

The complaint

Mr and Mrs J complain about the way UK Insurance Limited (“UKI”) trading as Direct Line handled a claim they made on their home insurance policy following damage caused by subsidence.

All references to UKI also includes its appointed agents

What happened

In late 2018, Mr and Mrs J noticed cracks in their property. They contacted UKI to make a claim, which was accepted and monitoring began on the right-hand side of the property (which is where the damage was) in 2019. Mr and Mrs J raised concerns that only the right side of the property was being monitored, and in 2021, they say UKI agreed to monitor the whole property.

In 2021, UKI deemed the property to be stable, so it put together a schedule of works for repairs. Mr and Mrs J thought some areas of damage were missing, and so the scope was amended to include them.

During the repair works, UKI had to remove a section of marble tiles in the living room, to fix a slope to the floor which had occurred due to the subsidence damage. When doing so, some of the marble tiles cracked. UKI said it would cover the cost of relaying the floor in the living room. It also said given the flooring was the same throughout the whole downstairs of the property, it would also pay a 50% contribution to replace the rest of the marble floor in the downstairs.

At this point Mr and Mrs J complained to UKI. They said they’d been told the marble might be damaged, but at no point were they told that the whole downstairs floor wouldn’t be replaced. They wanted UKI to pay for the whole of the downstairs to be replaced, as they said they didn’t have any spare tiles and couldn’t find a match for the existing marble. They said the tiles hadn’t been replaced by a specialist tiler, and so UKI was responsible for the damage and so they should be entitled to a full replacement of all tiles in the downstairs of the property.

They also complained that UKI hadn’t monitored the left-hand side of the property from 2019, and this was only included in May 2021. So they felt UKI had delayed the claim by not monitoring the whole property from the outset.

UKI didn't agree to change its position, so Mr and Mrs J brought their complaint to this service. Our investigator noted the claim had now moved on, but said he was only considering events up to the UKI's final response letter in August 2021. He said based on the reports he'd seen, UKI had acted reasonably in not monitoring the left-hand side of the property. He said UKI hadn't agreed to extend the monitoring to the left-hand side, but as he'd seen no evidence of subsidence damage affecting that side of the property, he wouldn't ask UKI to do anything further. He also thought UKI's offer on the flooring was fair and reasonable.

Mr and Mrs J didn't accept the outcome. They said UKI hadn't carried out the repairs to the floor as set out in the schedule of works, and it was this action that led to the marble tiles cracking. They said the insurance policy should put them back in the position they were in before the subsidence damage, so the entire ground floor needs replacing. They also maintained that the left-hand side had been monitored from 2021. As Mr and Mrs J didn't agree, the matter has come to me to decide.

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.

Mr and Mrs J have provided a number of points regarding their complaint, as an informal service, I won't comment on each of them, but I have read and considered what has been provided by both parties.

Monitoring of the property

There appears to be some confusion regarding the monitoring of the property. Mr and Mrs J were under the impression UKI had extended the monitoring to the left side of the property in 2021 and feel this should have been done from 2019. UKI said it hasn't extended the monitoring as it's satisfied the damage to the left-hand side of the property isn't caused by subsidence.

From what I've seen, Mr and Mrs J first raised concerns about cracking on the right-hand side of the property. So UKI started its assessment here by instructing an arboricultural survey to review whether trees/vegetation could be causing the subsidence. This found a number of trees near the right-hand side of the property to be the likely cause, and monitoring was agreed to check whether the movement was seasonal. UKI also carried out a review of the drains and found some damage to a rainwater gully on the right side of the property. Whilst it didn't think this was the likely cause of the subsidence, it carried out a repair as a precaution.

In September 2019 Mr and Mrs J contacted UKI to notify it of further areas of damage. It doesn't appear UKI reviewed this damage. But in November 2019, UKI finished the monitoring, it was satisfied the subsidence was caused by clay shrinkage due to the moisture demand of surrounding vegetation. The vegetation was removed at the end of 2019 so a further period of monitoring, to check the stability of the property, was done.

Following correspondence with Mr and Mrs J about further damage, UKI reviewed the cracks noted by Mr and Mrs J to the left-hand side of the property. In January 2020 a report from UKI said these cracks were unrelated to subsidence. And a further report was finalised in October 2020. This again reviewed the cracks to the left-hand side of the property and found they were not caused by subsidence, but other causes not covered by their insurance policy.

Mr and Mrs J say they've had multiple plumbers and tradespeople confirm that damage to two bathrooms on the left-hand side of the property is subsidence damage. But I haven't been provided with any report or commentary which persuades me this is the case. So based on everything I've seen, I consider it more likely that the damage to the left-hand side of the property isn't related to the subsidence damage. And so UKI doesn't need to undertake any repairs to these areas.

Mr and Mrs J have said UKI has included areas of the left-hand side of the property in its repair schedule, which proves there is subsidence and the whole house should be included. But I'm not persuaded that is the case. I can see there were some further amendments to the schedule of works after the final response letter in August 2021, but if Mr and Mrs J have concerns about this they need to raise them separately with UKI before this service can consider them. As they weren't raised as part of this complaint, I haven't considered them as part of this decision.

Mr and Mrs J say UKI agreed to monitor the left-hand side of the property around 2021, but I haven't seen anything to suggest that's the case. I have seen an email from UKI dated 1 June 2021, and this says monitoring will continue to confirm the stability of the property. But this doesn't say it will expand it to new areas of the property. It seems UKI agreed to continue monitoring as Mr and Mrs J had continued to raise concerns about movement, rather than because UKI were concerned the property wasn't stable.

Mr and Mrs J say UKI has admitted it did extend the monitoring, but from what I've seen that isn't the case. It appears there was one monitoring point towards the left of the property, to check the movement at the front elevation. But this was part of the original monitoring sites and wasn't added in 2021. So I'm satisfied that, as of the date of the final response letter in August 2021, no extension of the monitoring was agreed. And based on what I've said above, I think UKI acted reasonably in not monitoring the left-hand side of the property from the start.

Marble flooring

The subsidence caused a slope in the flooring near a bay window. To carry out a repair UKI needed to lift some marble tiles. It's clear there was some concern from UKI as to whether these tiles may break in the process of being lifted as this was discussed prior to the work starting. The tiles did break, and so UKI has offered to pay for replacing all of the tiles in the living room, as well as a 50% contribution to the rest of the flooring in the downstairs, as it is all the same.

Mr and Mrs J argue this doesn't put them back in the same position as before the damage, as the same tiles can't be sourced. They also say the tiles broke because of negligence from UKI, and if proper care and skill had been taken then the damage wouldn't have happened. They also say they were told by UKI the whole of the downstairs would be replaced if the tiles were damaged, so this is what should happen.

The starting position is Mr and Mrs J's policy. This says UKI *"won't pay to replace any undamaged items solely because they are part of a set, suite, group or collection, unless they are part of a bathroom suite or fitted kitchen and the damaged parts can't be repaired or replaced."*

I'm satisfied that under the policy, UKI doesn't have to pay to replace marble tiles that weren't damaged as part of fixing the subsidence damage. Mr and Mrs J have argued their flooring goes beyond this definition and it isn't just matching, it is intended to be continuous flooring with no breaks. I've considered what they've said, but I still consider the flooring comes under this definition. UKI have offered to replace all of the tiles in the living room, and contribute 50% for the rest of the ground floor for loss of match, so its offer is reasonable based on the policy terms.

If I were satisfied the tiles only needed replacing because of poor workmanship on the part of UKI, then I might consider it fair and reasonable to ask UKI to replace the whole of the downstairs flooring. But having considered everything, I'm not persuaded the tiles broke due to an error made by UKI. Mr and Mrs J have argued a specialist marble tiler should have been used, but UKI just used a joiner to carry out the work. UKI said its contractors are experienced in subsidence claims and have substantial experience in the building trade. It's not clear whether the contractors specialise in marble tiling, but having considered everything, I haven't seen any evidence that the outcome would have been different if UKI had used other contractors. UKI shared its concern that the tiles may break while the flooring was lifted in advance of the works taking place. So it seems it was always going to be likely some damage to the tiles may happen as a result of the works.

Mr and Mrs J say the contractor didn't carry out the works as set out in the schedule of works. I've reviewed the schedule from June 2021. It says:

"To correct the slope, we would have to lift the tiles which will probably break some of them and then we would have to take up and relay the full room."

It doesn't set out the method in which the repair will be carried out, and I haven't seen anything else which suggests UKI didn't carry out the repair as agreed. So I'm not persuaded any damage is as a result of poor work from UKI.

Mr and Mrs J asked what would happen if any tiles were damaged, and I have seen an email from UKI which says if that were the case it may consider replacing the whole of the downstairs. It later changed its position. I accept this would be disappointing to Mr and Mrs J, as their expectations had been raised. And it's not clear why UKI said this, given what its policy sets out. But ultimately it's my role to consider if UKI has made a fair offer for the undamaged tiles, and for the reasons set out above, I'm satisfied that it has. So I'm not going to ask it to do anything differently.

My final decision

My final decision is that UK Insurance Limited (trading as Direct Line) doesn't need to do anything differently.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 30 March 2022.

Michelle Henderson
Ombudsman