

The complaint

Mr S and Miss M are unhappy U K Insurance Limited (“UKI”) declined a claim they made on their buildings insurance policy for subsidence.

What happened

The circumstances of this complaint aren’t in dispute, so I’ll summarise the main points:

- The building is made up of two flats. Mr S and Miss M jointly owned one.
- Mr S got in touch with UKI in October 2022 about damage to the extension of the building. UKI appointed a loss adjuster, who arranged for investigations to be carried out. The loss adjuster thought the damage had been caused by subsidence as a result of a tree drying out the clay subsoil.
- The claim was declined because the loss adjuster said the foundation was defective – and the policy doesn’t cover that. They said a code of practice for foundation design and guidance provided by a builder of new homes, N, showed this.
- Mr S didn’t think this was fair. He provided a Completion Certificate from the local council Building Control to show the foundation had been signed off when built. He also said the tree causing the subsidence may not have been there at the time the extension was built, so the foundation design couldn’t have taken it into account.
- UKI maintained it was fair to decline the claim as the depth of the foundation wasn’t in line with N’s guidance – even if the impact of the tree was disregarded.
- Mr S said UKI had caused him and Miss M a financial loss by declining the claim. They’d previously let out their flat and the tenancy ended prior to the claim, leaving it empty. After that they’d begun the process of selling it but that had been interrupted upon discovery of the subsidence problem. They arranged for repairs to be carried out in March 2023 and the flat sale was completed soon after. They said the way UKI had dealt with the claim had caused them to make more mortgage payments than they ought to have done prior to the sale.
- Our investigator thought the complaint should be upheld. She said the relevant standards were Building Regulations. And the Completion Certificate showed the council was satisfied the extension foundation had met Building Regulations. So she didn’t think it was fair to say the foundation had been defectively designed.
- She asked UKI to accept the claim and pay interest on the cash settlement. She also asked it to pay £300 compensation and one month’s interest on Mr S and Miss M’s mortgage repayments to account for the delay caused.

- Mr S accepted our investigator's suggestions. UKI provided comments from its loss adjuster. In summary, they reiterated that they weren't relying solely on the guidance of N, but also on a code of practice for foundation design.
- Our investigator wasn't persuaded to change her mind, so the complaint has been passed to me.

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.

- The policy covers damage to the building caused by subsidence. But it contains a policy term which says damage caused by defective design isn't covered.
- UKI accepts the building damage was caused by subsidence. It's declined the claim because it thinks that was caused by defective design. The onus is on UKI to show it would be fair to rely on that policy term to decline the claim.
- UKI has referred to guidelines by N, a builder of new homes. N's guidance only applies when construction is under the supervision of N. That wasn't the case for this extension. So, the extension didn't need to comply with N's guidelines.
- Building Regulations applied to the extension. At the time it was built, they didn't specify a minimum depth. What depth was appropriate was a judgement call for the designer, builder and Building Control to make based on the site conditions.
- UKI has also referred to a code of practice for foundation design. They noted it requires the foundation depth to be 'below the zone where shrinkage and swelling due to seasonal weather changes, trees, shrubs, and other vegetation are likely to cause appreciable movement'.
- This is an overarching aim of the code. This is in keeping with Building Regulations which say, in summary, the building should be constructed so that ground movement caused by soil shrinkage won't impair its stability.
- I'm not persuaded taking these broad aims as literally as UKI has suggested would produce a fair outcome. It would amount to concluding that *any* claim for subsidence caused by clay shrinkage meant the foundation was faulty and the damage wasn't covered by the policy. Both the code and the regulations contain specific guidance about *how* to achieve the broad aim. UKI hasn't pointed to any specific guidance to set out what it thinks wasn't followed.
- Mr S has provided a copy of the local council Completion Certificate. It's clear Building Control was satisfied the extension met Building Regulations. So I'm not satisfied it would be fair to conclude that the foundation was defective.
- In addition, when Mr S and Miss M bought their flat, the extension was already in place. I think they were entitled to rely on the Completion Certificate as evidence the extension, including the foundation, was built to the appropriate standard.
- I don't think there's any other practical steps they could have taken to ensure this was the case. So I'm not satisfied it would be fair to decline the claim, *even if* UKI were able to show the foundation was defective.

- Taking of all this into account. I'm not satisfied it was fair and reasonable for UKI to decline the claim. To put things right, it should accept and settle the claim, subject to the remaining terms and conditions of the policy.
- Mr S has had the work carried out, so UKI will have to settle the claim by cash payment. It wouldn't be appropriate at this stage for me to make any findings about how much UKI should pay, as it hasn't had the chance to look into this yet.
- The next step is for UKI to consider what a reasonable amount to pay is in the circumstances. It should also add interest to the cash payment as Mr S and Miss M have been without the money unfairly. Interest should be added to each invoice UKI pays, to the extent it pays it, from the date it was paid, until UKI pays the settlement.
- Our investigator thought there had been around one month of delay during the claim. And had that not been the case, the repairs would have been carried out one month sooner and Mr S and Miss M's flat would have sold one month sooner. As a result, she thought they'd unfairly lost out on the mortgage interest they paid for a month and UKI should reimburse it. Mr S and Miss M agreed and UKI didn't challenge it. I'm satisfied this is fair remedy in the circumstances.
- Our investigator also thought the way UKI handled the claim had caused Mr S and Miss M avoidable distress and inconvenience and suggested £300 compensation. They agreed and UKI didn't challenge it. Given the delay dealing with the claim and the impact this had on the flat sale, I think avoidable distress and inconvenience was caused. I'm satisfied £300 is reasonable compensation in the circumstances.

My final decision

I uphold this complaint.

I require U K Insurance Limited to:

- Accept and settle the claim, subject to the remaining terms and conditions of the policy.
- Pay interest on the cash payment at 8% simple per year, from the date each invoice was paid to the date of settlement*.
- Pay one month of mortgage interest, upon receipt of evidence.
- Pay £300 compensation**.

*If UKI considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S and Miss M how much it's taken off. It should also give Mr S and Miss M a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

**UKI must pay the award within 28 days of the date on which we tell it Mr S and Miss M accept my final decision. If it pays later than this, it must also pay interest on the award 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 Miss M and Mr S to accept or reject my decision before 26 September 2023.

James Neville
Ombudsman