

## The complaint

Ms K complains about the way Zurich Insurance PLC Ltd handled a subsidence claim under her buildings insurance policy. She says the initial works to stabilise her property weren't lasting and effective as her property has suffered further subsidence.

Zurich are the underwriters of this policy, i.e., the insurer. Part of this complaint concerns the actions of the loss adjuster, an agent of Zurich. As Zurich have accepted it is accountable for the actions of the loss adjuster, in my decision, any reference to Zurich includes the actions of the loss adjuster.

## What happened

The circumstances of this complaint are well known to both parties, so I've summarised events.

- In 2019, Ms K made a claim on her building insurance policy when cracks appeared in her property.
- Zurich accepted the claim and said the subsidence damage was *“caused by moisture extraction by roots altering the moisture content of the clay subsoil, resulting in volume changes, which in turn have affected the affected foundations.”*
- To deal with the cause of the subsidence, an oak tree owned by the Local Authority was reduced, Ms K's own plant was removed, and the defective drains were rectified.
- The property was monitored between September 2019 and April 2021 which Zurich said showed the property had stabilised. Repairs were subsequently carried out, and a certificate of structural adequacy was issued in September 2021.
- In July 2022, Ms K reported to Zurich that large cracks had reappeared in her home. Ms K complained saying the stabilisation and repairs work completed previously had lasted less than a year and so, were inadequate.
- In its final response letter Zurich said the Local Authority had now agreed for the trees affecting Ms K's property to be removed. It said the repair method used the year prior was chosen based on the information available at that point – adding Zurich wouldn't have known the damage would return. It said there had been avoidable delays with progressing the claim and that the support it provided could have been better, so it awarded £500 compensation.
- Ms K remained unhappy and so, brought a complaint to this Service. An Investigator considered it and said Zurich needed to pay an additional £200 compensation as it hadn't shown the latest damage to Ms K's property was due to a new cause of subsidence. And so, he wasn't satisfied Zurich had carried out a lasting and effective repair.
- Ms K disagreed – saying she wanted confirmation the trees in question would be

removed and that her property wouldn't be affected by movement in the future. And so, the complaint has been passed to me for an Ombudsman's decision.

- Zurich has since confirmed that Ms K's second claim is going to be treated as a continuation of the first.

### **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 agree with the outcome the Investigator reached – I'll explain why. But before I do, I need to explain that whilst this claim might have moved on since Zurich issued its final response letter, I'm only considering events up until the date of it.

It's not in dispute that Ms K's property has suffered a reoccurrence of subsidence. But Ms K is unhappy because she thinks the damage caused in 2022 could have been avoided had Zurich taken different remedial action when she made her first claim for subsidence related damage in 2019.

Zurich will be well aware of this Service's approach to handling subsidence claims and its obligation to ensure any repair is effective and lasting.

So, I've considered the available evidence I have in respect of the first claim. Zurich has given me little in the way of reports or expert opinion from the time. But here it seems undisputed the subsidence related damage was said to have been caused by tree roots extracting moisture from the subsoil thus changing the composition of it, which caused the property to move. An oak tree – owned by the Local Authority was identified as being a causal factor in 2019. I note here that this same tree was also identified as a cause in 2022.

Zurich has said that following the reduction of the oak tree, along with removing a tree/plant from Ms K's property and repairing drainage, the property stabilised. On its face, this sort of action seems in keeping with what I've seen in other similar claims. But whilst I appreciate it has said retrospectively that monitoring of the property showed this course of action was the right thing to do – as the property had stabilised - cracks reappeared within a year of this work.

Zurich isn't responsible for making sure Ms K's property never moves again, but it did need to make sure any repairs were lasting and effective, and as cracks reappeared within a year, I'm not persuaded it had carried out a lasting and effective repair.

Zurich has said an unseasonably hot summer in 2022 triggered further movement and damage but it hasn't provided evidence to support this conclusion. And so, in the absence of expert evidence from Zurich which shows the stabilisation and repair works it carried out in respect of the first claim were most likely going to succeed, I'm not satisfied it has demonstrated its actions were a lasting and effective repair in the circumstances. So, on balance, I'm more persuaded the damage to Ms K's home in 2022 and the distress and inconvenience a subsequent claim has caused her, could have been avoided. And Zurich needs to recognise this.

Our Investigator recommended Zurich pay an additional £200 compensation. Keeping in mind Zurich has awarded £500 compensation and arranged for Ms K to be in alternative accommodation to mitigate some of the inconvenience, I'm satisfied an additional £200 is fair and reasonable in the circumstances of this complaint.

Ms K has said she's not been able to sell her property because of the second claim. I don't doubt it was her intention to sell the property, but there's no evidence to show she's suffered a financial loss – for example, that a sale has fallen through - because of Zurich's actions. And as our Investigator said, the policy makes it clear that Zurich won't be liable for any reduction of value following a repair. So, I won't be directing Zurich to pay anything in respect of this.

### **My final decision**

My final decision is I uphold this complaint and direct Zurich Insurance PLC to pay Ms K an additional £200 compensation. If Zurich *hasn't* already paid Ms K £500 as per its final response letter, it must pay this as well.

Zurich must pay the compensation within 28 days of the date on which we tell it Ms K accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 30 November 2023.

Nicola Beakhust  
**Ombudsman**