

The complaint

Mr W is unhappy with U K Insurance Limited's (UKI's) handling of a claim he made for subsidence damage to his property.

What happened

I issued a provisional decision on this complaint in May 2022, explaining that I was intending to partially uphold it. Here's what I said in my provisional decision:

"What happened

The details of this complaint are well known to both parties, so I won't repeat them again in full detail here. But to summarise:

- *Mr W noticed cracking damage at his property in 2007. He commissioned a visual inspection by a structural engineer, who concluded that the property was suffering from minor subsidence.*
- *In 2013 Mr W reported the claim to UKI. It appointed a firm of subsidence specialists to assess the claim on its behalf. They completed a visual inspection and concluded the property wasn't suffering from subsidence, but lateral movement. Based on this Mr W's claim was refused.*
- *UKI told Mr W he needed to carry out structural repairs in order for it to renew and continue cover. UKI says it wrote to Mr W several times to check whether this had been done but received no response until after the policy had been allowed to lapse.*
- *In 2017 Mr W instructed a builder to come and price the repair works UKI told him he needed to carry out. The builder refused to do any works as he believed the property was suffering from ongoing subsidence. He recommended Mr W should obtain a structural survey.*
- *In 2018 Mr W obtained a structural survey which concluded the damage was as a result of ongoing, progressive subsidence, likely due to a leak from the below ground drainage. Mr W reported this to UKI and it agreed to carry out a drainage survey and monitoring for three months before reviewing its claim decision. Following this, it maintained its decision to decline the claim as it said there was no progressive movement evidenced.*
- *A separate complaint, regarding the claim decision, was brought to our service. At around the same time Mr W obtained further comments from his surveyor stating three months wasn't sufficient time for monitoring and maintaining their conclusions regarding the ongoing subsidence.*

- *Our investigator recommended that an independent surveyor should be appointed to decisively conclude whether or not there was subsidence at Mr W's property. This was accepted and that complaint with our service was closed.*
- *An independent surveyor was appointed who considered all reports and evidence which had been gathered previously as well as carrying out their own site visit. They concluded that the property had clearly been experiencing ongoing, progressive subsidence, since at least 2007.*
- *UKI agreed to accept and settle the claim for subsidence damage. It also reimbursed Mr W for the surveyor's fees he had incurred. And, following a complaint from Mr W, it paid 8% simple interest on that amount from the date Mr W was out of pocket to the date he was reimbursed. UKI also accepted that the claim journey and level of service Mr W had been provided had been poor. It offered him £3,000 compensation to reflect this.*

The above offer is the subject of this complaint. Mr W feels that £3,000 is too low and doesn't sufficiently recognise the impact of UKI's errors. He also feels he should be compensated for loss of rent, loss of earnings and time spent administering the claim. Overall, he is seeking costs in the region of £230,000.

Another of our investigators considered this complaint. She concluded that UKI's offer of compensation was fair and reasonable in the circumstances. Mr W didn't accept our investigator's opinion. So, because no agreement has been reached, the complaint has been passed to me to decide.

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.

There has been extensive background to this complaint, and numerous issues raised at various points, as the claim has been ongoing since 2013. In this decision, I'll focus on what I believe to be the key issues, based on the evidence and arguments I have seen, rather than commenting specifically on every issue. This isn't meant as a discourtesy to either side, rather it reflects the informal nature of our service and my role within it. But in reaching my decision, I have considered everything that both sides have said and provided.

It isn't in dispute that UKI's claim decision in 2013 was incorrect, nor that the level of investigations it completed to reach the decision were inadequate. It also isn't in dispute that the decision to maintain the repudiation in 2018 was incorrect. UKI has accepted all of this. It has accepted it is responsible for covering the claim for damage caused by subsidence, it has reimbursed Mr W for his surveyors' costs and it has made an offer of compensation.

Mr W is seeking to be compensated for both financial loss and the distress and inconvenience he has suffered as a result of UKI's mistakes. I'll consider these elements separately.

Financial loss

Mr W says he has experienced financial loss in several ways as a result of UKI incorrectly declining his claim in 2013, and again in 2018.

Mr W says that had the claim been accepted in 2013 as it ought to have been, he would have been able to rent out the property from 2015. He says he would have rented it as a house in multiple occupation (HMO) at a rental value of £1,325 per month.

I appreciate Mr W's assertion that his intention was to rent the property in the future. But as I understand it, at the time of the claim and since, this property has been Mr W's primary residence. I've seen no evidence to suggest that he has ever rented it out or sought to do so. Nor have I seen any evidence to confirm that it could have been rented as an HMO or at what rate. And, given it is Mr W's primary residence, if he intended to rent it out, he would have incurred costs residing elsewhere too. Based on all of the above, I don't consider that Mr W has suffered a loss of rent as he's suggested. So, I'm not minded to make an award for these alleged, hypothetical losses.

Mr W has also suggested that his property should be classed as an asset to his business. But due to UKI's mistake, he says he's been unable to take advantage of the asset and thus, it has become a liability. So, he feels UKI should contribute toward the cost of his mortgage.

Again, the evidence suggests that this property is Mr W's primary residence. So, in my view, Mr W would always have been responsible for paying the mortgage, in his personal capacity. So, I'm not minded to make an award for these costs either. Mr W says he has suffered an actual financial loss as a result of the time he has spent administering the claim and complaint, including lost earnings when attending site visits and time spent communicating with UKI and its agents. He's calculated this time to be 13 full days and says he considers £150 per day to be a fair amount.

In order for me to compensate for actual financial loss, I'd need to see evidence of those losses and that they were solely due to UKI. In this case, I've seen nothing to confirm Mr W's stated rate of pay, nor anything to show that he actually incurred these losses on the dates specified, or solely due to UKI.

In any event, 10 of the 13 days Mr W has specified are for attending site visits, investigation meetings etc. While I appreciate that he likely needed to attend a slightly higher number of these meetings, owing to UKI's mistakes, Mr W would always have been required to make himself available for the majority of these visits – even if everything had gone as it should have done from the outset. Some level of inconvenience is to be expected when making a building insurance claim, and this isn't necessarily the fault of the insurer. So, even if I'd been provided with persuasive evidence of Mr W's alleged losses, which I haven't, I wouldn't consider it fair to compensate in the manner, or for the timeframe, he has suggested.

That said, spending time communicating on, or attending visits, for a claim which ran for much longer than it should have, and was incorrectly declined initially, would clearly have been frustrating. So, I'll consider the impact of this in the distress and inconvenience section below.

Distress and inconvenience

UKI accepts that its initial claim decisions were wrong and that, even after being presented with additional expert evidence, it took too long for the claim to be accepted. It has acknowledged and apologised for this and has offered £3,000 compensation for the impact of its errors.

Mr W has explained the impact UKI's mistake has had on him since UKI's incorrect repudiation of his claim in 2013. He says living in a house full of cracks has seriously reduced his enjoyment of the property. He also says the knowledge that his property was uninsured as a result of UKI refusing to continue cover unless he carried out repairs, valued in the tens of thousands of pounds (which UKI actually should always have been responsible for), has caused him a great deal of stress and has significantly contributed to the deterioration of his mental health. He says he should be awarded compensation of £50 per day, for each day between UKI's initial incorrect repudiation of the claim and the date it agreed to accept the claim. This amounts to around £140,000.

I should first highlight that when considering compensation for distress and inconvenience, I've considered everything that's happened in order to decide what level of award is fair, overall, to put right the impact of UKI's mistakes. The award I consider to be appropriate is to compensate for the level of impact to Mr W. It is not designed to punish UKI for having made the errors, or to act as a form of deterrent (as Mr W has suggested it ought to).

The award I make here will not be calculated based on a daily or hourly rate. Rather I'll consider the overall impact the business's mistake has had on Mr W to decide on a fair and reasonable amount of compensation, overall. I've also considered the actions of Mr W and whether he did all he could to mitigate the impact of the business's error.

I accept that Mr W has experienced distress and inconvenience for the entire period of time he has put forward. However, by his own admission, he initially accepted UKI's claim decision (despite disagreeing with it) and didn't make any attempt to challenge it again until 2018 – some five years later. It was only at this stage that Mr W discovered UKI's decision had been incorrect, based on the opinion of his builder and subsequent surveyor. And it was only from this point that he resumed his attempts to have the claim investigated and paid. So, I think it's fair to say that the level of inconvenience Mr W has suffered was greater between 2018 and 2021 than it was between 2013 and 2018. But that isn't to say that Mr W wasn't impacted at all between 2013 and 2018, I think it's clear that he was.

In terms of the impact of the cracking Mr W had to live with, I can understand that this would have reduced his ability to enjoy his property. But I'm also mindful of the fact that the cracks weren't so significant that they caused the property to be uninhabitable. So, despite some loss of enjoyment, Mr W was still able to live in his home during this period.

UKI has said in reaching the £3,000 figure, it considered the fact that Mr W didn't dispute the initial repudiation for five years. Mr W says he wasn't in a position to do so. He says he couldn't afford to carry out the repairs, which UKI erroneously told him were his responsibility, until 2017. And it was only at this point that he obtained further expert opinion stating UKI's decision was incorrect. He's also explained that his mental health deteriorated during this time, which he attributes to UKI's claim decision and the worry of having an uninsured property which he couldn't afford to fix.

I've thought carefully about this point. I accept that Mr W was prompted to resume his claim and complaint by the comments of his builder in 2017. But by his own admission, he disagreed with the claim decision when it was made at the time. So, I think Mr W could have complained to UKI about it at the time, and/or approached our service, free of charge, as he has done now. So, like our investigator, I don't think it would be fair or reasonable to hold UKI solely responsible for the full length of time the claim has taken to get to this stage.

That having been said, it's clear that everything that's happened has stemmed from UKI's initial error. And when it was given the chance to review that error in 2018, it compounded its mistake by carrying out inadequate further investigations and maintaining its incorrect decision. All the while Mr W was left unable to fully enjoy his home, stressed and worried about the fact that he couldn't insure or repair it, and needing to spend time and effort fighting to get his claim accepted – as it appears it should have been from the outset, based on the weight of expert opinion. And in Mr W's particular circumstances, the impact of these errors was greater than it might have been to others, owing to his health issues.

Having carefully considered everything that happened, alongside everything Mr W has told about the impact to him, I don't think UKI's offer of £3,000 goes far enough. I think Mr W has suffered distress and inconvenience, as well as pain and suffering (in terms of the ongoing impact to his mental health) over a period of many years, because of UKI's mistakes. For these reasons, I'm currently minded to uphold Mr W's complaint, in part, and to direct UKI to increase the compensation to £5,000. I appreciate this amount is significantly lower than Mr W is seeking. But having carefully considered the circumstances of the complaint, in my view, it's sufficient to fairly reflect the impact I think has solely been caused by UKI."

I said I was intending to direct UKI to pay Mr W a total £5,000 compensation, for the impact of its poor handling of his claim since 2013.

I asked both sides to send me any further comments or evidence they wanted me to consider before I reached a final decision.

UKI said it disagreed with my provisional decision. It questioned why I'd focused solely on the length of time the claim took and not commented on the fact that it took Mr W around five years from first noticing damage to bring his claim. It said it fully accepted mistakes were made but overall, it feels the £3,000 offered is fair and reasonable.

Mr W also disagreed with my provisional decision. He raised several points in response which I'll summarise below. But as with my provisional decision, I'll not respond to each and every point raised. I'll focus only on those which are material to reaching a fair and reasonable decision. Again, this isn't meant as a discourtesy to Mr W, it simply reflects the informal nature of our service.

In response to my provisional decision, Mr W said:

- He disagrees that he didn't contact UKI prior to his policy lapsing and says he has provided evidence to show that he did.
- His complaint has evolved since he submitted it, but I have considered it in its initial iteration. He's no longer seeking to claim for loss of rent. The costs he's seeking amount to £142,150 plus whatever I consider to be a fair amount of compensation for the inconvenience to his business.

- In terms of his claim for inconvenience to his business, I've focused too much on actual financial loss and mortgage costs, what he is seeking is compensation for impact to his business as a result of UKI's handling of his claim.
- He provided information regarding his earnings in 2012 which were significantly higher than £150 per day. So, he says he feels he's been generous to only request that amount.
- Additional investigations and site visits weren't required. If his claim could be declined based on a visual inspection, it stands to reason it could have been accepted also.
- He didn't complain about the decision to decline the claim in 2013 because he felt he had already given it his best shot in providing an engineer's report. I've also made the assumption that he knew about our service, but UKI didn't signpost him to us when it declined his claim, and so he wasn't aware and couldn't have come to us at the time.
- He says I have the ability to facilitate remorse on the part of UKI by awarding a higher amount of compensation. The impact on him continues to this day.
- He feels the award will allow UKI to set a new precedent for calculating annual compensation. He also feels the award I have made has only been made so that it fits within one of our service's published award brackets.
- He's concerned that the wording of my award (a total amount of £5,000) could prevent UKI from considering compensation on any future complaint he may need to bring.

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've also carefully considered the additional comments and evidence provided in response to my provisional decision. As both sides provided responses, I'll address each in turn below.

UKI's response

UKI has highlighted that it took Mr W five years from noticing damage to bring his claim and a further five years from the initial repudiation to challenge it. It also says Mr W took several months to respond to communications about the renewal.

I fully considered these aspects of the claim history when reaching my provisional conclusions. Mr W has explained that after discovering the damage initially, he wasn't in a suitable financial position to bring his claim. While I accept that the terms of the policy may have allowed UKI to refuse to deal with the claim based on this, the fact is that it didn't. It decided to investigate the claim and subsequently incorrectly declined it – leading to the sequence of events that resulted in this complaint. I don't think UKI can fairly use the fact that it decided not to refuse the claim, based on late notification, as any sort of mitigation for the impact of the errors it later made.

Similarly, I considered Mr W took around five years after the repudiation to challenge it, and I commented on this in my provisional decision. Mr W has explained that his health deteriorated, and his financial position remained poor, so he wasn't able to instruct a builder to carry out the repairs which he'd incorrectly been told he was responsible for. It was only when he was well enough, and financially able to begin the process of the repairs, that he discovered there was likely still ongoing subsidence at his property.

Ultimately, I think UKI are partly responsible for the five-year period, between the initial repudiation and the challenge, as well as being mostly responsible for the overall length of time this claim took to be correctly accepted, from the point it was initially raised. So, UKI's points haven't changed my provisional conclusions.

Mr W's response

Mr W says he has evidenced that UKI is incorrect to say he didn't contact it prior to his renewal date. He's provided an automatic response he received to an online enquiry he sent on 6 December 2013 which was three days prior to his renewal date. He also says he made numerous unsuccessful attempts to make contact by phone but was kept on hold for long periods before the calls were disconnected. Mr W says UKI is the party at fault for his policy lapsing, not himself.

I've not seen any supporting evidence that Mr W made calls to UKI at the time. Nor have I seen evidence of what the online enquiry said. But based on the evidence, I do accept that Mr W contacted UKI prior to his policy lapsing.

The reason Mr W's policy lapsed was because the remedial works required hadn't yet been completed. It's now apparent that it shouldn't have been left to Mr W to carry out this work. UKI has accepted the claim and will be carrying out the required repairs.

In addition to settling the claim, I think UKI ought to be prepared to offer Mr W cover moving forward (subject to him paying the relevant premiums for it). I think any policy it offers should be priced as if Mr W was an existing customer with a previous subsidence claim, rather than a new external customer with a subsidence claim. I say this because if everything had gone as it should have from the outset, the claim would have been accepted in 2013 and UKI would have been required to offer Mr W a renewal in line with the above, under the Association of British Insurers (ABI) guidance on continuation of cover following a subsidence claim. But I should point out that any offer of cover UKI makes to Mr W would still be subject to its remaining underwriting criteria – and I think that's fair.

Mr W highlighted that his complaint has evolved since he brought it to our service. I addressed the complaint as it was referred to us, for completeness. But as Mr W has made it clear he no longer wishes to make a claim for loss of rent, I'll not comment further on that.

In terms of Mr W's comments on the inconvenience to his business, I've seen no evidence that UKI's handling of this claim has impacted or inconvenienced this. The property in question is a personal asset, rather than a business asset. And I've seen no evidence that the time Mr W spent dealing with this (non-commercial) insurance claim caused any detriment to his business either. So, I'll not be making any award for inconvenience to Mr W's business.

Mr W has provided further information about the earnings of his previous business, up to April 2012, to support his claim for £150 per day for lost earnings. This new information hasn't changed my provisional conclusions. I say this because the claim wasn't made until mid-2013, so Mr W's business's earnings in 2011/2012 aren't proof of losses he allegedly incurred in 2013.

In any event, even if I were satisfied that Mr W had proven his earnings at the time were £150 per day or more, I still haven't been provided with any persuasive evidence to show that he actually lost out on these amounts on the dates he has specified, solely as a result of UKI's actions.

As I stated in my provisional decision, I think it's likely that even if the claim had been correctly investigated and accepted initially, the majority of the site visits would still have been required. So, even if I accepted the amount claimed by Mr W (which I don't for the reasons stated) or that he incurred those losses on the dates specified (which hasn't been evidenced) I don't think I could reasonably conclude that those alleged losses were all caused solely by something UKI did wrong.

Ultimately my provisional decision on this point remains unchanged. Taking into account everything I've seen, I'll not be awarding costs for loss of earnings.

The remainder of Mr W's points centre on the compensation award I provisionally decided was fair and reasonable. Mr W highlights that he didn't know about our service, so says it's unfair to suggest he could have come to us sooner.

I've thought about Mr W's point here. But I still don't think I can hold UKI solely responsible for the five-year period between the initial repudiation and his challenge. Mr W has admitted he disagreed with the decision from the outset. So, whether he knew about our service or not, he could still have raised a complaint with UKI at the time, and had he done so he would have been signposted to our service. I say this because UKI are obligated to provide referral rights to our service when they respond to a complaint. I appreciate Mr W felt that he had already done everything he could at the time, and I sympathise. But taking everything into account, I don't think it would be fair to hold UKI solely responsible for the full time the claim took to resolve.

In terms of the amount of the compensation award, both our investigator and I have explained that our awards are not intended to be punitive. Neither do we expect businesses to use them to develop a precedent for amounts per annum (or per any other timescale). We consider each individual case on its own merits. That's what I have done in this case. And having considered everything that happened I think a total of £5,000 is sufficient to fairly compensate Mr W for the impact of the errors, which are the subject of this complaint, and which are solely attributable to UKI.

To alleviate Mr W's concerns, this award should not have any bearing on any separate complaints he may currently have with UKI, nor any potential future complaints he may make. The total amount I'm awarding is for the issues covered as part of this complaint only.

My final decision

For the reasons I've explained above, and in my provisional decision, I to uphold Mr W's complaint in part.

U K Insurance Limited must:

- Pay Mr W a total of £5,000 compensation, for the impact of its poor handling of his claim from 2013 to the point of this complaint.
- Offer Mr W cover moving forward in line with the principles of the ABI's guidance on continuation of cover following a subsidence claim – subject to its remaining underwriting criteria and Mr W paying the relevant premiums.

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

Adam Golding
Ombudsman