bedroom and left hand bedroom. All four external elevations were reported as having stepped cracks. The boiler store was detailed as having rotated downwards.

The engineer confirmed there had been recent subsidence. However, he was of the opinion the cracks above the window openings were due to the absence of lintels or lintel deflections, which wasn't covered by the policy. It was confirmed some external repairs were needed, but the property wouldn't be repainted after those repairs as the current finish was in poor condition. The cause of the subsidence was unclear and so site investigations and a drainage survey were to be arranged. Monitoring was to be undertaken to determine if the property was still moving. It was anticipated the claim would be settled by the end of 2015.

CIS wrote to Mr B (who was dealing with the claim at the time) and confirmed the claim had been accepted. It said a £1,000 excess would be payable when repairs started. Mr B responded questioning the matter of the excess – he pointed out the damage was in the same place as the previous repairs and he felt it was a continuation of the previous claims. He thought this was because the property hadn't been properly repaired i.e. it hadn't been stabilised, just tied together.

CIS acknowledged Mr B's concern about the excess and said that once the cause of the subsidence was established it would be confirmed whether a further excess was due to be paid.

A drainage survey was completed. It determined there was nothing wrong with the main drainage, but the soakaways for the rainwater drainage were too close to the house under current building regulations. Mr S told us the soakaways in question were installed by CIS as part of the 2002 claim. The loss adjusters recommended the soakaways be moved and this was done at Mr and Mrs B's expense.

The ground investigations showed that the house had foundations of around 600mm and was built on ground that was predominantly silty sand.

In April 2014 the level and crack monitoring points were installed. The report from the monitoring company stated there was no suitable place to install the datum (the fixed point taken as the static point from which the movement of the monitoring points would be established) for the level monitoring. As such, the monitoring company had used monitoring point 1 on the house itself as the datum. It recommended instead that a 'deep datum' be installed.

Monitoring continued every two months thereafter. Copies of the monitoring reports were sent to Mr B (and later to Mr S) and updates provided by the loss adjuster's engineer. The recommendation to install a deep datum was repeated each time.

In January 2015 CIS was made aware of further cracking around the property and a site visit was arranged. The subsequent report said:

*'This visit was in response to readings obtained during a monitoring period, showing movement to the front right hand corner, despite there being no notable drainage or vegetation issues at this location.'*

*The ongoing level monitoring has shown a general trend of minor fluctuations, such as those that could be expected from normal temperature and moisture variations, reading error and seasonal fluctuations. However, there was a marked downward movement of the front right hand corner in the order of 2.0 to 2.5mm, with an uplift of the read elevation in the order of 1.0 to 1.5mm.'*

It was decided the monitoring period would be extended to at least June 2015. In June 2015 the loss adjuster wrote to Mr B saying that despite the movement in the early part of 2014 it appeared *'the property has now found some form of stability with minor fluctuations being typical of the articulation seen in a property that has cracked and is subject to normal temperature and moisture variations in the building fabric and ground.'*

Mr S didn't accept CIS' position. He said that the cracking was getting worse and the damage to the boiler store meant water was getting in and affecting the electrics. There was now an intermittent problem with the central heating. A few days later he told the loss adjusters the central heating wasn't working at all. Emergency repairs were authorised about a month later and due to the handling of the boilers store issue, a complaint was made to CIS. CIS offered £150 for its poor handling of the problems with the boiler store in September 2015.

Whilst the emergency matter of the boiler store was being looked into, a schedule of works was also being drawn up for repairing the main house. Monitoring continued and showed the right front corner of the building was still moving downward. In November 2015 the loss adjuster told Mr S the monitoring showed 'normal fluctuations' and they were of no concern. It was looking at options for dealing with the boiler store problems and would contact Mr S in due course.

By January 2016 the monitoring showed there was *'continued movement particularly to the front right hand corner with no signs of ceasing.'* It was decided *'to bring in a higher level expert opinion on a repair solution.'* The loss adjusters referred the matter to its technical claim unit (TCU).

A site visit was arranged with the TCU engineer and a new report was compiled in April 2016. It was documented that most of the level monitoring points showed cyclical movement, probably to do with moisture content. However, the front right-hand corner had dropped by 4.5mm. It was decided that monitoring should continue, but that this should be done using a different datum because the one then being used might not be stable. It was also suggested that a distortion survey be done. Mr S was told what the next steps would be.

Consideration of what to do about the boiler store continued – whether to rebuild the store or fit an internal boiler. However, it doesn't appear that Mr and Mrs B's opinion was sought during this process, as it turned out that they didn't want the boiler moved into the house.

Several weeks later the loss adjuster wrote to Mr S and confirmed that a new monitoring point was to be installed on his home (which was thought to have been built on a deep piled foundation). However, it was not until early July 2016 that the TCU told the claim administrator to arrange for the new monitoring datum to be installed on Mr S' house once

the new claim reserve had been approved by CIS. The reserve was approved the same day and it would appear the instruction for the new datum was issued.

By August 2016 the engineer had decided to continue monitoring using the existing datum point. However, a new monitoring point was to be installed on Mr S' home. The new monitoring point would show if the datum point was moving. The claim administrator was told to change the instructions to the monitoring company.

A distortion survey was also commissioned in August 2016. It was done less than a month later. It showed that the right-hand front corner of the property was almost 10cm lower than the opposite corner.

In the meantime, the TCU arranged for a desktop review of all the existing evidence to be made by an external expert (which I will refer to as G). the report produced detailed that:

- The general trend of settlement appeared to be downward toward the right-hand front corner.
- Water levels were higher at monitoring point 3 (right hand front corner) than on the opposite side of the property where there was a reduced rate of settlement.
- Settlement appeared to be seasonal, with increased rates of settlement during winter months.
- A deep datum needed to be installed for accurate monitoring to be done.

The conclusions regarding cause of damage were detailed as follows:

- a) Long-term general settlement at low rates, but the settlement at point 3 was increased as a result of changes in loading or localised changes in groundwater levels.
- b) As above, but settlement at point 3 had been affected by vibrations caused by heavy goods vehicles passing on the nearby farm road.

It was documented *'I think in summary this is one (or another) to be careful with. While peat extraction would seem to be the smoking gun, I'm not so sure and in any event will be very difficult to prove. We really don't suggest that you simply throw in the towel and underpin to infinity and beyond. I'm certain there is a better way.'*

*'I think there are gaps in what we know at the moment that have to be filled. Let me know if you want to discuss further.'*

In October 2016 the monitoring company asked the loss adjusters where the new datum was to be installed. It would appear it was told to install a new datum on Mr S' house rather than follow the changed instructions from August 2016 regarding the datum remaining in place and a new monitoring point being installed.

Monitoring continued thereafter using the new datum point. No further investigations were done, nor does it appear any conclusions were reached about the cause of the movement.

Mr B sadly passed away in 2017 and Miss B was added as a policyholder.

G was again commissioned to provide its technical expertise in early 2018 and it produced a report in April 2018. The report detailed that G had been asked to assess the evidence to determine the cause of damage to the property and whether dewatering at the nearby peat workings may have contributed to the damage. When doing so G took account of all of the

investigations the loss adjusters had undertaken and the reports/documents Mr S had provided about the peat workings and local hydrology situation.

Having considered the trial pit data and British Geological Survey information, it was concluded the geology under and around the property was likely to be sand and gravel with pockets of peat at higher strata levels within it. This meant the flow of ground water in the vicinity was likely to be complex and variable. Approximately 300m to the north of the property the ground conditions changed to being predominantly peat with low permeability. The flow of water across the site was toward the peat workings.

In relation to the monitoring results, G commented that the first set of results showed an ongoing drop of the north east (front right) corner of the property. However, the second set of results showed a small settlement/heave oscillation around the south east corner of the property. However, the cracking locations and patterns indicated that there was a downward movement of the northwest corner of the property, with the damage being displaced because of the reinforcement installed in 1999. The movement was thought to be slowing and may have stopped.

G concluded there were two possibilities for the movement of the property – the first being that the ground beneath the house was weak. The second was a lowering of the water table caused by the nearby peat extraction. There was then consideration of the various pieces of evidence. Based on damage to the front right corner of the property having occurred before the peat workings increased production in the 1990s, it indicated that the quality of the soil beneath the foundations was the issue, not dewatering.

G also explained the investigations that had been done, including the measurement of the depth of the water table and associated information from government agencies, indicated the water table was quite high in the area of the house. It was considered the peat surrounding the site the house was built on, because it had low permeability, was effectively retaining water in the site. As such, it was thought the lowering of the water table by the peat workings was unlikely to be the cause of the damage. However, sustained lower rainfall in general might have had some effect on the water levels on the site.

It was recommended by G that further monitoring (to take it to a total of 12 months) be done using the existing datum on Mr S' property to check for developing distortion. If further distortion in the property was identified, then some further ground investigations would be appropriate, but it didn't say what these investigations should be.

Mr S raised a complaint on Mrs B and Miss B's behalf. They were unhappy with the time the claim was taking and the poor service they had received.

26 June 2018 CIS responded to the complaint about the progress of the claim and the behaviour of its appointed representatives. CIS said that the technical aspects of the claim was complex and it didn't accept its representatives had delayed the claim. However, it acknowledged it hadn't responded to correspondence and there had been some delays. CIS offered £100 compensation in this regard.

Mrs B and Miss B didn't accept CIS' position and referred their complaint to this service.

In July 2018 CIS informed Mrs B and Miss B that it would be installing a deep datum for more accurate monitoring to be done.

One of our investigators looked at the complaint. He noted CIS had issued a final response relating to the problems with the boiler house in September 2015 and, although given referral rights to this service, the complaint hadn't been referred to us. As such, he concluded the issues with the boiler store before September 2015 fell outside of our jurisdiction. Mr S didn't object to that position on Mrs B and Miss B's behalf.

In relation to the merits of the remainder of the complaint, including the ongoing situation with the boiler store post-2015, our investigator explained that claims involving ground conditions such as those involved in this case can be very complicated and take a long time to resolve. He thought that given the specialist's opinion, there were grounds for a period of further monitoring at that point. However, he thought rather than changing the datum to the neighbouring property in 2016, CIS should have installed a deep datum at that time. As such, it had caused significant delays and the investigator recommended CIS pay £500 compensation (including the £100 it had already offered).

In relation to Mr S' request for an independent engineer to be involved because Mrs B and Miss B had lost faith in the loss adjuster's ability to deal with the claim, he said it was something that could be considered when the further monitoring had concluded.

Mr S responded. He confirmed the date the deep datum had been installed and made proposals for what should be required of CIS going forward. This being the six months of monitoring and then he considered it should be required to produce a repair proposal within two months of the monitoring. He also said that he would like this service to remain involved until the property had been repaired.

As agreement hadn't been reached the complaint was passed to me for consideration. I requested some further information.

Mr S confirmed that they had been unable to find any paperwork relating to the installation of the new soak away drains. He said they decided to install the new soakaways because CIS had told them the existing ones didn't comply with current standards, even though they had been installed as part of the 2003 insured repairs. CIS wasn't able to confirm what works had been done in relation to the drainage in 2003.

CIS confirmed that the house had been monitored for a full 12 months after the deep datum had been installed. The monitoring results were referred to G and it concluded the property was stable and could be repaired. A copy of the monitoring and G's comments were provided to us.

In relation to the excess Mr S had questioned, CIS said it was payable. This was because G had said in its 2018 report the cause of the 1990s episode of subsidence was most likely related to the start of the more aggressive peat workings. Whereas the most recent claim was a different cause of damage – the poor load-bearing capacity of the ground beneath the foundations.

I issued a provisional decision on 21 December 2020. In that document I set out my conclusions and the reasons for reaching them. Below is an excerpt.

*'Before I move on to explain my conclusions in this case, I would like to confirm that I agree with our investigator about the matter of our jurisdiction in relation to the concerns about the handling of the boiler store issue. I can't consider the matters covered by the final response letter, up to the date of its issue in September 2015.*

*It would be usual where subsidence has been identified as damaging a property that two things would be established; firstly if the subsidence was ongoing and, if it was, what the cause of the subsidence was. The latter needs to be established to determine what can be done to stop the ongoing movement – be that by removing an external factor that is causing the subsidence, such as removing a tree where it is drying clay soils, or determining it to be a problem with the underlying soil needing an engineered solution to be installed.*

*This claim was accepted at an early stage, but I think it is clear the handling of the claim was significantly below the standard initially Mr and Mrs B and later Miss B could reasonably have expected. It was clear from the previous claims, the results of the site investigations and the input from the consumers, this was a complex subsidence situation. It is also clear that the loss adjusters concluded quite early on that there wasn't an obvious cause for the movement. However, it was almost two years before the claim was transferred to the loss adjusters' specialist technical claim team. I would have expected this referral to have been done in the latter part of 2014.*

*During those two years the property was being monitored for movement, but using a datum that was unusual to say the least. The purpose of a datum point is to act as a reference point or control against which other points which may not be stable can be measured. The initial datum point selected in this case was on the building that was subsiding and as such, its stability was known to be in doubt. CIS' own monitoring company recommended that a deep datum was installed for the monitoring, but that recommendation doesn't appear to have been considered, or at least there is no evidence of any such consideration in the file we have been provided.*

*Around two years later CIS's loss adjusters had realised this was not an adequate situation and looked to change the monitoring arrangements. The external engineers at this time also recommended a deep datum be installed. Again there is no evidence of the recommendation being given serious consideration in the file of papers. I consider this is a serious failing given the loss adjusters had been being given this recommendation on a regular basis over the previous two years and it was then reinforced by the experts it brought in to help. It seems rather counterintuitive for an expert opinion to be asked and paid for, just to ignore it.*

*However, whilst CIS may have ignored the advice it received about the right way of monitoring the movement to Mr and Mrs B's home, a new monitoring point that was thought to be more stable was to be included in the monitoring, so that it could be assessed whether the datum point was moving. Unfortunately, the instruction given to the monitoring company was wrong, and even when the monitoring company questioned it, it doesn't appear to have been corrected. This meant that the original years of monitoring and the subsequent ones couldn't be linked, effectively, rendering the original period a waste.*

*The property was then monitored until 2018, when again the external engineers were brought in. Whilst the engineers didn't repeat the recommendation to install a deep datum within the report produced, the decision to do so, coincided with their further involvement. This started the monitoring of the property from scratch again. So effectively the first four years of monitoring was of no use because a deep datum was needed to monitor the property effectively, as CIS' monitoring company had recommended at the outset.*

*For a notable portion of those four years the property continued to move and the damage became worse. Mr and Mrs B, and latterly Mrs B on her own, remained living in the house, watching it deteriorate around them. In addition, whilst the immediate danger from the*

*movement to the boiler store had been alleviated by the temporary propping and filling the gaps between it and the house, it would have remained a concern.*

*I also note there was a notable lack of communication about this issue. CIS costed repair/replacement of the boiler store and that for moving the boiler into the house. It determined the more cost-effective option was to move the boiler to the bathroom. However, the consumers don't appear to have been involved until the proposal to move the boiler was presented as a fait accompli. I think it's clear that if they had been approached about this at an early stage, the time and effort CIS spent on this concept wouldn't have been needed.*

*I also note that it was only when the claim entered its second year that it was referred to the technical claim unit. In the situation where there is ongoing movement, which it is clear there was during the first years of the claim. as I have explained above, if a property is found to be suffering from progressive movement, it's usual for an insurer to actively pursue establishing the cause of that movement, so it can stop it and repair the property. CIS did some initial investigations into ground conditions, but there is nothing on the file we have been provided with that indicates any even potential causes of the movement were drawn until 2016 when the TCU and external engineers became involved. It appears that when the cause was not immediately obvious CIS allowed the claim to drift and I don't consider that was acceptable.*

*I consider there were years of delays in this case and that would have caused Mrs B, and Mr B until his death, a lot of inconvenience and upset. Mr S has suggested CIS purposely delayed the claim in order to avoid having to do expensive stabilisation repairs. I haven't seen evidence that CIS made a conscious decision to let this claim drift on until the property naturally stabilised, but the handling of the claim was clearly seriously lacking. I consider CIS should pay Mrs B a sum of £4,000 (including the £100 CIS has already offered) compensation in this respect.*

*The monitoring since the installation of the deep datum (and even those from earlier in 2018) show that the property is stable. In this situation all CIS is required to do is repair the damage to the structure – it isn't required to do any works to stop the property moving again in the future.*

*I note that Mr S has suggested the house be declared a write-off and the claim settled that way. I can understand why he has made that suggestion, but it isn't something I can ask CIS to do as its current position of offering to repair or cash settle for the repairs, is all it is required to do under the insurance policy terms and conditions. However, CIS could consider this request if it wishes to, as, based on the history of the property and the expert opinion, further bouts of subsidence are likely.*

*I have also considered the matter of whether a further excess is due to be paid for the 2014 claim.*

*G commented that the 1990s claim coincided with the increased peat extraction, and so 'seems' to be linked to it. However, CIS has confirmed it doesn't have the full claim file, so it isn't now possible to know what the actual cause of the movement in 1997 was concluded to be at that time. I am not persuaded G had sufficient evidence in 2018 to reach a definitive conclusion about the 1997 cause of movement, which would explained why G said it seemed to be.*

*However, the evidence there is shows that similar damage occurred in the same place on the house four times. One incident happened before the increased peat workings, one*

*shortly after, one shortly after the peat workings decreased and the final incident many years later.*

*G determined that the 2014 movement was due to the poor load-bearing capacity of the ground, which was influenced by its water content. It also warned Mrs B and Miss B that this issue could cause further bouts of movement in the property. The 2002 claim was recorded as having occurred because of consolidation of peat layers. It isn't clear from the evidence we have whether that was the cause of both areas of damage in 2002, although it was clearly the cause of damage to the kitchen floor, where the majority of the damage was. Given the lack of information from 1997 and 2002, the similarity of damage and G's comments, I think it is more likely than not that all the bouts of movement to the front corner of the house had the same underlying cause – the poor loadbearing capacity of the ground made worse by a change in the water levels.*

*However, in order for me to say an excess shouldn't be paid, I would have to be persuaded the 2014 movement was a continuation of the 1997/2002 movement and effectively the same claim. Given it was over a decade between the 2003 repairs and new damage being reported, I'm not persuaded I can conclude that it was one claim. As such, I don't consider CIS was wrong to charge an excess on the 2014 claim.*

*It has been raised that Mr and Mrs B paid for soakaways installed in 2003 to be moved during the current claim because they were advised they didn't comply with current regulations. Mr S has said the non-compliant soakaways were installed by CIS in 2003, but neither he nor CIS have been able to provide any evidence of this. In order to require CIS to pay for the replacement soakaways, I would need evidence they were installed by CIS and that they would have been considered inadequate in 2003. I don't have that evidence and so I can't make an award in relation to this issue.'*

CIS accepted my provisional decision.

Mr S responded on behalf of Mrs B and Miss B. He said they accepted most of my conclusions as being fair and reasonable, but they would like to question one point. He questioned whether the property was stable as they had taken a reading using the deep datum and they believe there could have been up to 3mm of movement since the last reading. Whilst this is not a lot of movement, it would add up over time. Mr S requested that I appoint an independent firm of surveyors to take a reading and if it is found that the property is still moving, that I reconsider whether CIS needs to take action to stop the property from moving.

If the property is found to be stable, they asked that robust crack repairs are done, involving helical ties being inserted into the mortar joints. At present CIS has only offered to repoint the cracks, which they consider is nothing but cosmetic.

### **my findings**

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

I note that Mr S has said they have taken a reading from the datum and believe there is a difference from the last one taken by the monitoring company. I would explain that taking monitoring readings involves a level of skill, which is why insurers, surveyors and engineers will hire in specialist companies to complete this work. So whilst I can understand Mr S'

conclusion based on the reading they took, it isn't sufficient for me to conclude the engineer's assessment of the readings from 2018 and 2019, which concluded the property was stable, was wrong or that further monitoring should be undertaken.

I can understand Mrs B and Miss B wanting stabilisation works done to the property as, based on experience and the engineer's conclusions about the cause of movement, it does seem possible there could be further incidents of movement in the future. However, I can't require CIS to complete such works where the evidence says the property has stabilised.

As to the nature of the superstructural repairs that should be completed to the property, that isn't something that we can become involved in at this stage. Even if it were something we could consider, we would be guided by the expert evidence before coming to any conclusions about what repairs were needed.

Although I know this will disappoint Mrs B and Miss B, their further submissions have not changed my conclusions, which were detailed in my provisional decision.

### **my final decision**

My final decision is that I uphold this complaint. In full and final settlement of the complaint I order CIS General Insurance Limited to pay Mrs B and Miss B a total of £4,000 compensation for the poor handling of the claim. Under the rules of the Financial Ombudsman Service, I am required to ask Mrs B and Miss B to accept or reject my decision before 26 February 2021.

Derry Baxter  
**Ombudsman**