

The logo for dti, consisting of the lowercase letters 'dti' in a white, sans-serif font, positioned on a teal background bar.

**COAL MINING SUBSIDENCE
DAMAGE**

A Guide to Claimants'
Rights

DECEMBER 2004



The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

1. ABOUT THIS LEAFLET

- 1.1 If you live in a coal mining area, your home or other property may be damaged by coal mining subsidence. This might begin with problems such as cracked plaster and sticking doors. This leaflet explains how to make a claim against the mine owner if you believe that damage to your home might have been caused by coal mining subsidence.
- 1.2 Depending on where you live, responsibility for dealing with your claim rests either with a mining company or the Coal Authority (who, for convenience, are referred to jointly in this leaflet as 'the mine owner'). Your claim should be sent to the contact address on the notification letter you received from the mine owner mining in your area. If for some reason you do not have this address, or if you need further information about making a claim, contact the Coal Authority at this address:

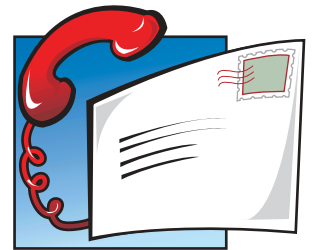
The Coal Authority
200 Lichfield Lane
Berry Hill
Mansfield
Nottinghamshire
NG18 4RG

Telephone: 01623 427162
Helpline: 0845 626848

- 1.3 This leaflet is not a detailed guide to the law, nor is it a substitute for professional advice or assistance. But it may help you to decide whether to make a claim against the mine owner and how to carry it forward.
- 1.4 If your property is a farm, commercial or industrial premises, a church or a listed building, special arrangements may apply. These are explained in Paragraphs 16 - 20.

2. THE LAW AND SUBSIDENCE DAMAGE

- 2.1 If your home has suffered from coal mining subsidence damage you have rights under the Coal Mining Subsidence Act 1991 as amended by the Coal Industry Act 1994.
- 2.2 You may also be entitled to make a claim based on historical or special rights originally attached to the surface land at the time its ownership was separated from that of the coal underneath. Such special rights may be revealed in the Title Deeds of your home. You should seek legal advice if you want to make a claim of this kind.
- 2.3 In a few parts of the country, the High Court may have granted the mine owner or any predecessors rights to mine coal. The



Court may also have made provision for the basis on which compensation should be paid for subsidence damage. Although such a Court Order allows a further means for making a claim, the circumstances are comparatively rare. You should seek legal advice if you think you are able to make a claim of this kind.

- 2.4 The rest of this leaflet describes your rights to claim under the 1991 Act if your home or other property is damaged by coal mining subsidence.

3 WHO CAN CLAIM?

- 3.1 Generally, only owners of damaged property can claim. But tenants may also claim if their tenancy agreement makes them responsible for any repair and maintenance. Tenants who notice possible subsidence damage should tell their landlord immediately because landlords will probably wish to claim for damage to items which are their responsibility. Tenants may also be able to claim for damage to improvements which they have paid for and damage to personal effects.
- 3.2 If there is a mortgage on the property, you should tell the lenders (e.g. building society or bank) or any other persons who might have a claim against the property, that you have made a coal mining subsidence claim.

4 WHEN SHOULD I CLAIM?

- 4.1 You should make a claim as soon as you think your home might have been damaged by subsidence. Although you can make a claim up to six years from when it was reasonable for you to have known that the damage had occurred, it is in your own interest to make a claim as soon as possible. If a claim is not made at the earliest opportunity, there will be more scope for disagreement about when the damage appeared and about its origin.



5 HOW DO I ACTUALLY MAKE A CLAIM?

- 5.1 When you first notice damage, or reason to believe it has occurred, you should make a claim by filling in the form (enclosed with this leaflet) called a 'Damage Notice'. You should then send the Damage Notice to the mine owner.
- 5.2 Your home will normally be inspected by the mine owner within a short time of your claim being received. If further damage occurs at any time, whether or not a claim has been settled, you should inform the mine owner as soon as possible. You will then be sent a further claim form which should also be completed and returned to the mine owner as soon as possible.

6 WILL THE MINE OWNER REPAIR MY PROPERTY OR PAY COMPENSATION?

- 6.1 In general, the mine owner will carry out repairs to your home or other property. The repairs should make good the damage to your reasonable satisfaction. An agreed itemised schedule of repairs will be drawn up before repairs are started. On completion you should check that all work has been properly carried out.
- 6.2 In certain circumstances the mine owner may pay compensation instead of making repairs. Examples include:
- a) where repairs are not physically possible, for example where tilting of a building cannot be corrected;
 - b) where the cost of repairs is significantly greater than the reduction in value of the property arising from the damage;
 - c) where other work is merged with the repair work or where re-development takes place instead of repair work;
 - d) where the condition of a dilapidated property is such that it is impossible to repair in isolation the damage specifically resulting from subsidence.
- 6.3 The mine owner may also be liable to pay compensation for damage to moveable property (furniture, ornaments, personal possessions etc.) caused by coal mining subsidence damage. You must, however, take reasonable steps to minimise the damage.

7. CAN I HAVE THE WORK CARRIED OUT BY MY OWN CONTRACTOR?

- 7.1 Generally, yes. In this case the mine owner will reimburse the cost to you of employing your contractor, provided that the charges are reasonable. If you decide to use your own contractor you will be responsible for supervising the work and ensuring that it is done to an acceptable standard.
- 7.2 Payments for repairs carried out by your own contractor can only be made after the work to be done, and the costs involved, have first been agreed with the mine owner. Normally payments will be made only after the work has actually been finished, although staged payments can be arranged.



8 WILL WORK START IMMEDIATELY?

- 8.1 Normally work will start as soon as possible after the schedule of works is agreed. Sometimes, however, there is likely to be further mining subsidence damage. If it is reasonable to defer

permanent repairs until the worst of the damage has occurred, the mine owner may give you notice that, except for emergency works, permanent repairs will not be carried out until the land becomes stable (this notice is known as a "Stop Notice"). In the meantime, the mine owner will carry out necessary work to ensure that your home continues to be safe and habitable.

- 8.2 A Stop Notice will be lifted as soon as there is the prospect of an 18 month period of ground stability. Stop Notices can continue in force beyond three years only if you raise no objections. If you do object, the mine owner must then carry out full repairs.



9 WHAT HAPPENS IF EMERGENCY WORKS ARE REQUIRED?

- 9.1 Normally no repairs should be carried out or arranged unless the mine owner has first been consulted. However, in an emergency, you may carry out work which is **urgently** needed to prevent further damage occurring or to ensure that your home can still be lived in - for example, unblocking drains or reconnecting electricity, gas or water. These emergency works can be undertaken without informing the mine owner beforehand but you **must** tell the mine owner as soon as possible what work has been carried out and why. If you do not do so the mine owner may not have to reimburse you.

10 CAN I GET PROFESSIONAL ADVICE, AND CAN I GET BACK MY EXPENSES?

- 10.1 You may wish to seek professional advice about your claim, for example from a surveyor, solicitor or architect. You may also ask an adviser to make the claim and negotiate with the mine owner on your behalf. This may be desirable when a claim is not simple or straightforward - for example, where there may be a dispute about the cause or extent of the damage.
- 10.2 Where the mine owner is liable for coal mining subsidence damage, you will be reimbursed your reasonable costs. This is not limited to the cost of professional advice. It may also include, for example, expenses such as phone calls, visits and any other reasonable costs associated with pursuing your claim. You should therefore keep a record of such incidental expenses.
- 10.3 You may also decide to commission a survey of your home before undermining takes place to establish its pre-damaged condition. Where damage is caused the mine owner may be obliged to reimburse the costs of this if the survey was reasonably undertaken for the purpose of making a later claim in respect of subsidence damage.

- 10.4 If you do seek professional advice, it is in your interest to check that your adviser is a member of a recognised professional body.

11 WHAT IF MY HOME IS TOO BADLY DAMAGED TO LIVE IN?

- 11.1 If your home becomes unsafe or uninhabitable because of subsidence damage, you will be provided with or receive payment for equivalent alternative accommodation. A special claim form is available from the mine owner which you should return by post or by hand within 14 days of the date on which you think your home became uninhabitable. Your case will be dealt with quickly if you tell the mine owner as soon as your home becomes uninhabitable.
- 11.2 While you are in alternative accommodation, the mine owner must look after your house, keep it secure and weatherproof. If furniture has to be moved or stored, the mine owner will do this or pay reasonable expenses. Where reasonably incurred living costs in the alternative accommodation (e.g. light, heat, travel to work) are greater than in your own accommodation, the mine owner will meet the excess costs.



12 WHAT IF THE MINE OWNER CANNOT PROVIDE ALTERNATIVE ACCOMMODATION DURING THE PERIOD OF REPAIRS?

- 12.1 Normally the mine owner will provide alternative accommodation if your home is seriously damaged. However, if this is not possible, and you remain in your own home while repairs are carried out, you may qualify for compensation for the inconvenience and disturbance. These payments are made when the total cost of the works is greater than £3,000 and they take more than six months to complete.

13 WHAT IF I CANNOT SELL MY HOME BECAUSE OF SUBSIDENCE DAMAGE?

- 13.1 If your home has been damaged by subsidence and you are suffering because you cannot sell it at its former undamaged value, the mine owner may, depending on the circumstances, be under an obligation to buy it for its undamaged value, if repairs have been deferred because a Stop Notice has been given or is likely to be given. In exceptional circumstances the mine owner will do the same if the house is not actually damaged but there is a strong and imminent probability that it will be, and that a Stop Notice will be given.

- 13.2 To be considered for such payments, you will need to be able to demonstrate a good reason for selling - for example, your need to work in another district or retire to a smaller property.



14 WHAT IF MY HOUSE HAS TO BE DEMOLISHED?

- 14.1 If your home is so badly damaged that it has to be demolished, the mine owner will either rebuild it or pay you compensation based on its full market value in its undamaged condition. In either case you may (if you satisfy certain conditions) also be entitled to a home loss payment.

15 WHAT IF I HAVE A DISPUTE?

- 15.1 Many disputes can be settled simply by a letter, a telephone call or a visit by a representative of the mine owner. If, however, agreement still cannot be reached, you have the right to take the matter to the Lands Tribunal.
- 15.2 However, in the majority of cases arbitration offers a cheaper, quicker and less formal way of resolving disputes. You have the right to choose arbitration as an alternative to the Lands Tribunal. Two arbitration schemes have been set up, which are run by the Chartered Institute of Arbitrators and are completely independent of the mine owner. Both are specifically designed to deal with disputes about subsidence damage.
- a) The Householders' Arbitration Scheme provides a low cost method of resolving disputes and is available only to householders, (owner occupiers or tenants). It currently costs £80 (+VAT) to refer a dispute to the Householders' Scheme, refundable if you are successful. If you are not successful the arbitrator has the discretion to award that you reimburse the mine owner's registration fee of £80 (+VAT). This scheme may not however be appropriate to deal with more complex disputes.
 - b) The General Arbitration Scheme is available to deal with any dispute involving someone who is not a householder (e.g. property owners, farmers, commercial organisations). It is also available for more complex cases of dispute involving householders. Each party must initially pay a registration fee, currently £120 (+VAT), and must pay half the arbitrator's cost before the award is published. Further, the arbitrator may award that either party pays some or all of the other party's costs (including the other party's share of the arbitrator's costs) in addition to their own.

- 15.3 If you consider that you may wish to use either of these arbitration schemes, you can request further details and an application form from the Coal Authority (address in Paragraph 1.2).

16 CLAIMANTS' RIGHTS: SPECIAL CASES

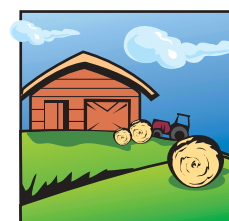
- 16.1 If you are a farmer or the owner of a small business, or if your property is a church, a listed building or an ancient monument, some special arrangements may apply. These are explained as follows:

17. FARMS

- 17.1 Farmers may be entitled to:

Compensation for crop loss

- 17.2 If you have been notified by the mine owner of the possibility of subsidence damage you are expected to take all reasonable steps to mitigate your losses.
- 17.3 If subsidence damage results in a loss of profit from agricultural land (whether arable or grazing) the mine owner will be liable to make up the loss until such time as he discharges his remedial obligation. Claims must be made within a year of the calendar year to which the claim relates. It makes it easier to assess properly the extent of your loss if you inform the mine owner before you harvest the crop.
- 17.4 In assessing the loss, it will be necessary to take into account any savings the farmer may make as a result of the damage, for example reduced cultivation and fertiliser costs.



Compensation for farm loss

- 17.5 A farm loss payment will be made if the farmer is displaced from his land because the extent of subsidence damage is such that the land can no longer be farmed profitably.

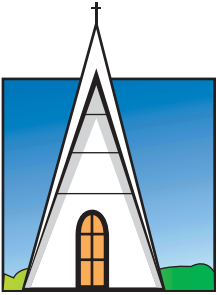
Tenant farmers' compensation

- 17.6 The mine owner may sometimes make a depreciation payment to the owner of land rather than carry out repairs. In these cases the tenant who actually farms the land may also be entitled to compensation.

18 SMALL FIRMS

- 18.1 If you run a small firm whose business property has been damaged by subsidence you may be entitled to full compensation for loss in profits which are a direct result of the damage.

- 18.2 If you have been notified by the mine owner of the possibility of subsidence damage you are expected to take all reasonable steps to mitigate your loss.
- 18.3 You must notify the mine owner as soon as possible after you become aware that you have suffered consequential loss as a result of subsidence damage. Claims must be made within 12 months of the calendar year during which the losses were incurred.
- 18.4 A small firm is defined as one which employs no more than 20 people.



19 CHURCHES

- 19.1 As well as the owner of the church, the Church Commissioners can make a claim if they suspect subsidence damage. Normally a church will be repaired if it is damaged. However, if the mine owner makes a depreciation payment instead of making repairs, the payment will be made to the Church Commissioners who must use this money for the purpose for which the proceeds of a sale of the property would be used under relevant legislation. In the case of other religious denominations, such payments will be made to the appropriate representative body, if it so requests.

20 LISTED BUILDINGS AND ANCIENT MONUMENTS

- 20.1 In order to maintain the country's heritage it is important that listed buildings and ancient monuments are restored to their former condition wherever possible. The mine owner will therefore be under a duty to restore (or pay for the restoration of) such properties providing it is reasonably practicable to do so. The mine owner will not generally be able to settle a claim by way of a cash settlement based on the loss in value of the property. If there is a dispute about the practicability of restoration, the case will be decided by the Secretary of State for Environment, Food and Rural Affairs.

21 DAMAGE TO MOVEABLE PROPERTY

- 21.1 The mine owner may also be liable to pay compensation for damage to moveable property (e.g. plant and machinery, stocks of goods, livestock, household and other possessions) caused by coal mining subsidence. You must, however, take reasonable steps to minimise the damage.

22 DISPUTES

- 22.1 If you are in dispute with the mine owner you can take your dispute to the Lands Tribunal. You also have the right to choose arbitration as an alternative (see Paragraph 15.2 for details of the Householders' Arbitration Scheme and the General Arbitration Scheme).

23 FURTHER ADVICE

- 23.1 This leaflet is designed to give a general indication of your possible rights. It is not designed to be a comprehensive guide to the law. If you require further information you should contact the Coal Authority, seek legal advice, or contact your trade association or representative body.

24 OTHER FREQUENTLY ASKED QUESTIONS

24.1 Will it cost me anything to make a claim?

- 24.2 No. There is no charge made by the Coal Authority or the mine operators for submitting a claim to them.

24.3 Do I need someone to represent me in my claim?

- 24.4 It is not generally necessary but you may do so if you wish. If you do choose to use a professional representative to act on your behalf in making a claim he may make a charge to you for the services he provides. Some or all of these charges may be recoverable if your claim is successful.

24.5 Is there a time limit for making a claim?

- 24.6 Yes. The Coal Mining Subsidence Act 1991 says that claims must be submitted within six years of the damage becoming apparent.

24.7 I have inherited a property from elderly relatives who never made a claim. Can I claim now as the new owner?

- 24.8 There is nothing to prevent anyone from submitting a claim at any time. However, the time limit for submitting claims applies to any person who had the knowledge of the damage and the right to make a claim; this would include a predecessor in title. It may be, therefore, that your relatives' failure to claim at the proper time may lead to your claim being rejected under the time limits.



24.9 My claim has been rejected because there has been no coal mining for more than six years. Is this correct?

24.10 The six year time limit for submitting claims is not dependent upon the date of the mining. Whilst it is true that damage due to coal mining usually occurs at or about the time of mining in the majority of cases, there are many circumstances which can lead to damage becoming apparent several years later; for example, shallow mine workings close to the surface and the existence of faulting or fissures in the land.

24.11 I am having difficulties changing my insurance company as there has been a subsidence claim on my property. Can I be compensated for any increased premiums?

24.12 There is no provision within the Coal Mining Subsidence Act 1991 for such compensation. The insurance industry does not differentiate between coal mining subsidence (where there is a statutory framework for the repair of such damage) and subsidence due to other causes where no such statutory framework exists.

24.13 A mining search has revealed the existence of a mine shaft near my property. Can I claim for a lost sale?

24.14 There is no provision for compensation for the mere existence of a shaft in the vicinity of a property. The Coal Mining Subsidence Act 1991 covers actual damage caused by a shaft or mine entry and the Coal Authority may, additionally, have duties with respect to shafts and mine entries under Health & Safety legislation.

24.15 If I make a claim and it is rejected, will the records be kept?

24.16 Yes. All claims made, irrespective of their outcome, are recorded and retained by the Coal Authority and the mine operator.

24.17 I am selling my house and the Coal Authority has made the prospective purchaser aware of a previous claim on the property. Are they allowed to do this?

24.18 The Coal Authority provides mining reports to solicitors, upon request, during the normal course of property transactions in mining areas. These requests are part of the solicitor's "enquiries before contract". All known mining information, including the claims history, is included on these mining reports.

24.19 My claim has been rejected and the mine operator is relying on a specialist report which they have commissioned. They have refused to provide me with a copy. Is this correct?

24.20 Specialist reports are usually confidential between the specialist concerned and the commissioning client (the mine operator in this case). There is no obligation on the mine operator to provide a copy to the claimant. If a claim proceeds to arbitration or the Lands Tribunal, and the mine operator intends to rely on the report, they will have to submit the report in evidence and a copy will then be provided to the claimant as part of the proceedings.

24.21 My property is being undermined and the mine operator has served a "Stop Notice". What does this mean?

24.22 A "Stop Notice" is a notice served under the terms of the Coal Mining Subsidence Act 1991 in circumstances where the mine operator considers that subsidence damage may be continuing for a period and it would be unwise to carry out permanent repairs. The action of such a notice is to defer the mine operator's obligation to carry out repairs until the "Stop Notice" period has expired. It does not prevent the carrying out of temporary or emergency repairs.

24.23 Can I claim for the time spent dealing with my own claim?

24.24 Under the Coal Mining Subsidence Act 1991, successful claimants are able to recover costs reasonably incurred in the pursuit of their claim. This does not cover a claimant's own time for dealing with his claim unless evidence can be produced that actual costs have been incurred; for example a certificate from an employer declaring that actual wages have been lost.

24.25 If I pursue my claim at arbitration, how can I obtain the information about mining from the mine operator in order to prove that the damage is caused by coal mining subsidence?

24.26 The Coal Mining Subsidence Act 1991 contains a provision that, in proceedings under the Act, it is up to the mine operator to show that the damage is not due to coal mining subsidence. This reverses the usual requirement that a claimant in proceedings has to prove his case. A claimant has only to show that damage has occurred and that the circumstances are such that he can reasonably believe coal mining subsidence could be the cause. Thereafter, the mine operator has to show that the damage is not due to coal mining and they will have to produce the evidence at arbitration.

24.27 What are the costs of pursuing an arbitration under the General Arbitration Scheme?

24.28 It is not possible to give even a general idea of the level of costs which might be incurred. This depends very much upon the nature of the dispute. Under the General Scheme, both parties are at risk on costs and the general principle of “costs follow the event” usually applies, as it does in other legal proceedings. This means that a successful party can usually expect to recover all or most of his costs.

24.29 Is it cheaper to pursue a dispute under the General Arbitration Scheme than at the Lands Tribunal?

24.30 Not necessarily. For smaller claims involving little or no legal argument held without a formal hearing, the costs of the losing party are likely to be cheaper under the General Arbitration Scheme. It must be remembered however that the costs of the arbitrator and the costs of any accommodation used for a formal hearing are part of the costs in the arbitration which the losing party is likely to be ordered to pay. The costs of the Lands Tribunal members and the court accommodation are likely to be met out of the general fund of court costs.

