

The complaint

Ms H has complained about U K Insurance Limited (UKI) trading as Churchill. She isn't happy about the way it dealt with a claim under her buildings insurance policy.

What happened

I looked at this case and provided my initial thoughts in my provisional decision as follows;

Ms H made a claim under her home insurance policy in relation to a subsidence problem at her home address in 2018. As part of the rectification work trees had to be felled and a tree surgeon attended her property.

After the tree surgeon had finished removing a tree they showed Ms H a damaged section of her garden wall that hadn't been visible before the tree was removed. Ms H thought the damage was new and had been caused by the tree surgeon as opposed to being old damage. So, she complained to UKI and then this Service about the damage.

UKI said the wall had been suffering direct impact due to the growth and trees around the wall, including from the neighbouring property. It says it was noted in the pre purchase survey and in images taken that the damage just wasn't visible to Ms H or her neighbour before the removal of the tree. And highlighted that the neighbour had previously carried out repairs to the wall which was leaning and not in a state of good repair. However, it did offer £250 as a gesture of goodwill for the repairs to the damaged section of the wall. But Ms H remained unhappy and complained to this Service as she wanted UKI to repair the damaged section of the wall.

Our investigator looked into things for Ms H but didn't uphold her complaint. She agreed it was possible that the tree surgeon caused some damage to a small section of the wall when they removed a tree. However, she thought UKI's offer of £250 as a contribution towards repairing the area of damage caused by the tree surgeon was fair.

But Ms H didn't agree and got some quotes to repair the wall which were, in the main, significantly higher than the amount UKI had offered. Our investigator asked UKI to consider these but it didn't change its view and she agreed a lot of the increased costs stemmed from the fact that the wall wasn't in a good state of repair and would need rebuilding as opposed to just repairing the small section of the wall that had been damaged by the tree surgeon. So, the matter has been passed to me for review.

What I've provisionally 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.

I also think it's important to explain I've read and taken into account all of the information provided by both parties, in reaching my decision. If I've not reflected something that's been said in this decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to

reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless it's relevant to the crux of the complaint.

I can understand Ms H's frustration here as she simply feels the tree surgeon caused the damage outlined to her wall. And I think there is sufficient evidence to support her position as our investigator outlined. But the difficulty in this case is that the whole wall isn't in a state of good repair, so the quotes for repair that Ms H has gained quote for repair of a greater area than UKI is responsible for (in the main).

UKI has looked at the various quotes Ms H has gained and is of the view that the whole wall needs replacing, and I can understand its position here having looked at the photos and considered the pre purchase survey. However, the lowest of Ms H's quotes (£788) suggests a way of repairing just the area of the wall that UKI is responsible for as its tree surgeon may have damaged this part of the wall. But it also includes additional work, such as the removal of a tree stump, that UKI isn't responsible for. UKI has suggested the cost of the tree stump removal would be somewhere between £250 and £500 which means its offer of £250 is fair and in line with Ms H's quotation.

However, I don't think we can be sure about how much Ms H's contractor would charge for the stump removal here and obviously there is a wide range in the figure UKI has suggested. As such I think it would be fairer for UKI to pay Ms H what it would cost her to make good this part of the wall less the cost of the stump removal. So, Ms H can either ask her contractor to provide a new quote without the stump removal costed in, or UKI can pay £500 as opposed to £250 if Ms H isn't able to do this for any reason. I say this as this is more in line with the quotation Ms H gained. And I think UKI should pay Ms H £100 in compensation for the stress and hassle she has faced by the damage caused to her wall.

Replies and developments

Both sides responded to my provisional decision.

UKI reiterated its general position and feels that its offer of £250 is fair. And questions why a further £100 compensation has been suggested as it feels its original offer is fair and in line with the general approach outlined within the provisional decision. And ultimately, UKI disagrees that it should pay £500, as opposed to £250, in the event Ms H can't get her repairer to provide a quote without the stump removal. This is because it feels the two aspects (wall repair and stump removal) are completely separate.

While Ms H also said again she felt that UKI had provided the contractors that caused the damage and so it should make good the repair. She had questioned their competence originally and was offered assurances that any damage would be made good which she feels has been reneged upon. And she went over her previous evidence again and said that although it was difficult to repair just the section that was damaged she has managed to get this repaired now - although her neighbour feels the repair is unsightly.

Ms H sent in a photo of what she felt was a 'botched' repaired wall and said that she feels it is 'extraordinary that a contractor would be allowed to walk away from the damage they had caused'.

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.

I can understand Ms H's continued frustration, but it is clear that the wall was in a poor state of repair generally before. And this impacted the ability to repair just the damage caused as opposed to the whole wall.

As Ms H has highlighted herself in her response most repairers wouldn't even attempt just a repair of the damaged area as opposed to repairing the whole wall and this was also highlighted by UKI. So, although I can understand her frustration, it wouldn't be fair to ask UKI to repair the whole wall as this would amount to betterment. This is why I suggested UKI pays a slightly higher contribution towards the cost of the repair that Ms H has ultimately undertaken in line with the one quote that Ms H gained that would undertake a repair (less the cost of the stump removal). I know she isn't happy with the repair now but this isn't a matter for UKI as it was her chosen repairer, so I won't comment on this here.

Turning to UKI's representations. It feels that its original offer of a £250 contribution towards the repair of the whole wall was fair and so it shouldn't have to pay anymore or pay £100 compensation. But I don't think its original offer went far enough.

I say this as it is clear from Ms H's quotations that one of her contractors was happy to undertake a repair of the damage its contractor caused. And so, I think it should have engaged with this and looked to make a payment in line with this at an earlier stage. I accept that this quote for £788 made reference to the removal of a tree stump. But it could have simply asked for a further quote without the cost of the stump removal and paid that. As I didn't want the matter to drag on any longer I suggested that Ms H can still do this. But if she wasn't able to do this for any reason it would seem fair, given the passage of time, to pay a £500 contribution instead. This was because I didn't find UKI's guestimate of the stump removal persuasive and it seems just as likely that it would cost the lower end of its estimate (£250) as it would the higher end (£500).

Given all of this, I remain of the view that the fair and reasonable thing to do, in the particular circumstances of this case, is for UKI to pay Ms H a £500 (total) contribution towards the cost of the repair that Ms H has undertaken. Or Ms H can provide a breakdown from her repairer of the cost of just repairing the wall. And I remain of the view that UKI should pay £100 in compensation for the stress, hassle and inconvenience it caused Ms H when it damaged her wall.

My final decision

It follows, for the reasons given above, that I uphold this complaint. I require U K Insurance Limited trading as Churchill to:

- pay Ms H's costs for solely repairing the damaged part of her wall (subject to her evidencing her position) or a £500 contribution: and
- pay £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 29 July 2022.

Colin Keegan
Ombudsman