

The complaint

Mr G complains about the way China Taiping Insurance (UK) Co Ltd (“CTI”) has handled a claim he made for damage caused by subsidence under his commercial property insurance policy.

What happened

In late 2018, Mr G contacted CTI to make a claim as he’d noticed some damage he thought could have been caused by subsidence. Mr G’s property is made up of two buildings, I’ll refer to those as ‘A’ and ‘B’. Mr G lives in one of those buildings (B), the other he runs as a bed and breakfast (A). CTI asked Mr G to provide a report on the likely cause of the damage. Mr G’s report from a structural engineer, K, said the buildings were ‘*inherently vulnerable due to partial basements*’ and movement was likely caused by clay shrinkage due to the hot summer of 2018. It recommended some further investigations. Most of the reports and recommendations that have followed have focused on property B as this is the one worst affected by the subsidence.

CTI’s loss adjuster agreed further investigations would need to be carried out. At this point Mr G appointed another expert – a geo-environmental engineer ‘R’. Its report was in two parts – provided in March and August 2019. It reiterated concerns about the foundations and concluded underpinning would be necessary because the trees likely to have caused the damage were protected by tree preservation orders, and so would be difficult to remove. Mr G wanted CTI to underpin his properties, but it didn’t agree to this without further investigation.

An arborist report (‘J’) was commissioned in September 2019. This recommended that a horse chestnut tree be removed to stabilise the property. It later said a further two horse chestnut trees should be removed, a beech tree and a section of a hedge. Other trees such as copper beech trees and a different hedge should be maintained at their current level.

Mr G was unhappy that CTI were pursuing the trees as a possible cause for subsidence. Due to the ongoing dispute on the cause of the damage, a structural engineering firm ‘P’ was appointed, it provided a report in April 2020. It concluded the most recent movement was caused by nearby trees and recommended the removal of three horse chestnut trees, a beech tree and partial removal of a hedge. It also said consideration should be given to removing a group of Copper Beach which may have the potential to influence the foundations. It also thought a full drainage survey should be carried out to ensure the drains weren’t exacerbating the problems with the soil.

Mr G complained to CTI in April 2020. He complained about CTI’s findings and methods of investigation, and that it had set out to implicate the trees from the start of the claim. He also said CTI’s loss adjuster wasn’t answering his questions and had tried to pressure him into taking out a drainage survey. Mr G also complained that CTI had refused to renew his policy in 2020, even though there was an ongoing subsidence claim. Mr G maintained that the property should be underpinned.

Following his complaint, Mr G hired an environmental consultant ‘A’. He also hired his own drain expert, T, to provide a report. These were done in September and October 2020. A’s view was there was no justification for trees being removed. It thought the subsidence could have been caused by excess hydration of the soils being unable to support the properties

shallow foundations. It also recommended the drains be inspected. T's report said there was no issues with the drains.

CTI said it hadn't discounted underpinning as a possibility, but it needed to carry out the investigations recommended by several different engineers, to establish the cause of the damage. It said Mr G had refused access when the drains were to be inspected, and his actions had caused a delay in CTI assessing the cause of the damage, so it couldn't move the claim forward.

Mr G also felt property A had been forgotten. And if CTI felt the movement to property A was historic only, he wanted it to provide him with a certificate of structural integrity to provide to new insurers.

Our investigator reviewed the reports provided by both parties. He thought they agreed the shallow foundations of the property have made them vulnerable to differential movement. But he didn't think CTI had acted unreasonably in pursuing the removal of trees as a preferred method of managing the subsidence affecting the property.

Taking all of this into account, our investigator was most persuaded by the arborist's report by J. He felt the recommendations in J's report should be followed but didn't think all of the trees mentioned in P's report needed to be removed.

Our investigator thought CTI's proposal of monitoring the cracks whilst investigations were taken into the drains was reasonable based on the evidence he'd seen. He also said for property A, monitoring had been recommended but not yet agreed, so he felt that needed to happen. But he said without carrying out any repairs to A, it wouldn't be reasonable to ask CTI to provide a certificate of structural integrity.

In relation to the policy renewal issue, our investigator thought CTI had acted unreasonably in not offering cover whilst the subsidence claim was ongoing. He thought under the ABI agreement, it should have continued to provide Mr G with cover for his property, even for the subsidence. Our investigator said CTI should reassess the risk of the property to decide if it would have offered cover [regardless of the subsidence claim]. He said if CTI would have offered a policy to Mr G – it should provide him with a quote. As Mr G had found alternative cover – without subsidence – our investigator said CTI needed to provide Mr G with a policy that covered him for subsidence only if that's what he wanted. And it should pay any difference between what Mr G paid for his policy in 2020 and what CTI would have charged had the original policy continued, plus interest.

CTI accepted the findings of our investigator. Mr G didn't. He provided extensive commentary, including from his expert 'A' as how he wants the claim to proceed. A agreed further investigation was required, but maintained there was no basis for implicating the trees. Mr G also said he hadn't been reimbursed for the reports he'd had carried out, and he wanted some assurance that any future reports he commissioned would be paid for by CTI.

Our investigator wrote a follow up assessment. He noted CTI had provided a further report from the arborist J dated April 2020, which he hadn't seen before. He maintained CTI were reasonable in following the recommendations of J in relation to the trees.

Our investigator said CTI should liaise with Mr G and A to agree and arrange further investigations into the source of any excess moisture in the soils. He said CTI should also continue to monitor property B and start monitoring property A to establish the extent to which movement is ongoing and whether the trees can be proven to be the cause. Our investigator said whilst Mr G had argued the arborist report from J should be excluded, he hadn't seen any evidence to say it should be. And if Mr G wanted to provide his own arborist report, CTI should consider it.

Since the complaint has been referred for a final decision, Mr G has provided another report from an arborist 'E' in July 2021. As well as more comments from A and a further report from K who wrote the original 2018 report.

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.

CTI's final response to this complaint was in April 2020. Matters have moved on considerably since then, with more reports and commentary being provided. For clarity, this decision will cover matters up until October 2021. I'm aware this is an ongoing claim and Mr G is looking to provide further representations in support of his case, but in order to be able to move the complaint forward, I will look at all the reports provided up until July 2021. As far as I'm aware there are no further reports to consider between July and October 2021.

CTI has accepted a claim for subsidence damage, the issue here is a disagreement between it and Mr G about how to move the claim forward. Mr G feels CTI has pursued the trees as a cause of the subsidence from the outset, without considering other factors. He feels it has exerted pressure and leverage in its reports to fit its agenda. As of October 2021, there has been little progress to the claim given the opposing views.

I think it's important to set out to Mr G the remit of my decision, my role is to independently weigh up the evidence provided by both sides, to determine if CTI has treated him fairly. Mr G has asked me to confirm whether I'm discounting any reports from the business, as some he sees as controversial. In considering the case I've reviewed all of the reports sent to me by both parties. I can confirm I haven't discounted any without them being considered – out of fairness to both parties.

There is extensive correspondence on this file, as an informal service, I won't respond to every issue Mr G's raised. This decision will focus on the main reasons for the outcome I've reached.

Should CTI have agreed to underpin the property at the start of the claim

Since Mr G has said from the outset that he wanted the property to be underpinned, I've firstly considered all of the reports to decide if CTI has acted fairly and reasonably in not agreeing to underpin the property at this stage.

Mr G has pointed to a report from March 2019 from 'R' an environmental geotechnical specialist. This report says the soil on which the property sits is weak, and so the building should be underpinned. Mr G says other reports – such as the original one carried out in October 2018 by K - agree on the soil being the reason for the movement.

Having read the reports, I'm not persuaded that CTI should have underpinned the property on receipt of them. I find the March 2019 report by R doesn't comment on the damage to the property and the likely cause. Nor does it consider any other alternative to underpinning and why it would be unsuccessful. And whilst the report in 2018 by K did comment on the soil weakness, the conclusion of that report was that the dry summer of 2018 had resulted in clay shrinkage of the soil. It recommended further investigations into the trees and drains but didn't suggest a method of repair. So it doesn't conclude that the only viable repair would be to underpin the property.

In August 2019, following some questions from the insurer, R issued an addendum to its March 2019 report. In this, it said underpinning would be most suitable as some of the trees are protected, and so can't be removed. I accept that underpinning is an effective way to resolve subsidence. However, this service would generally only expect an insurer to consider it when other, more cost-effective options, have been considered. While we expect insurers to stop the current movement, it isn't responsible for making sure a property never moves again, so if it can stabilise the property without underpinning it, this service considers that to be a reasonable solution. Tree preservation orders don't always prevent trees being removed. So I'm not persuaded CTI should have pursued underpinning as the course of action from the outset.

It's important to note CTI hasn't ruled out underpinning as a potential solution, but it wanted to carry out further investigations, and I think it was reasonable in pursuing this first.

CTI's handling of the claim

Mr G has complained about the method in which CTI has carried out its investigation. He feels the trees have been pursued from the outset, and other evidence has been disregarded. He's said he thinks bullying and leverage tactics have been used and has asked this service to decide on this.

I've reviewed CTI's handling, and I'm not persuaded that it has solely focussed its efforts on implicating the trees and ignoring other evidence. Mr G's own initial report by K in October 2018 recommends that a CCTV drainage survey and an arborist report be carried out. From my experience these are commonly used in subsidence claims to understand the cause of the movement. Mr G had lived in his property for many years before he noticed any damage caused by subsidence. So it's not unreasonable for CTI to assume an external factor had caused the downward movement in 2018. And issues with drainage or trees are two common causes in my experience.

Mr G's concerned that CTI applied some pressure to R, following its report carried out for him in March 2019. In the March 2019 report, R recommended underpinning the property. CTI asked the author to clarify some comments, and ultimately asked R to comment on the cause of the subsidence, which it hadn't done in its first report. So R wrote a further report in August 2019 that concluded:

"The long hot summer of 2018 undoubtedly contributed to the onset of the issues relating to the observed structural distress. B). The presence of the trees on the boundary of the property also exacerbated the situation. However, it is understood that the trees all have preservation orders on them, thus removal is not possible. Therefore, as the trees mature and grow, the effect on the building will become more pronounced, irrespective of the effects of future hot spells. It is on this basis that the recommendation is to underpin the shallow foundations around and within the building."

I haven't seen any evidence that R was pressured in any way to produce this clarification. I find it was reasonable for CTI to ask further questions of R following its initial report. R was appointed by Mr G, and I've seen nothing to suggest its further comments should be discounted.

CTI subsequently got a report from an arborist 'J' in October 2019 to comment on the trees. It's provided follow up reports based on new tree root information in January 2020 and April 2020. Mr G has been critical of J's reports, saying its conclusions are not backed up by science or maths. He's also said as J has changed its findings in its reports, it doesn't inspire confidence in the findings. He thinks J's latest report of April 2020 should be discounted.

I'm satisfied CTI has acted reasonably in taking J's report into consideration. I consider J is suitably qualified to report on the trees and its provided reasons for the findings it has reached. The second version of the report was done to include further information following tree root analysis. And the third seems to be have done on receipt of information to consolidate its findings. I note Mr G's point that he was unaware of this report – CTI should have shared this with him, as it did previous reports.

Whilst I understand Mr G's strength of feeling on the trees, I'm satisfied that he hasn't provided any persuasive evidence to suggest CTI has wrongly relied on the experts in pursuing the trees as a likely cause. Roots from the trial pits were assessed in a lab and Mr G hasn't been able to disprove their presence. And Mr G's own expert R noted in his August 2019 that the trees were likely an influencing factor but felt as they couldn't be removed underpinning should happen.

A structural engineering company 'P' were also instructed to carry out monitoring of the property, to determine the cause of the movement. There is some dispute on who appointed P – CTI has said P is an independent company contracted at Mr G's request. Mr G has disputed this, but as I don't think it has any bearing on the outcome of the case, I don't intend to make a finding on who's instruction P was. It has come to light that P was involved in a previous subsidence claim on the property in 1991. Mr G says trees were removed during that claim, which shows that tree removal wasn't successful and so shouldn't be pursued by P again. I consider that given the amount of time that passed between the two claims – nearly 30 years – it can't be concluded that tree management wouldn't be successful in stabilising the property based on the previous claim.

Mr G's concern is that CTI's reports only mention the trees as a factor because it is influencing them too. I haven't seen any evidence of this. And even reports commissioned by Mr G himself had made comments relating to the trees, from the initial report in October 2018.

Mr G didn't agree to CTI appointing a drainage expert, so he hired his own contractor who provided a report in October 2020. And CTI did agree to consider Mr G's own drainage report. So I don't think it's acted unfairly.

I understand Mr G's been upset at the conduct of CTI and its contractors, but I haven't seen any evidence to support that it's acted unreasonably or unfairly. Nor have I seen any evidence of rude or aggressive behaviour. Mr G has made some strong accusations about some of the contractors, which have been robustly denied by the contractors in question. But I don't think CTI has acted unreasonably in its communication with Mr G.

The claim has been ongoing for nearly three years, but I don't think that's down to any poor handling on the part of CTI. Subsidence claims can be complex and take years to resolve. In this case, there is a fundamental disagreement between Mr G and CTI on the best way to proceed, which has hampered any progress being made. I understand this is Mr G's home and business, and he's very passionate about the claim. But it is a fact that each time another expert is hired, it causes a delay to the progress of the claim.

It seems that whilst some cracking was noted at property A initially, most of the focus has been on property B, where the worst damage is. I think CTI should have started monitoring property A earlier. And if it hasn't already done so, it should start monitoring property A. But overall, I don't think CTI's failure to monitor the property at an earlier stage has led to delays in the claim, as the delays have been caused by a disagreement on what investigative work should be carried out.

Mr G has said CTI hasn't paid him for reports he had carried out, in particular the drainage report. CTI said it hadn't been provided with an invoice, but it was agreeable to reimbursing this cost. I consider this to be reasonable. So far, I think CTI has reimbursed any costs Mr G has asked for. However it's unclear if Mr G has asked to be reimbursed for the two latest reports he's had carried out in July 2021. I don't think Mr G made CTI aware he was carrying out these reports – and I think it's fair that he does seek agreement with CTI before carrying out any more reports. But as CTI has acted reasonably in its position so far, I'd expect it to reimburse Mr G for the two reports from 2021, subject to him providing suitable invoices. But I'm not going to, as part of this decision, require CTI to reimburse any future reports carried out by Mr G. Of course, it may do so if it feels appropriate.

Has CTI acted fairly in relying on its expert reports?

As set out above, there have been several reports carried out by both parties, and some of the reports have opposing views. So I've considered which reports I'm most persuaded by, so that I can give a direction to both parties on how I think the claim can progress from here.

As I see it, there are two main reports that have opposing views. The structural engineering report by 'P' in April 2019, and the geo-environmental consultant report from September 2020 by 'A'. P's findings were that a Beech and the Horse Chestnut trees should be removed, as well as part of a hedge, as they were affecting the soil. It also said a further group of trees should be removed to reduce future risk. These are largely supported by the arborist, J. The report carried out by A disputes the findings of P in that it doesn't think the trees have caused the clay shrinkage that's led to the subsidence damage.

A's report concludes that the soil is overhydrated, and the subsidence is linked to the presence of the cellar, and not any trees. It says

"We can therefore only conclude that P should be directed to further examine issues related to the bearing failure without the requirement to solely assess a tree causation."

On receipt of this report, P disputed some of A's evidence relating to the trees. It noted that none of the other reports carried out on behalf of either party had raised the same 'over hydration' issue. But CTI ultimately said "[A] are simply suggesting that the source of any excess moisture be identified and eliminated, and this is a view with which we would concur." I'm satisfied this statement shows CTI are open to investigating other causes of the subsidence. And I find this is a reasonable course of action going forward. Both A and CTI should work together to carry out further investigations into any excess moisture.

However, I also find that CTI should also continue with the monitoring on B. There is conflicting information from both parties as to monitoring. CTI says Mr G has refused entry for them to take readings from the monitoring sites from mid-2020. Mr G has said that CTI didn't attend when it should have in March 2020 and he was then called out of the blue months later about a further monitoring reading. CTI was unable to carry out some monitoring in 2020 due to a national lockdown. Mr G has disputed this as he says CTI was due to attend before the lockdown was announced. But overall I'm persuaded the government restrictions would have caused some delay to the monitoring readings in any event.

But based on everything I've seen, I'm satisfied from the reports that CTI are acting fairly by also investigating the possible influence of trees and vegetation. Whilst A and P have disagreed over the type of the soil and how susceptible it is to shrinking [with A saying medium and P saying high] they at least seemingly both in agreement that the soil beneath Mr G's property could shrink during a period of hot weather.

Whilst A has said the trees are not within the industry wide recognised influencing, I think there's enough information in the other reports from 2018 – 2020 which suggest it's not unreasonable for CTI to consider if the movement is seasonal related, and if removing any trees would stabilise the movement. Particularly as tree roots have been found under the foundations. And I think that J, as an arborist, is an expert in the field of assessing the influence of trees. So I'm not satisfied that any work to the trees should be discounted at this stage.

New evidence submitted by Mr G

Mr E's provided two further reports in July 2021. One is a follow up from K, who carried out the initial report in October 2018. The conclusion of this report is that *"that the prime cause of movement is the varying depths of foundations associated with seasonal effects... removal of the trees is not considered to be a long term solution and could exacerbate the problem"*. CTI has said it hasn't been provided with a copy of this report. Having considered it, I'm not persuaded that this report evidences why tree removal could exacerbate the problem, or how this conclusion was reached. It also doesn't explain why its findings have changed from what it said in 2018, or what evidence it has reviewed to reach these findings.

Mr G's also provided his own arborist report by E dated July 2021. In the background, the report sets out its purpose as not evaluating the cause of the subsidence or to present any findings related to the property, but a critical review of previous reports carried out. However, it also notes that it hasn't been provided with the lab results on the tree root samples as they weren't provided by Mr G. So I'm not satisfied that this report is a full review of all of the evidence gathered by both parties so far.

The conclusion of that report is summarised below:

- there are conflicting assumptions on the cause of movement.
- K's report of 2018 suggests tree removal wouldn't stabilise the property long term
- The hydration of the soil should be explored further.
- So far it hasn't been demonstrated the proposed arboricultural solution (of removing trees) will remediate the subsidence issue.
- It's not clear why P implicated the beech tree.

I don't know if the conclusions of this report would be different had E been provided with the lab results of the tree root analysis, especially in relation to its last finding. I say this because the lab analysis in the arborist J's report, found a root matching a beech tree in one of the trial pits. And this report doesn't comment on the implication of the horse chestnut trees or provide any persuasive evidence that CTI has acted unfairly in pursuing these.

However, even with these inconsistencies, I consider the conclusions of this report aren't entirely at odds with CTI's position. CTI has said it hasn't concluded removing the trees will definitely stabilise the property, only that it should be allowed to consider it. And I agree this is a fair and reasonable position. So E's report doesn't persuade me that CTI have acted unreasonably in pursuing vegetation management – namely the removal of trees - as a potential solution to stabilising the property.

Overall having considered all of the reports, I'm most persuaded by the reports of the arborist J and consider its latest position of April 2020 to be fairly relied upon by CTI. This report takes into account lab analysis of tree roots found under the property, as well as likely influencing distances as set out by leading building construction standards, which are used in the building of new homes. I've seen no persuasive evidence that demonstrates these roots may not be an influencing factor. I find unless the results of further monitoring demonstrate that the trees are the cause of the damage, it's unlikely that the local authority will permit their removal, given the tree protection orders. So I don't think it's unreasonable that monitoring continues so that this can be established.

It is accepted by most experts that Mr G's foundations may be susceptible to movement due to their varying depths. But I think if CTI can stabilise the property without underpinning the foundations, it should be entitled to carry out this course of action. I say this because Mr G's policy provides cover for damage caused by subsidence. In carrying out a lasting and effective repair we'd expect an insurer to demonstrate it has stabilised the property. But we wouldn't expect it to simply underpin a property because of varying foundation depths, if it had been stabilised through other means.

In this case, CTI has said that if tree management was unsuccessful for any reason, it would look to underpin the property. I think this is a reasonable position.

My overall finding on this part of the complaint is that whilst CTI should have shared one of its reports with Mr G earlier, I'm satisfied it hasn't treated him unfairly. In the interests of moving the claim on, I propose CTI continue its monitoring on both properties until it can be established – one way or another – if the trees are the likely cause of the subsidence. If they are, it should pursue their removal in line with J's recommendations in April 2020. If tree removal is unsuccessful [due to the local authority's refusal] or if it doesn't stabilise the property, CTI should consider underpinning.

There seems an outstanding issue of potential excess moisture in the soil. CTI should work with Mr G and A to carry out reasonable further investigations and carry out any remedial action once these investigations are complete.

CTI removing subsidence cover

Our investigator found CTI had acted unreasonably in removing subsidence cover, following the principles of the ABI agreement relating to ongoing subsidence claims. Our investigator recommended CTI assess the risk of continuing Mr G's previous cover including subsidence. He said If CTI can show the claims history would have resulted in CTI not continuing cover [regardless of the ongoing claim] it doesn't need to take any further action. But if it would have offered cover, it should provide a quote to Mr G. Mr G has found a new insurance policy that doesn't cover him for subsidence. If he wanted to stay with the new insurer, CTI should offer subsidence cover only and pay any difference between what Mr G paid for his policy in 2020 and what CTI would have charged had his original policy continued. If there is a difference, CTI should pay interest on any difference.

Both parties accepted this principle. So I've seen no reason to depart from it and consider it a fair way to resolve this part of the complaint.

I note Mr G was concerned CTI may decline him for other reasons having carried out an assessment. I haven't been provided with the outcome of that assessment, but if Mr G did have concerns about any decline, he can raise that as a separate complaint and this service could consider it separately.

My final decision

My final decision is that China Taiping Insurance (UK) Co Ltd should:

- Continue monitoring property A and B until it can be established if the trees are the cause of the subsidence.
- Investigate further the potential for overhydration of the soils and carry out any mitigation.
- Upon receipt of invoices, it should reimburse Mr G for the reports carried out by E and K in July 2021.
- Consider the risk of continuing Mr G's previous cover against its underwriting criteria – without applying the ongoing subsidence claim.
- If it is able to continue cover, at Mr G's option offer him renewal terms (including subsidence cover) for the 2021 renewal onwards as if the policy had continued.
- If the policy can continue, pay Mr G the difference (if any) between the premiums charged in 2020 by his current insurer and what China Taiping Insurance (UK) Co Ltd would have charged had the policy continued, without any loading applied for the ongoing subsidence claim.
- Pay 8% simple interest on any refund from the date the premium was paid by Mr G to the settlement date.
- If China Taiping Insurance (UK) Co Ltd wouldn't have offered cover having reassessed the risk (but without applying any reference to the subsidence claim) then it doesn't need to take any action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 November 2021.

Michelle Henderson
Ombudsman