

The complaint

Ms H complains about U K Insurance Limited's handling of a claim under her home insurance policy.

What happened

Ms H has a home insurance policy underwritten by UKI which covers her contents and buildings, amongst other things.

She made a claim in 2013, relating to subsidence at the rear of her property. UKI accepted the claim. They concluded that the subsidence was due to leaks from the drains which run underneath the house. And they carried out repairs to the drains and to the damage caused to Ms H's home.

Ms H contacted UKI again in October 2018, after she noticed cracks reappearing in her home and patches of damp in various places.

UKI appointed a surveyor (from here on in, I'll refer to them as surveyor A) to inspect the property. In brief, they concluded that there had been some subsidence, which had caused damage to Ms H's home.

They said this was likely due to clay shrinkage. Possible causes were a rainwater pipe which discharged direct onto the hard standing outside the rear of the house and/or a tree in the neighbour's garden.

They also recommended further monitoring, to confirm that the 'minor' movement had stopped, and then repairs of the subsidence-related damage in the house. They said the damp wasn't caused by the subsidence issues.

I needn't go into the full detail here because both parties are fully aware of the history, but UKI then proceeded to carry out further investigations and monitoring and came to the conclusion that the internal repairs could now be completed.

Ms H wasn't happy with UKI's proposals and so commissioned her own surveyor (who I'll refer to as surveyor B) to inspect the property.

He came to the conclusion that the subsidence was due to a leak in the drains – which hadn't been repaired effectively in 2013. He also felt that all of the damage inside Ms H's home – including the damp and issues with the roof – were caused by that subsidence.

He recommended, in summary, that UKI replace the drains entirely, underpin the loadbearing walls in the house and then complete all the necessary repairs to the house itself.

Given that the two surveyors were in clear disagreement about what had happened, why it had happened, and what needed to be done to put it right, UKI suggested they appoint an

entirely independent third surveyor (who I'll call surveyor C). Ms H selected surveyor C from a list of six put forward by UKI.

To summarise, surveyor C concluded that the house was now stable and any movement due to subsidence had ceased. They agreed with surveyor B that the problem had most likely been caused by water leaks from the drains.

But they said the drains could be repaired, rather than replaced entirely. And they felt that underpinning wasn't necessary given that the movement had stopped.

They also said that the subsidence and leaks had likely caused some of the damage to the house, but that there were areas of damage which couldn't be linked to the subsidence. In particular, the damp in the front room, damage to the shower cubicle and bathroom, the kitchen door (which was not closing or locking properly) and the roof at the rear of the building.

UKI had agreed to be bound by the recommendations from surveyor C and were prepared to proceed on that basis. But Ms H objected – she thought surveyor B's report was more accurate and compelling. And she wanted UKI to take up surveyor B's recommendations.

When UKI weren't willing to do that, Ms H complained to them and then brought her complaint to us.

Our investigator looked into it and thought UKI had done the right thing in appointing an independent surveyor (surveyor C) to break the deadlock.

But she thought surveyor B's report was more detailed, more accurate and more compelling. And she came to the view that UKI should carry out the work that surveyor B had recommended – including replacing the drains and underpinning the house.

UKI disagreed and asked for a final decision from an ombudsman.

Having considered all the evidence and information we had, I agreed with our investigator that Ms H's complaint should be upheld. But I took a different view about what UKI need to do to put things right.

So, I issued a provisional decision. This gave both Ms H and UKI an opportunity to provide further information or evidence and/or comment on my thinking before I make my final decision in this case, which will be this service's last word on the matter.

My provisional decision

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I think the first thing I should say is that surveyor B – commissioned by Ms H – and surveyor C – who is independent – agree that there has been on-going subsidence at the rear of Ms H's property since the repairs were carried out after the claim in 2013.

More importantly perhaps, they agree that the cause of that very likely wasn't the rainwater pipe discharging onto the hard standing or the neighbour's tree (as surveyor A suggested). They both say there has been an on-going leak of water from the drains which were supposed to have been repaired after the 2013 claim.

So, I don't think anyone is now disputing that UKI should stop the leak from the drains and carry out repairs to any damage to Ms H's home caused by the subsidence after 2013.

There are however, two major and significant differences in the two reports.

The first relates to what UKI need to do to put an end to the problem. Surveyor B says they should replace the drains and underpin the house. Surveyor C says the drains can be repaired and it's not necessary to underpin, because the house is stable.

The second relates to the repairs to the house itself. Surveyor B believes, more or less, that all the damage in the house is due to the subsidence and/or the leak of water from the drains.

Surveyor C says some of the damage is down to the subsidence (and should therefore be repaired by UKI), but not the damage to the back door, the shower cubicle and bathroom or the rear roof.

I'll deal with the latter issue first – the damage to the house itself.

Surveyor C later agreed that he made some erroneous assumptions when he prepared his report. For example, damage to the roof (and damage from a supposed subsequent leak) was put down to impact from a firework. Ms H pointed out that incident happened in a different part of the roof - and was repaired.

I also agree with our investigator that surveyor C's account of the damage to the back door was likely wrong. He did say that he was relying on evidence from a contractor who examined the door and said it had been badly hung.

But that doesn't alter that fact that the door had been operating without any problem for several years after it had been hung – which suggests the later jamming was due to movement in the door and/or doorframe or the floor / walls around them.

On the other hand, surveyor B gives a very compelling account of how damage to the roof and to the front of the property (away from the seat of the leak) may likely have been caused by the subsidence attributable to the leak from the drain.

So, on balance, I'm inclined to agree that surveyor B's report is more reliable and more compelling in identifying what damage to the house can be put down to the subsidence – and ultimately the leaking drain.

Both reports give a cogent, coherent and compelling account of the cause of the subsidence (on which they broadly agree). And both make consistent, logical and convincing arguments about what needs to be done now to prevent any further subsidence problems at the property (on which they disagree).

It's not for me to act as a fourth expert in this case. And I have no doubt that both surveyors have given an entirely honest account of their opinion.

I suspect that if two very well qualified and reputable surveyors can disagree about the work necessary to protect Ms H's property, then there is a very real and finely balanced question here about how best to resolve things.

On balance I'm inclined, as things stand, to ask UKI to carry out repairs to the drains in line with surveyor C's recommendations. And I'm inclined, as things stand, not to require them to carry out underpinning work.

I think this is a case of two expert professionals having a very legitimate and finely-balanced difference of opinion. I'm sure both opinions have merit. And both would be regarded as respectable - and within the range of reasonable opinions which might be expressed by a member of their profession.

I believe our investigator was persuaded by the fact that there is one sure way here to avoid any possibility of any further problems for Ms H. That being to take the recommendations of surveyor B and secure the house by underpinning and replacement of the drains.

But our duty of fairness also extends to UKI and I have to bear in mind the effort and expense involved in the solution suggested by surveyor B. To say nothing of the great and prolonged inconvenience to Ms H herself if the more radical repair scheme is accepted.

I also have to bear in mind that surveyor C was entirely independent. And that whilst Ms H didn't agree to be bound by his findings, she certainly agreed that his report might be a means to break the apparent deadlock after the reports provided by surveyor A and surveyor B.

On balance – and particularly bearing in mind the results of the on-going monitoring of the cracks in Ms H's property (which haven't widened for some considerable time) – I think it's more likely than not that the house is stable and will remain so as long as effective repairs are made to the drains.

And for those reasons, I'm inclined as things stand to require UKI to repair the drains, as suggested by surveyor C, but not to require them to underpin the load bearing walls in the house.

In summary, I'm minded to ask UKI to carry out all the repairs to the house suggested by surveyor B, but to carry out preventative work to guard against further subsidence in line with the recommendations of surveyor C.

I sincerely hope this will put an end to the problems Ms H has experienced for many years now. But I would stress that if the subsidence recurs at any point and causes further damage, I would expect UKI to review the position very quickly.

I'd also expect that UKI would then carry out the more fundamental works suggested by surveyor B, unless there is a very good reason not to do so and an acceptable alternative means to resolve the problem.

There are one or two other issues that I also need to comment on here.

First, UKI should not treat this as a new claim and charge Ms H another excess. In essence, both surveyors B and C agree that the problems Ms H has experienced more recently are the direct result of the failed attempts to repair the drains after the 2013 claim. I expect UKI to rectify the errors their contractors made at that time and not to ask Ms H to contribute in any way to paying for the further work now.

Second, UKI should reimburse Ms H for any work she's already paid for to rectify damage which surveyor B puts down to the subsidence. That includes any work

carried out on the rear roof of the property and any expense incurred relating to the rear door.

Third, if they haven't already done so, UKI should reimburse Ms H for her costs in commissioning surveyor B. Had she not done so, the claim might have been settled in an unfair and inappropriate manner, on the basis of surveyor A's findings.

Finally, although I agree with our investigator that UKI did the right thing in agreeing to appoint a third, independent surveyor, that wouldn't have been necessary, had their own surveyor found the issues with the drains later identified by both surveyor B and surveyor C.

Ms H reported her on-going problems to UKI in October 2018. And she is still waiting for the necessary work to begin. And given that the current issues appear to have arisen only because the drain repairs after the 2013 claim failed, I think Ms H has experienced several years of stress and inconvenience due to UKI's (or their contractors') errors.

So, I'm minded to require UKI to pay Ms H £500 compensation for the trouble and upset caused by their errors since 2013."

The responses to my provisional decision

UKI responded to my provisional decision simply to say that they accepted my findings. I'm grateful to UKI for confirming that.

Ms H responded in more detail. I'll try to summarise her points without necessarily wanting to repeat them here word-for-word. I'm sure Ms H will understand if my summary doesn't cover the full detail she provided.

Ms H wants me to re-consider my decision that her drains can be repaired. She says Surveyor C said the drains were "serviceable", but she believes they do become blocked from time to time due to the bowing in the pipes mentioned by the various surveys.

And she says that the initial CCTV survey failed until the drains were flushed – likely because of a blockage caused by the bowing. She also says she has to flush her toilet twice, which shows the drains are not working properly.

Ms H wants me to require UKI to replace the drains, with the provision of a concrete bed underneath the pipes to prevent bowing. She says the previous attempts at repair clearly failed, likely due to the lining of a six inch pipe with a 4 inch liner. And she fears any further attempt at repair will lead to the same result – on-going leaks underneath the house and further subsidence.

Ms H also says that the repair or replacement schedule / plan for the drains should be prepared by an independent surveyor. She has lost trust in surveyor A, due to their failure to get the repairs right in 2013 / 2014. And she believes their analysis of the problem in 2018 – subsequently shown to be false by both surveyor B and surveyor C – suggests they don't have an understanding of the issues with her home.

Finally, Ms H thinks the compensation I suggested for her trouble and upset (£500) is insufficient. She says the issues have been on-going for nine years since she first made a claim to UKI.

And in that time, she's had to cope with damp in her kitchen and a house in an increasing state of disrepair. She says this has affected her mental health and that she hasn't been able to move to a new location as she'd intended. She also says she's had a dehumidifier running constantly, at great cost in times of her energy bills.

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.

Ms H is clearly concerned that if UKI don't underpin her house and replace her drains completely, there is a possibility that the problems she's experienced will either continue or re-emerge at a later date.

I completely understand that. Anyone in Ms H's position would feel the same way, I suspect. But I have to make a decision based on the available expert evidence and the balance of probabilities. And I have to bear in mind that the absolutely risk-free solution may be disproportionate in light of the available evidence.

On that basis, I'm not going to fundamentally change my view about whether UKI repairs or replaces the drains. I think repairs are the proportionate response right now, in light of surveyor C's report and in light of the evidence about the current level of movement of the property.

I hope Ms H will understand that UKI have absolutely no interest whatsoever in doing a botched set of repairs which might well lead to the drain failing again in the near future. If that happens, UKI will have to then carry out more fundamental works and they will have ended up paying twice to get Ms H's home in a sound state. I strongly suspect UKI wants to get these issues sorted for once and for all, almost as much as Ms H does.

All of that said, I think Ms H is well within her rights to ask that UKI do not use surveyor A again to set out the scope of works for the repairs. It's not unreasonable for her to say she doesn't trust them to identify all the issues and deal with them effectively given the history of her claim.

So, I am going to require UKI to use a different surveyor to plan the repair work. I don't think I need to go so far as to say the surveyor has to be independent. That may just lead to more delays. But I am of course expecting that the scope of works will be thorough and subject to appropriate checking and control by UKI.

Again, I bear in mind that UKI have no interest in carrying out cheap and ineffective repairs. And I should be very clear that the onus is very much now on UKI to carry out effective and lasting repairs to Ms H's property.

This should include remedying any bowing to the drains which may be likely to cause blockages, partial blockages or standing water in the drains.

I'm not a surveyor and it's not for me to set out how that can be achieved. There may indeed be a number of different ways to achieve that end. But I hope it goes without saying that it will not be fair or reasonable for UKI to leave Ms H's drains in a state where blockages are likely to occur and/or water does not run freely.

Finally, I understand Ms H's view on the level of compensation suggested in my provisional decision. She has very eloquently set out the effect the on-going problems with her property have had on her.

However, I have to consider what part of Ms H's understandable distress and inconvenience has been caused purely by UKI's errors. As opposed, of course, to the stress, trouble and anxiety she would have experienced because her house has a subsidence problem.

UKI aren't responsible for causing that problem and I can't hold them to account for all the worry Ms H has experienced or all the effects on her home.

I have to bear in mind that Ms H originally raised this issue with UKI in 2013. And, as far as UKI were aware, matters were resolved by 2014. Ms H then contacted them again in 2018. I can say that UKI failed to make effective and lasting repairs in 2014, but I can't reasonably say they're responsible for whatever trouble and upset Ms H experienced between 2014 and 2018. Simply because they weren't aware there was a problem.

So, when Ms H says she's experienced nine years of anxiety and upset, it's difficult for me to attribute all of that to UKI. I also have to consider that Ms H's anxiety between 2014 and 2018 wasn't sufficient to prompt her to go back to UKI to ask them to carry out further investigations at the property.

None of this is intended to diminish the very unfortunate experience Ms H has had with her house, or to downplay the effect on her. But I'm satisfied that the compensation I suggested in my provisional decision is fair and reasonable in all the circumstances.

In response to my provisional decision, Ms H also raised the question whether she should be compensated for the higher energy bills she paid because she was using a dehumidifier with great regularity.

This wasn't an issue addressed in UKI's final response to Ms H's complaint to them. I assume because it wasn't raised at the time. It also wasn't covered in our investigator's view. Again, because it wasn't part of the original complaint, as far as I can see. Nor did Ms H raise it in response to that view.

If Ms H wishes to provide evidence to UKI to show that her energy bills were appreciably higher in the relevant period due to her almost constant use of a dehumidifier, I'm sure they will consider that as part of her claim.

But if they haven't been asked to do that yet – as it appears, from the evidence we have on file at least – it's not possible, under the rules which govern our service, for me to uphold a complaint about that point now and require UKI to reimburse Ms H.

Putting things right

As I say, I'm not fundamentally changing the outcome proposed in my provisional decision, for the reasons I've set out above.

I'm still of the view that UKI need to repair the drains, repair Ms H's house itself (as recommended by surveyor B), pay Ms H for relevant repairs already carried out, pay Ms H for surveyor B's report, and pay Ms H £500 in compensation for her trouble and upset.

I do though agree with Ms H's suggestion that surveyor A should not be involved in any way in determining what repairs are carried out to the drains.

My final decision

For the reasons set out above and in my provisional decision, I uphold Ms H's complaint. U K Insurance Limited must:

- carry out repairs to the drains as recommended by surveyor C (and must not involve surveyor A in planning or carrying out this work);
- carry out repairs to Ms H's house as recommended by surveyor B;
- reimburse Ms H for the cost of commissioning surveyor B;
- reimburse Ms H for repairs she's already paid for (as set out above in my provisional decision); and
- pay Ms H £500 in compensation for her trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 20 April 2022.

Neil Marshall
Ombudsman