

The complaint

Mrs W and Mr W complain about U K Insurance Limited's handling of a claim made under their home insurance policy.

What happened

Mrs W and Mr W have a home insurance policy underwritten by UKI which covers their house and its contents, amongst other things.

They bought their house in 2017 and in April 2019 they made a claim having noticed cracks in their garage and the main part of the house.

The background to this case is well known to both parties, so I'll summarise it very briefly here.

In short, UKI have accepted that the garage at the property is subject to subsidence. And they're covering the cost of repairs to the garage and removal of nearby vegetation which is suspected of causing the subsidence.

The real contention in this case is about the damage to the main part of the house and the conservatory. Mrs W and Mr W believe this is caused by subsidence and should be covered under their policy.

UKI say there is no evidence of damage to the main part of the house or the conservatory caused by subsidence. Their experts have suggested the damage is likely caused by shrinkage or thermal movement, which is not covered under the policy's terms.

Mrs W and Mr W have complained to UKI on two separate occasions about the handling of the claim and about delays and poor communication.

UKI provided final responses to those complaints in April 2021 and December 2021. They accepted there had been delays and poor communication with Mrs W and Mr W. And they paid £550 in total to Mrs W and Mr W in compensation for their trouble and upset.

Mrs W and Mr W brought their complaint to us in January 2022. They weren't happy with UKI's latest response. They want UKI to accept that the damage to the house is caused by subsidence, accept their claim, and carry out the required repairs.

Our investigator looked into it and didn't think UKI's decisions about the cause of the damage were unfair or unreasonable in light of all the evidence available.

However, she thought there were unnecessary delays caused by UKI or their agents and, at times, poor communication with Mrs W and Mr W. And she said UKI should pay Mrs W and Mr W a further £750 in compensation - and ensure that the repairs to the garage were completed as soon as possible.

Mrs W and Mr W disagreed and asked for a final decision from an ombudsman. They believe UKI should accept their claim relating to the damage to their house and conservatory.

They're concerned that their house has lost value and would only regain it if what they see as the subsidence issues are addressed. And failing that, they want a certificate from UKI to say that the house is not subject to subsidence.

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.

Before I address the substantive issues in this case, I need to be clear about what issues I'm considering in making this decision and, more specifically, what time period I'm looking at.

Our service operates under dispute resolution (DISP) rules set out by the Financial Conduct Authority (FCA). Those rules say that if a customer complains to a financial business and receives a final response from that business, they then have six months to bring that complaint to us if they're unhappy with the business's response.

If it's brought to us after more than six months has passed, we can't consider it – unless the business consents or there are exceptional reasons to explain why the customer couldn't refer the matter to us earlier.

Mrs W and Mr W's first complaint to UKI received a final response in April 2021. This clearly referred Mrs W and Mr W to us if they weren't happy with the outcome and clearly stated that they had six months to make their complaint to us.

Mrs W and Mr W brought their complaint to us in January 2022 – more than six months after UKI's formal final response in April 2021. So, the rules which govern our service mean that I can't consider the issues raised by Mrs W and Mr W in their first complaint.

UKI have been clear that they don't consent to us looking into those matters, given that they were brought to our attention late. And there are no exceptional circumstances to explain why Mrs W and Mr W couldn't have brought that complaint to our attention earlier.

UKI provided a final response to the second complaint in December 2021 – and Mrs W and Mr W complained to us the following month. So, I can consider the issues raised in that complaint.

I'm sorry this is a rather technical explanation of the statutory rules which govern our service. But it's important to recognise that in effect I can only consider what's happened to Mrs W and Mr W – including any decisions made by UKI, and/or any delays and poor communication – between April 2021 and December 2021.

Anything before that was covered in April 2021's final response from UKI – and was not brought to our attention in time.

And if Mrs W and Mr W are unhappy about anything that's happened after the second final response in December 2021, they would need to make a further complaint to UKI and then bring that to us if they aren't happy with the outcome.

That's because the DISP rules also say that a financial business must have an opportunity to consider and resolve any complaint from a customer before that complaint can be

considered by us.

Of course, that would apply to any further delays – after December 2021 - in the repair work being carried out to the garage.

Turning now to the substantive issues in the case, I'll first consider whether it's fair and reasonable for UKI to conclude that the damage to Mrs W and Mr W's is not caused by subsidence.

Again, there is a long and involved history to this case. But I'll try to summarise the key facts, which I don't think are in dispute.

After receiving the claim, UKI appointed a loss adjuster to inspect the property. They thought the damage to the garage required further investigation, but the damage to the house was unlikely to have been caused by subsidence.

A different loss adjuster was then appointed. They set up monitoring of the cracks, obtained an arboriculturist's report and recommended UKI accept liability for the claim relating to the garage.

In essence, neither loss adjuster believed that the damage to the house was caused by subsidence. The second loss adjuster carried out several inspections and monitoring of the cracks and believed the evidence supported their conclusion.

Mrs W and Mr W weren't willing to accept these findings and commissioned their own surveyor to provide a report on the property. Their conclusion was that the house was likely subject to subsidence and this was the cause of the damage and cracking.

UKI then sent a surveyor to carry out a further inspection, but they again concluded that the damage was not caused by subsidence.

At this point, UKI suggested an independent inspection, to be carried out by an expert Mrs W and Mr W were happy with. I'm satisfied that was a fair and reasonable way to try to resolve the impasse arising from the previous surveyors' disagreements about the cause of the damage.

That inspection was carried out in October 2021. The surveyor concluded that his inspection:

"... did not reveal any evidence to suggest that significant foundation instability currently afflicts the building."

He noted "*nominal disturbance*", which he said wasn't caused by subsidence or by movement in the foundations of the building.

He thought that since the garage had been affected by subsidence it might be prudent to reduce vegetation in the area, but he said there was:

"... little evidence to suggest the foundations serving either the main building or the conservatory have suffered from significant seasonal movement exacerbated or otherwise by vegetation in close proximity."

As I say, I'm satisfied UKI acted reasonably in having that independent inspection carried out. And I'm satisfied it's not unfair or unreasonable for them to conclude – on the basis of all the expert evidence and opinions available – that the house is not suffering from subsidence.

To put it very simply, three experts think there is no subsidence affecting the house – one of whom is entirely independent. One expert – appointed by Mrs W and Mr W – thinks that there is evidence of subsidence. It's not unreasonable in that context for UKI to conclude that the likelihood is that the damage is not caused by subsidence.

Of course, I'd expect UKI to keep an open mind on this issue if in future Mrs W and Mr W can provide further evidence – or if indeed, the damage progresses in such a way as to suggest that a further inspection is warranted to look again at whether subsidence has begun to affect the house.

However, I can't reasonably conclude that UKI have done anything wrong in deciding that subsidence isn't currently affecting the house, based on all the currently available evidence.

I can understand Mrs W and Mr W's concern about the value of their house. But that's not the issue I have to consider when I look at what UKI have done in their handling of the claim.

I don't think anyone is disputing that the house has cracks and damage – and that may affect its value. The question for me is whether that damage is covered by Mrs W and Mr W's policy. And, as I say, I'm satisfied it's not unreasonable for UKI to conclude that the damage isn't caused by subsidence, which would be covered, but by other causes, which are not covered.

Mrs W and Mr W have said they'd like a certificate from UKI to confirm that their house is not affected by subsidence. I don't think that would be necessary or particularly useful. Mrs W and Mr W have several letters from UKI confirming their position on the claim (that the damage isn't caused by subsidence) and they have copies of expert reports which say the same thing.

So, I don't think UKI have made any errors in their decision making on this claim. However, they have admitted that there were unnecessary delays. In the period that I can look at (see above), it took the best part of six or seven months to get from the impasse which arose after Mrs W and Mr W's surveyor's report (in March 2021) to the inspection by the independent surveyor (October 2021).

In that period, there were also several failures in the communication with Mrs W and Mr W. Again, UKI have admitted that the service they or their agents provided wasn't of the required standard.

I'm aware that UKI had already paid some compensation to Mrs W and Mr W. But they agreed with our investigator's view that, taking everything into account, a further £750 in compensation would be fair and reasonable.

Putting things right

I've considered the degree of stress, concern and inconvenience suffered by Mrs W and Mr W during the relevant period (which I've outlined above) as a result of the delays and poor communication caused by UKI's admitted failings.

Bearing in mind the significance of the claim to Mrs W and Mr W and what was at stake for them, I'm satisfied that level of compensation (a further £750) is not unreasonable. And I bear in mind, of course, that UKI agreed after our investigator suggested that amount when she gave her view on the case.

My final decision

For the reasons set out above, I uphold Mrs W and Mr W's complaint.

U K Insurance Limited must pay Mrs W and Mr W a further £750 in compensation for their trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 22 July 2022.

Neil Marshall
Ombudsman