

The complaint

Ms G complains that U K Insurance Limited trading as Privilege (UKI) unfairly declined a subsidence claim he made on his buildings insurance policy.

Reference to UKI includes its agents.

What happened

Ms G holds a buildings insurance policy with UKI. She made a claim on the policy for damage caused by subsidence which UKI declined. It said it accepted the damage was caused by subsidence, but said the policy excluded damage caused by faulty design. It thought the design was faulty because the extension foundations didn't meet the building regulations in place at the time. It thought the foundations were too shallow when taking into account a nearby oak tree.

Ms G didn't agree and complained. She said the extension passed all planning permissions and was signed off by the local council. So, she thought this showed it did meet the regulations in place at the time. She also complained about communication throughout the claim.

UKI didn't change its stance on the claim, but it did acknowledge it could've communicated with Ms G better. It offered her £100 compensation.

Ms G remained unhappy and brought her complaint to us.

One of our investigators recommended it be upheld. He thought UKI was unfairly relying on the faulty design clause. He thought this because he didn't think UKI had shown the design didn't meet regulations at the time. And he thought the extension had stood the test of time – standing for 20 years without issue. He recommended UKI consider the claim without relying on the faulty design exclusion and pay Ms G a further £250 compensation for the delays caused by unfairly relying on this term.

Ms G agreed. UKI didn't and asked for an ombudsman's decision.

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.

Having done so, I'm upholding it. I'll explain why.

- It's not in dispute that the damage caused to Ms G's property is caused by subsidence. Nor is it in dispute that subsidence is covered in her policy with UKI. So, I need not focus on that. I only need focus on what's in dispute.
- UKI says Ms G isn't covered for any damage caused a result of faulty design. That's true and clearly set out in her policy. UKI thinks is fair to apply that term because it

thinks the foundations of the extension are too shallow. It says the relevant regulation, BS 8004, hasn't been met, because essentially, the foundations didn't adequately take into account the roots of a nearby oak tree. It says the tree is mature, so the root system would have already been established at the time the extension was built in 2000. It says roots were found to a depth of 1500mm, so thinks the foundations should have been deeper than this.

- BS 8004 recommends foundations should be at a depth of a minimum of 900mm. But it says where vegetation is concerned, this should be considered and that depths greater than 900mm should be considered. But, BS 8004 doesn't specify what those depths should be.
- Ms G's foundations for the extension are 1100mm. I appreciate this is not as deep as the tree roots themselves and I can appreciate UKI's argument that it's not adequately taken into account the tree roots. But it does indicate the effect of the vegetation was considered, because they're lower than the minimum recommended depth. Also, the extension passed planning permission and was signed off by building control.
- What's more, I agree with our investigator that this design has stood the test of time for standing for roughly 20 years without issue. I take on board UKI's point on this matter – that this is very weather dependant – but I think over a 20-year period we've seen many types of weather over that period and all the reasonably foreseeable weather conditions have likely occurred within it. I think it's more likely than not that if the foundations were inadequate, problems would have arisen during those 20 years. *If* the weather causing this issue – drought – was so severe the year that the subsidence occurred, then it's more likely that, as opposed to any faulty design, that is the cause of the problem.
- In light of the above, I'm not persuaded that UKI has shown that the extension didn't meet the standards at the time. And so, it follows that I don't find it's shown its fair to apply the faulty design exclusion.
- UKI has offered £100 compensation. But I agree with our investigator that an additional £250 is due for the distress and inconvenience caused by the claim ongoing and the issue being unresolved.

My final decision

For the reasons set out above, I uphold this complaint. To put things right I require U K Insurance Limited trading as Privilege to:

- Reconsider Ms G's claim in line with the remaining policy terms. For clarity it should not use the faulty design exclusion to decline this claim.
- Pay Ms G £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 17 February 2023.

Joe Thornley
Ombudsman