

The complaint

Mr and Mrs L complain that Gresham Insurance Company Limited (“Gresham”) has unfairly handled a subsidence claim made under their home insurance policy.

Any reference to Mr and Mrs L and Gresham includes respective agents or representatives.

What happened

The background of this claim and complaint is extensive and is already well known between parties as well as detailed elsewhere. So, I’ll summarise events.

In September 2018 Mr and Mrs L made a subsidence claim.

Gresham investigated this and established the removal of vegetation (with a tree protection order in place) owned by a local authority would be necessary to stabilise the property. Following a back and forth between parties, the tree was not removed.

In 2021 Gresham considered engineering solutions to resolve the subsidence.

Gresham put forward initial plans on how it intended to underpin the property. Gresham concluded it would deepen historic existing mass concrete underpinning to the front elevation of the property to resolve the subsidence.

Mr and Mrs L sought the expert opinion of Expert T. They produced a report and reached a different conclusion to Gresham on the extent of necessary underpinning works – believing Gresham’s plans would lead to risk of differential movement, and that to minimise this risk underpinning should be extended under a gable wall and the rear wall.

As Gresham disagreed, Mr and Mrs L also sought the expert opinion of Expert G. They recommended a *“provision of transitional stepped underpins extending back from the line of the main deep concrete underpins on the front elevation, along each of the respective abutting party wall elements.”*

Mr and Mrs L brought their complaint to this Service. This included a range of different concerns. Our Investigator upheld their complaint. A number of reviews and assessments took place, so I will outline each of the points that were previously agreed by Gresham and Mr and Mrs L so are no longer in dispute.

- The Investigator said Gresham should have explored other avenues to resolve the subsidence earlier than it did. And that its actions and initial plans for repair that were insufficient had caused unnecessary delays. Awarding a sum of £1,500 compensation for the distress and inconvenience caused to Mr and Mrs L. It agreed.
- The Investigator said Mr and Mrs L had been unable to complete Party Wall works earlier due to Gresham’s delays. So, it should cover any reasonable additional costs due to the time that had passed. Gresham agreed to consider any financial losses Mr and Mrs L have incurred in relation to the Party Wall upon receipt of appropriate evidence.

- The Investigator directed Gresham to consider alternative accommodation costs. It agreed it would pay any alternative accommodation costs in line with its policy terms and taking into account Mr and Mrs L's specific circumstances.
- Our Investigator said Gresham should professionally clean the property as part of the claim – it agreed.
- Gresham should undertake an inventory with Mr and Mrs L of repair work related to the subsidence damage. Mr and Mrs L confirmed this took place.

There are also a number of issues still outstanding that Mr and Mrs L are unhappy with. These include:

- *Underpinning plans:* Based on the expert opinions available, the Investigator said Gresham's initial underpinning proposals appeared to carry significant risk of differential movement. Gresham agreed to abide by Expert G's proposals – as well as pay Mr and Mrs L for any incurred costs of Expert G. The Investigator said 8% simple interest should be paid from the date Mr and Mrs L made payment to the date of reimbursement.

Gresham has most recently provided commentary to this Service to say:

"...we remain of the opinion that underpinning of the party wall returns is not required. Our underpinning scheme proposes to deepen the existing underpinning across the front elevation of [neighbouring property] to the same depth as the underpinning of [neighbouring property] ..."

Mr and Mrs L have put forward it is unfair for Gresham to change its position on this matter after it has agreed to follow Expert G's proposal. Our investigator agreed.

- *Underpinning of the rear elevation:* Our Investigator said Gresham should follow Expert G's report and findings – which do not specify underpinning at the rear of the property is required, and instead discusses use of Helibars. Gresham said it would not look to carry out any further underpinning as a result, as a tree causing additional damage (separate from the main cause of subsidence) had been removed, so this wasn't necessary.
- *Cracking to the rear elevation:* Gresham did not agree to cover the rear of the property as it said its condition is not related to the subsidence claim in hand. Most recently saying:

"Damage to the rear does not relate to the subsidence damage to the front according to [Expert G] and [Gresham's surveyors]. So why should we consider further?"

The Investigator stated this cracking had been included throughout the duration of the claim. And while it was related to a different cause, it was ultimately a subsidence claim so it wasn't fair at this stage to decline cover. She included quotes from Gresham's own expert, as well as Expert G that made reference to use of Helibars at the rear of the property from May and June 2022. She also highlighted Gresham's own steps to remove the other cause (the Laurel tree) as indication why it should take responsibility for this.

- *Expert T's report and associated costs:* Gresham said it would not cover Expert T's costs as it didn't believe his report contributed in addition to Expert G. It said this provided no benefit and was duplication in places of Expert G. Our Investigator believed these costs should be covered as Expert T had highlighted concerns about Gresham's works and it had an opportunity to re-review these at this time – but it didn't. So, this had led to the follow up review of Expert G to support their concerns.

- *Legal costs incurred by Mr and Mrs L:* Our Investigator did not agree it was necessary or a requirement for legal assistance to be appointed, so while they may have found this assistance helpful, she wasn't persuaded Gresham should cover these costs.
- *A specific timeframe on next steps:* Gresham said it could not provide a specific timeframe on works beginning or being completed given the complexities on drawing up schedules, tendering process, Party Wall notices being issued, and builder lead in periods. The Investigator said it was reasonable for Gresham to provide a likely timeframe in the circumstances.

Since the complaint has been with this Service, Mr and Mrs L have also raised additional points including:

- Requesting Gresham change its surveyor as they have lost faith in its ability.
- A sketch of proposed underpinning has been produced by Gresham and shared with Mr and Mrs L. They have asked to provide commentary on this matter.
- Assurance Gresham would reinsure Mr and Mrs L in the future.
- Mr and Mrs L wish to stay in their second home as their alternative accommodation which they have asked Gresham to cover the costs of.

The Investigator made both parties aware the matter would be passed to an Ombudsman for a final decision. Mr and Mrs L have most recently provided further commentary from Mr G, Mr T and its own experts further highlighting their position on the matter and belief Mr G's suggested works go ahead.

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 this complaint. I'll explain why.

When considering what's fair and reasonable in the circumstances I need to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to be good industry practice at the time.

Both Gresham and Mr and Mrs L's submissions to this Service span many pages. Within this decision I won't be responding in similar detail. This is not intended as a discourtesy, but a reflection of the informal nature of this Service.

My role is to focus on what I consider the crux of the complaint to be which means I will only comment on those things I consider relevant to the decision I need to make. This means I won't comment on everything Mr and Mrs L and Gresham have said but I can confirm I have read and considered everything said by both parties.

Issues no longer in dispute

- As listed above, there are a number of matters that formed part of this complaint that have since been resolved. I don't intend on exploring these in detail as both parties appear satisfied with the outcome on these particular points. Suffice to say I am in agreement with our Investigator that Gresham's claims handling wasn't in line with what we'd expect, having delayed matters considerably by not engaging with other

potential solutions to the subsidence after a reasonable period of time when it became clear the removal of vegetation at the front could not be done. It also seems clear to me that the original underpinning plans put forward by Gresham were insufficient in light of the other reports put forward. So, I think the compensation put forward of £1,500 is fair and reasonable sum to account for this.

- Many of the remaining points Gresham has agreed to – considering alternative accommodation, potential additional costs related to the Party Wall and others – relate to ongoing claims handling. So, while I agree with these in principle, I would expect Gresham to keep in mind its obligations to handle claims promptly and fairly. Should these matters subsequently not be met to Mr and Mrs L's satisfaction and they do complain and Gresham is unable to resolve these matters, it may be this Service will need to review these matters again.

Live issues

- *Underpinning plans:* The detail behind the underpinning plans in this case have been discussed at length between parties. Following some back and forth and following our Investigator's assessment, Gresham explicitly said it would agree to "abide" by Expert G's proposals. Mr and Mrs L also agreed to this.

For clarity, these again were to include a "...*provision of transitional stepped underpins extending back from the line of the main deep concrete underpins on the front elevation, along each of the respective abutting party wall elements.*"

This was accepted by all parties as a way forward. Most recently Gresham has put forward comments regarding the party wall not being necessary. And it has made reference to its *own* underpinning scheme. From what it's presented, no new evidence or findings have come to light since it agreed to Expert G's proposals previously.

I want to be clear this claim has been ongoing for many years. And across the life of the claim Gresham has had ample opportunity to put forward its position on all matters concerning the underpinning. So when it accepted Expert G's findings, agreed to "abide" by them, and pay his respective costs, I think it's fair and reasonable to consider this particular part of the dispute (regarding work to the party walls) to have been brought to an end.

Mr and Mrs L have most recently provided some commentary from Expert G that simply reiterates his earlier position. So, I've been given nothing to suggest that Gresham is seeking to rely on a changed view of Expert G. And as a result, simply, I am going to hold Gresham accountable for the previous agreement it made to abide by Expert G's proposals. Alongside this I would also add, I'm satisfied Expert G's suggestion is the most appropriate works in the circumstances taking into account all of the reports and evidence put forward. So, I will be directing it to undertake the appropriate repairs, as proposed by Expert G previously.

- *Underpinning of the rear elevation:* As above, I'm satisfied Expert G's findings and proposal is a fair and reasonable solution to this complaint. Expert G did not make any proposal to underpin the rear of the property. And from what I've been given from Gresham it appears the cause of the rear elevation movement (the Laurel tree) has been removed and the movement has stopped as a result. So, I will not be directing Gresham to carry out underpinning to this area. Gresham will need to carry out the necessary superstructure works to the rear of the property, including Helibars – as put forward by Expert G.
- *Cracking to the rear elevation:* Gresham has accepted it investigated damage to the rear of Mr and Mrs L's property and carried out remedial action as well as monitoring.

So, it seems clear there's no dispute it was damaged by subsidence – albeit with a different cause to the front of the property. Our investigator has previously provided Gresham with a range of quotes from its own agent commenting on the necessary repairs to the rear of the property. So, it seems clear to me this matter was considered under this claim and seemingly this secondary cause of subsidence was resolved. The remaining matter is the repairs that are necessary to the rear elevation, now the cause of the damage has been removed.

Gresham's most recent response appears to suggest it is not intending on doing anything further in relation to the damage at the rear of the property. In light of having appeared to have accepted it under the wider claim, investigated the matter, carried out repairs and monitoring, I do not believe it would be fair nor reasonable for Gresham to simply detach itself from this remaining damage and repairs at this late stage of the claim, nor to try to separate this out into a new issue. So, I will be directing Gresham to include any necessary repairs to Mr and Mrs L's property related to the Laurel subsidence damage in line with the remaining terms and conditions of the policy.

- *Expert T's report and associated costs:* Gresham has previously acknowledged that Expert G's input has changed its position on the claim, and as a result that its initial proposals would be insufficient. And in doing so it agreed to cover Expert G's costs.

Expert T was contacted prior to Expert G. And his report raised similar concerns to Expert G's about Gresham's proposed underpinning plans and the risks this placed on the property. So, I think this was significant as it shows Gresham's plans were unlikely to provide a lasting and effective repair. This prompted a change in the claim, so it had a material impact on things. Expert T's proposals differed from both Gresham's and Expert G's – recommending further underpinning. I recognise this proposal was not agreed to – and Expert G's was.

I think it's inaccurate for Gresham to indicate that his findings were either not useful or a duplication of Expert G's. I say this as, crucially, when Expert T's findings were put to Gresham it had an opportunity to review its position and put forward alternative plans taking into account the concerns raised – which it didn't. And so, I think it was reasonable Mr and Mrs G sought the third opinion of Expert G. For these reasons I'm going to direct Gresham Pay Mr and Mrs L for any costs invoiced up until the date of this decision, or already paid by them (proof to be provided to Gresham) related to the provision of the reports provided by Expert G and T.

- *Legal costs incurred by Mr and Mrs L:* Mr and Mrs L's representatives have put forward this Service should direct Gresham to cover the legal costs incurred by their legal representatives in bringing this complaint. I take into account the points they've made. But while I acknowledge this claim and the complaint will have had its complexities, in my view, the core issues above haven't required particular legal input or opinion in bringing the complaint to this Service. So, while I don't doubt it will have alleviated some of the stress and frustration caused to Mr and Mrs L, and been helpful to them, I'm not persuaded or satisfied that this representation was necessary. So, it follows I'm not persuaded to direct Gresham to cover these costs.
- *A specific timeframe on next steps:* Mr and Mrs L have asked for specific timeframes on next steps given the timeframes this claim has already been ongoing for. Gresham has said it has been unable to provide a specific timeframe on works beginning or being completed given the complexities on drawing up schedules, tendering process, Party Wall notices being issued, and builder lead in periods. Taking these points into account, I'm in agreement that a specific timeframe set by this Service may become impossible for reasons outside of Gresham's control. So I will not be setting a particular deadline as Mr and Mrs L have asked for. However, I would remind Gresham again of its obligations to handle this claim promptly and

fairly as it takes it forward. Should any unnecessary delays occur going forward, this again may well be considered in any such follow up complaint.

Additional points raised since the complaint came to this Service

- Mr and Mrs L have asked Gresham to change its surveyor as they have lost faith in its ability. They also had comments to make regarding Gresham's underpinning sketch. And sought assurance that Gresham would reinsure Mr and Mrs L in the future and about its treatment of future alternative accommodation.

I want to be clear that this Service is not here to handle claims on an ongoing basis. And so, these matters will need to be addressed with Gresham in the first instance, as they fall outside of the scope of this complaint, or relate to matters that have happened long after Mr and Mrs L first brought to this Service. Should Gresham not resolve Mr and Mrs L's complaints about these matters, it may be this Service will need to investigate them in a follow up complaint in the future – but I will leave this to Gresham in the first instance to pick up.

My final decision

For all of the above reasons, I uphold this complaint. I direct Gresham Insurance Company Limited to do the following:

- Pay Mr and Mrs L £1,500 in compensation for the distress and inconvenience it has caused them in handling this claim (if it has not already done so).
- Professionally clean the property as part of the claim.
- Gresham *must* undertake the appropriate repairs as proposed by Expert G previously. This will include
 - The provision of transitional stepped underpins extending back from the line of the main deep concrete underpins on the front elevation, along each of the respective abutting party wall elements;
 - Any necessary works to the rear of the property – including use of Helibars as put forward by Expert G.
- Within its scope of repairs under this claim, Gresham *must* include any necessary repairs to the rear of Mr and Mrs L's property related to the Laurel tree subsidence damage in line with the remaining terms and conditions of the policy.
- Pay Mr and Mrs L for any costs invoiced up until the date of this decision, or already paid by them (proof to be provided to Gresham) related to the provision of the reports provided by Expert G and T. Gresham must pay 8% simple interest from the date Mr and Mrs L made payment until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 5 October 2023.

Jack Baldry
Ombudsman