

The complaint

Mrs E's complaint is about a claim she made on her home insurance policy with a high street lender, which was underwritten by U K Insurance Limited (UKI) at the time of the claim. Whilst the claim was accepted, she's not happy that UKI won't underpin her home as part of the repairs.

What happened

Mrs E took out her home insurance policy with UKI in 2012. In the spring of 2018, she became aware that some cracking to her home that had developed over time might be due to a problem with the building. She contacted UKI, but decided not to progress a claim at that time. She arranged for a local builder to look at the damage, and the builder believed the damage had been caused by subsidence. Mrs E contacted UKI again and it sent out its subsidence experts to assess the damage and determine what the cause was. UKI's subsidence experts said the damage could be due to subsidence but there could be other causes (such as a lack of restraint in the roof). It was decided some site investigations needed to be done. It was also noted that there were pins present in the exterior walls, which indicated the property had been monitored for movement at some point in the past.

In late 2018 UKI appointed new experts and they completed investigations into the ground conditions and Mrs E's foundations. The investigations were done in the early months of 2019 but it wasn't obvious what had caused the movement in the property. Although it was thought that a possible leak on the incoming mains water pipe could have caused movement to the free-standing garage.

UKI decided to monitor the property to see if it was actively moving. The monitoring done between the spring of 2019 to January 2020 showed that the property wasn't moving. UKI explained this to Mrs E in January 2020. However, Mrs E wasn't convinced, and was adamant the property was suffering from current subsidence and needed to be underpinned. She also told UKI that the cracks in the property had got worse. As such, UKI's engineer visited the property in late January 2020. He believed the damage had been caused by subsidence at some point, so there was a valid claim, but he thought all the evidence there was at that point indicated the property was stable. In order to reassure Mrs E, it was agreed that the property would be monitored for a further period.

The engineering report produced at that point confirmed the property was built on silty, gravelly clay. This clay had a low to moderate shrinkability, so it was unlikely that it had shrunk due to dehydration and subsidence had resulted, although it was noted there had been a large tree close to the area of the property that had moved most, and it had been removed around the time the monitoring started. In addition, it was noted that the clay was soft up to 1.2m below ground level at the left-hand side of the house, becoming very soft below that. The soil at the other end of the site was confirmed as being soft for the entire depth of the sampling – 2.5m.

The monitoring of the property showed some slight movements, but there wasn't a downward trend to them – they moved up and down throughout the seasons, as would be expected with most properties. The engineer concluded the likely cause of the foundation

movement was the weight of the building causing some consolidation of the very soft clay beneath its foundations at the left-hand end of the house. However, the monitoring showed that there was no progressive downward movement, and the engineer was satisfied the property was stable and could be repaired. It was also confirmed that the engineer was satisfied the cracking to the remainder of the property was minor and not linked to subsidence.

There were ongoing discussions with Mrs E throughout the first half of 2020 about the property. This involved UKI's saying the property was stable and could be repaired without underpinning and Mrs E's belief and insistence that it should be underpinned.

In the middle of 2020 UKI had finished the further period of monitoring and this again showed the property was stable and only subject to normal, very small amounts of seasonable movement. So UKI offered to arrange for the repairs to be completed. Mrs E refused to allow the repairs to be done unless UKI agreed to underpin the property. She also reported that there were doors and windows in the property that were sticking. UKI said it that it could have its contractor ease the sticking when the schedule of works was drawn up. Mrs E declined the offer. She also made a complaint about UKI's handling of the claim and its proposals to repair her home.

In order to again reassure Mrs E about the stability of the property, UKI agreed to monitor the property for movement until the end of 2020. It said that if the property was shown to be stable, it would move to repair. In addition, it said that when it came to the point repairs were to be done, it could arrange for a meeting at her home to talk Mrs E through the repairs that were going to be done. It confirmed that if the property was stable at that point, it would be for Mrs E to prove that it needed underpinning.

UKI responded to Mrs E's complaint. It said there was no evidence to indicate the property needed underpinning and the monitoring had confirmed the property was stable. It was satisfied repairs could be started, but confirmed it would be doing a further six months of monitoring to give Mrs E further reassurance.

Mrs E didn't accept UKI's position and referred her complaint to this service. When the complaint was allocated to one of our investigators, Mrs E explained the cracks had appeared gradually over time and she filled them without making a claim. It wasn't until a friend visited in early 2018 and told Mrs E that the cracking could be due to subsidence and she should contact her insurer to have the property underpinned, that she reported the issue to UKI. Mrs E reported that the cracks (indoor and out) had become worse since Christmas 2019. She said there were now gaps between the windows and walls. Mrs W also explained that she thought the problem might be with the type of foundation she had and mentioned that there was a marsh nearby that nothing was allowed to be built on.

One of our investigators considered the complaint. However, she was satisfied the evidence showed that UKI's decision not to underpin the property was reasonable. She also found that the offer of an additional six months monitoring to reassure Mrs E that the property was stable before repairs, followed by more monitoring after repairs were complete, was fair.

Mrs E didn't accept the investigator's conclusions. She commissioned her own engineering report. The engineer concluded the left-hand gable of Mrs E's house had suffered significant downward movement and this had resulted in cracking to the front and rear elevations. It said the site investigations completed by UKI were inadequate in its opinion and this had resulted in a lack of clarity as to the cause of the movement. In addition, it questioned the results from the investigations that were done, as it said its experience was that the soil type in the area was not clay, but rather soft alluvial silts with bands of peat overlying sands. The engineer postulated that there might be clay because of a nearby stream and that a layer of

peat could be beneath the clay, which might have contributed to the movement. This was because peat can become unstable if ground water levels change.

The engineer concluded that the investigations hadn't been extensive enough and detailed what investigations it thought should be done. This included digging additional trial pits along the length of the gable wall and a comparison pit at the opposite end of the house at the back, rather than the front as UKI had done. The engineer also recommended a bore hole be taken to determine what the soil type was at a deeper level than the 2.5m UKI's experts had established. It said this would give a greater certainty about the future behaviour of the foundations and superstructure.

UKI considered the content of Mrs E's engineering report. It highlighted that the engineer had focused on the adequacy of the site investigations, but he hadn't commented on the monitoring results and what they showed about the property. UKI said that the engineer had criticised it for using remote data and conjecture, but then went on to do the exact same thing. It went on to say that the engineer seemed to have failed to have understood the purpose of the site investigations – to determine if there were any mitigating actions it could take to stop any movement, if indeed there was any movement. UKI said that the ground conditions under Mrs E's home might be poor and there might also be peat at a depth, but unless progressive movement is evidenced then it was able to move to repair.

In addition, UKI said that the property had been ready to be repaired for some time. It said it was willing to make a cash settlement for the claim, less any excess, and Mrs E could put the money toward the costs of an engineer and contractor of her choice.

Our investigator considered the new report from Mrs E's engineer and UKI's comments about it. Whilst she accepted that the monitoring showed there wasn't any requirement for the property to be underpinned at the present time, she thought UKI should repeat the site investigations in line with the suggestions of Mrs E's engineer.

UKI didn't agree to complete further investigations. It said that the ultimate purpose of site investigations and monitoring is to ensure the stability of a property. These investigations have shown the property was stable. UKI again said it thought it was revealing that Mrs E's engineer hadn't commented on the monitoring reports and the stability of the property, only the ground investigations. It repeated that it had over a period of 16 months proved that the property was stable and in that situation its obligation was to repair the damage caused by the subsidence. It said it had tried to do this and Mrs E had prevented it each time. It reiterated its offer to settle the claim in cash so that she could put the money toward underpinning the property if she wanted to do so.

As agreement couldn't be reached, it was decided the complaint should be reviewed by an ombudsman.

Following this, Mrs E said the cracks in her walls are getting worse and going deeper into the concrete. She said that her engineer had explained to her that if the investigations and works aren't done properly, she will be back to square one. Mrs E also expressed concerns about what could happen to her home if the subsidence wasn't stopped. Around this time, she again contacted the business her branded insurance policy was with. The current underwriter of the insurance policy sent out a firm of loss adjusters to look at the property again.

The second loss adjusters detailed the damage to Mrs E's property, and it matched that which had been documented by UKI's loss adjuster in early 2019, including the width of the cracks. It concluded that the damage was the same as was being claimed for against UKI and so the new underwriter shouldn't involve itself further.

Subsequently Mrs E's son wrote to us and confirmed that Mrs E had arranged for two separate subsidence surveyors to assess her property and both had determined that the property needed to be supported structurally/underpinned. He said that despite these opinions, UKI had not progressed the case and had left his mother in a very troubling situation with no resolution. He said that having seen the property condition, he was concerned the property was becoming increasingly dangerous for Mrs E to live in, and her neighbours to live besides, and it was only a matter of time before the issues escalated and there was potentially a collapse.

I issued a provisional decision on 9 July 2021, which set out my conclusions and my reasons for reaching them. Below is an excerpt.

'UKI has accepted liability for the damage to Mrs E's home and the dispute revolves around whether it should, as part of the repairs, underpin the property. Mrs E believes the property is still moving and that it needs underpinning; UKI on the other hand, is satisfied there is no progressive movement and, therefore, the property doesn't need underpinning.'

Before I consider the engineering evidence in this case, I believe it would be appropriate to explain an insurer's obligations in relation to a subsidence claim. Under the terms and conditions of an insurance policy, an insurer is only required to repair the damage caused by an insured event. So technically, all the policy would require of UKI is to repair the cracks in the above ground structure (superstructure) of the property. However, the insurer is also required to provide a 'lasting' repair. This means in real terms the insurer needs to stop the subsidence before it can repair the superstructure, or the repairs will fail quickly thereafter. It will only be required to complete structural stabilisation works (such as underpinning) if there is progressive movement in the property. If there has been movement in the past, but there isn't any at the time of the claim, the insurer wouldn't be required to complete stabilisation works. The insurer is not expected to complete preventative works, designed to stop any possibility of movement in the future.'

I would also explain that most buildings will move slightly throughout the year due to seasonal changes in the ground beneath the foundations. This is called seasonal movement and because the amount of movement is small and not long-standing (there will movement down and back up again), it doesn't cause damage to the fabric of the building or its foundations. This type of movement is normal and doesn't require the building to be structurally reinforced below ground level. Indeed, doing so when it's not needed can create problems of its own.'

When a claim is made for subsidence damage, the insurer will investigate its cause and assess whether the property is moving and, if it is, why. These investigations will often involve establishing the type of ground the property has been built on, whether there is vegetation nearby and if there are any faults with the local drainage system. This is to establish what the cause of the subsidence is/was. Level monitoring will also often be done to establish if the property is moving. If a property is moving, the insurer will carry out works to stop the movement. These works won't necessarily involve making alterations to the structure of the property (such as underpinning). Often subsidence will be caused by an external factor, such as vegetation dehydrating clay soils or leaking drains washing away small particles from the soil. If the external factor is removed, then the subsidence will usually stop, and that is all the insurer is required to do in such circumstances.'

I have considered Mrs E's engineer's assessment of the property. The report essentially just set out what investigations it would have done had it been commissioned to investigate the subsidence and that it considers UKI's investigations, because UKI did fewer trial pits than it would have and didn't do a deep borehole, was inadequate. The reason it seemed to think

the investigations were inadequate was because they didn't identify whether there was peat beneath the 2.5m of clay and below the water table, which could be affected by changes to the water table and potentially have been responsible for the subsidence. The engineer didn't comment on the monitoring results or voice an opinion on whether the property was stable.

UKI has said the subsidence, whenever it happened, was due to the soft clay the property was built on, although the tree that was removed might have had an influence. However, over the period the monitoring was done, there wasn't progressive movement. What movement there was, was slight and of a seasonal nature and so wasn't causing any damage to the property. So it was satisfied the property didn't need underpinning.

Mrs E has said at various points during UKI's investigation into the complaint that the cracks at her home were worsening and she believed the property was still moving. UKI detailed the crack damage to Mrs E's home in the spring of 2019. The second loss adjusting company that attended Mrs E's home at the end of 2020 did the same. While Mrs E believes the cracks were worsening, the second report doesn't indicate that was the case. For example, the crack at the rear window in the master bedroom was the widest crack in the property at 3 mm width. It is also described as being 3 mm wide in the second loss adjusters' report around 18 months later.

Based on the evidence I have, I don't think there is any substantive evidence UKI was wrong in its conclusions that the property was stable throughout the period of the claim. In that circumstance, there is no requirement for it to underpin the property or complete any other form of foundation support. Whilst I can understand that Mrs E might want such works done so that there is no possibility that the property could move again at some point in the future, that isn't what an insurance policy is designed to do. I can't find that UKI has done anything wrong in refusing to underpin Mrs E's home.

In relation to the investigations Mrs E's engineer would have done if it had investigated the subsidence, I don't think its comments add substantively to the evidence. Different engineers will have different opinions about the type, extent and order of investigations into a problem. The fact that Mrs E's engineer might have investigated the movement slightly differently doesn't mean UKI's investigations were inadequate or that the conclusion it came to about the subsidence was wrong. In light of this, I don't consider I can require UKI to complete more investigations or to pay the cost of the report, as it didn't alter the outcome of the claim.

I know my findings will disappoint Mrs E, but I don't propose to ask UKI to expand its scope of repairs to include underpinning of the property nor do I consider it needs to do further investigations.

UKI has said that it will repair the property if Mrs E allows it to. Alternatively, if she isn't willing to let it do so, it will settle the claim by paying her the cost of the repairs. Insurers usually complete subsidence repairs to ensure they are done properly, as subsidence is a somewhat specialist area of work. As such, I would recommend Mrs E give serious thought to whether she will allow UKI to repair her home or not.'

UKI responded to my provisional decision. It said that it had been trying to repair the property since early 2020 and believed that it would be unfair on it to have to again deal with any delays in trying to arrange and carry out the repairs. As such, it considers the only possible option left for it is to cash settle the claim based on the scope of works previously compiled. It also highlighted that the terms and conditions of the policy allow it to choose to do this.

Mrs E responded by highlighting various areas of damage caused by the subsidence that needed to be included in the repairs. Included in this were concerns about damage caused by UKI's contractor to the drainage and hardstanding at the side of the garage during investigations. She said that the area had experienced poor drainage since. She asked that I set out in my final decision the repairs that I required UKI to complete.

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.

UKI has said that rather than it being Mrs E's choice about how the claim should be settled, it now wants to make that decision and it wants to settle the claim in cash. As I know UKI is aware, where an insurer has entered into a contract to repair, as UKI has here, it can only be released from that contract if the policyholder agrees to it or the policyholder has frustrated the contract.

It appears that Mrs E has now accepted, following our explanations, that her home doesn't need to be underpinned and she wants to move to it being repaired. It would also appear that she wants UKI to do those repairs.

Prior to the complaint being referred to this service, UKI's position was that it was willing to do the repairs and that prior to doing so, it would arrange a meeting at Mrs E's home to talk her through the repairs that would be done. It later said that it would pay Mrs E a cash settlement at her request if she wanted to get her home underpinned and use the value of the claim toward those costs. These options were entirely reasonable and despite its response to my provisional decision, I believe it should maintain this position, as I don't consider Mrs E frustrated the contract to repair, given how UKI dealt with her concerns. Indeed, it would appear the only reason for the delays in this case was a lack of understanding, which seems to be due to poor communication between the parties. I would also remind UKI that it even if it hadn't entered into a contract to repair Mrs E's home, it is good industry practice for an insurer to complete subsidence repairs, even where its policy gives it the right to cash settle if it wishes to do so.

Mrs E has detailed the damage to her home she wants repaired as part of the subsidence claim. She wants me to set out in detail the damage UKI should repair in this decision. That isn't something I will be doing. There isn't currently a dispute about the scope of works, other than whether stabilisation works are needed and so it's not appropriate for me to list what I think should be repaired – that's a matter for the technical specialists involved in the claim. However, if Mrs E accepts UKI's offer to walk her through the repairs, she can ensure UKI is aware of all the damage she believes is linked to her claim and any questions she has can be discussed as part of that process. I would also suggest that if there are any areas of damage that she and UKI don't agree on, she allows the repairs they do agree on, to start. Any discussions about areas of disagreement can be dealt with separately.

In relation to Mrs E's concerns about the drainage near her garage and damage having been caused by UKI's contractors. This matter isn't something that this service has investigated as it wasn't part of her original complaint. As such, I can only suggest she ask UKI to look into the issue separately to the repairs to the fabric of her home. In the meantime, I would recommend Mrs E allows UKI to complete the repairs to her home.

Having considered the further comments of the parties, my conclusions remain the same. I don't uphold this complaint because I am satisfied the evidence shows Mrs E's home is stable and can be repaired. If Mrs E changes her mind about UKI repairing her home and would prefer a cash settlement, she should inform UKI as soon as possible. In the

meantime, I leave it to UKI to make contact with Mrs E to make the necessary arrangements for the repairs to start.

My final decision

My decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mrs E to accept or reject my decision before 7 September 2021.

Derry Baxter
Ombudsman