

The complaint

Mr and Mrs W complain that HCC International Insurance Company Plc trading as Tokio Marine HCC removed cover for subsidence from their home insurance policy.

Where I refer to Tokio Marine, this includes its agents and claims handlers acting on its behalf.

What happened

In June 2021 Mr and Mrs W took out a buildings and contents insurance policy for their home, underwritten by Tokio Marine. They renewed the policy in June 2022. When taking out and when renewing the policy, they were asked a number of questions about the property, including questions about subsidence.

In August 2022 Mr W contacted Tokio Marine about making a claim on the policy. He said a crack had opened up in the wall of their home. Tokio Marine wrote to Mr and Mrs W saying there would be an increase in their premium. It also sent a revised renewal document in which the answers to two of the questions had been changed. Mr W challenged this and there were a number of phone calls and emails about the policy.

Tokio Marine had arranged for a loss adjuster to visit the property but Mr W cancelled the appointment. He said the crack in the wall had closed and there was no need to proceed with the claim.

Tokio Marine confirmed the claim had been withdrawn and said it would not charge any additional premium. But it said there were a number of cracks and it would not provide cover for subsidence until the cause of the cracks had been confirmed and repair work carried out.

When Mr and Mrs W complained, Tokio Marine's final response said:

- The fact that it wasn't clear if the damage had occurred during the previous policy period was what led to subsidence being excluded from cover.
- If a surveyor could inspect the property and confirm that the cause of the damage was not subsidence (as Mr W believed), it would reconsider.

Mr and Mrs W then referred the complaint to this Service. Our investigator said the complaint should be upheld as Tokio Marine could only change the cover provided by the policy if it could show there had been a qualifying misrepresentation. And it hadn't done this, as Mr and Mrs W had answered the questions asked of them correctly.

The investigator said Tokio Marine should reinstate cover for subsidence and pay compensation of £200.

Mr and Mrs W accepted the investigator's view but Tokio Marine didn't and requested an ombudsman's decision. It said:

- Photos of the building show a diagonal crack, Mr W mentioned that crack had been ongoing for some months, and he's an architect so he knew it was subsidence.
- Mr and Mrs W withdrew the claim before the loss adjuster attended, denying it the

- opportunity of inspecting the damage.
- Mr and Mrs W didn't renew the policy in June 2023, so reinstating cover for subsidence is now academic.

The investigator considered these comments but didn't change her view, so the complaint has been passed to me to determine.

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.

The relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out their insurance policy. The standard of care is that of a reasonable consumer. If a consumer fails to do this, the insurer has certain remedies, provided the misrepresentation is what CIDRA describes as a qualifying misrepresentation.

For it to be a qualifying misrepresentation, the insurer has to show it would have offered the policy on different terms or would not have offered cover at all, if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care, including whether the questions asked by the insurer were clear and specific.

When Mr and Mrs W took out the policy, and again when they renewed it in June 2022, the questions asked included the following:

"Are you aware of any subsidence, landslip or heave at your home or within 400 metres of your home?"

"Have the buildings been monitored or are they currently being monitored for subsidence, landslip or heave?"

"Are there any diagonal cracks or bulges in the internal or external walls of the buildings?"

They answered each of these questions "No" but after Mr W called about making a claim, Tokio Marine changed the answers to the first two questions to "Yes".

There's no evidence that the property had been monitored for subsidence, so there doesn't seem to be any basis for changing the answer to that question.

Tokio Marine says Mr W knew there was subsidence and so should have disclosed this. In coming to this view, it relies on there being a diagonal crack in the wall and on Mr W referring to cracks having been present for some months.

Mr W has explained that there were some small cracks but the only significant crack was the horizontal one on the external wall, which is what prompted him to contact his insurer. He says this opened up during a period of very hot weather. Knowing the property is on clay soil, he thought it was likely due to excessive shrinking of the clay but thought it should be checked for peace of mind. Following a change in weather and a period of rainfall, he says the crack closed up again, so he was no longer concerned.

Looking at the photos, this crack is horizontal not diagonal. Mr W provided a further photo showing how the crack had closed up. Tokio Marine says cracks had been present for some months and Mr W should have disclosed them. But at the point when it made the decision, it hadn't seen the cracks – and the photos were only taken when the claim was made in August, not at the point when the policy was renewed. The evidence doesn't show that at the point of renewing the policy there was a diagonal crack or bulging in the wall, or other evidence of subsidence. So I think Mr and Mrs W did answer the questions correctly.

On this basis I don't consider it reasonable for Tokio Marine to change the policy and withdraw cover for subsidence as it hasn't shown that there was a misrepresentation.

Even if Mr and Mrs W didn't renew the policy again this year, it would be reasonable to reinstate the subsidence cover for the period in question. Since this cover should not have been withdrawn, the policy should be treated as if it had remained in place, so Mr and Mrs W do not have to say to a new insurer that their subsidence cover was withdrawn.

Mr W called about a possible issue with his property. In the end he didn't need to proceed with a claim but as a result of his call Tokio Marine said it was going to increase the premium and withdraw subsidence cover. This would have been upsetting for Mr and Mrs W and although Tokio Marine withdrew the premium increase they were put to some trouble in trying to get things resolved. In the circumstances I agree a payment of £200 is fair.

My final decision

I uphold the complaint and direct HCC International Insurance Company Plc trading as Tokio Marine HCC to:

- reinstate the subsidence cover and treat the policy as including cover for subsidence throughout; and
- pay compensation of £200 to Mr and Mrs W for the distress and inconvenience caused to them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 14 November 2023.

Peter Whiteley
Ombudsman