

## **The complaint**

Ms B and Mr H complain about U K Insurance Limited (trading as Churchill Insurance policies – “UKI”)’s handling of their buildings insurance claim.

All references to UKI also include its appointed agents.

## **What happened**

Below is intended to be a brief summary of key events that led to this complaint. It does not therefore include a full timeline or list of every point that has been made.

- Ms B and Mr H made a claim in 2018 for subsidence to their home.
- Following investigation, UKI identified hedging in Ms B and Mr H’s property, and a tree in a neighbouring property, were contributors to the damage.
- As part of intended repairs, UKI planned for the hedge to be removed and, as it formed the border of the property, replace it with a fence.
- The tree was subject to a tree preservation order (TPO) and an application was made to the relevant Local Authority (LA) in December 2020 for it to be removed.
- The LA responded in February 2021. It said it couldn’t accept UKI’s application as it was incomplete.
- UKI resubmitted the application in May 2021. Around this time, UKI also sought assistance from solicitors with the application.
- The LA delayed providing its answer to the TPO several times and in January 2022, UKI told them it was now treating the application as declined and proceeded to pursue alternative methods of repair. The LA provided official confirmation of the application to remove the TPO as refused in around March 2022.
- UKI decided on an underpinning scheme, and applications were made to the LA for relevant permissions to carry out the work.
- A meeting was held at Ms B and Mr H’s property in June 2022, with UKI and its contractors present. Following this meeting Ms B and Mr H raised concerns about outstanding questions and information they required.
- UKI’s contractor contacted Ms B and Mr H in July 2022 to discuss works beginning in August 2022. Ms B and Mr H said they had not received the information they had requested, so were unable to make an informed decision for works to begin.
- UKI provided a response to Ms B and Mr H at the end of July 2022. But there are several aspects which all parties did not agree on. Additionally, Ms B and Mr H didn’t feel they had been given enough notice of a start date for works.
- Works did not begin in August 2022.

In summary Ms B and Mr H have raised the following points:

- UKI reneged on an agreement to remove a hedge identified as causing subsidence and to provide Alternative Accommodation while underpinning and repair work were carried out at the property.

- They disagree the property will remain habitable while works are being carried out and have pointed in particular to the loss of use of the downstairs bathroom, the dust levels generated from works and the impact these will have on members of their family.
- UKI have caused substantial delays in its handling of the claim.
- UKI tried to impose a different regime of works with insufficient notice.
- UKI has refused to provide documentation from its Solicitors

UKI provided a final response to Ms B and Mr H's complaint in August 2022. It said:

- It had discussed aspects raised by Ms B and Mr H regarding works starting in their meeting in June 2022 and in emails in July 2022.
- The works and noise levels from external repairs would not make the property inhabitable. So, it didn't agree AA was required.
- Because the TPO application was unsuccessful, and alternative works were being carried out to stabilise and repair the property, there was no longer a need to remove the hedge.
- If Ms B and Mr H provided pictures of damage caused to the fence by its contractor, it would review them.
- Delays regarding the TPO, whilst waiting for a response from the LA, were out of their control. However, it said there had been aspects of the claim it didn't handle well. It offered Ms B and Mr H £400 for the inconvenience its actions had caused.

#### *Our investigator's view*

Our investigator thought Ms B and Mr H's complaint should be upheld. He said he wasn't persuaded the home was inhabitable and therefore didn't agree AA was required. He also said UKI originally offered to replace the fence and remove the hedge, but as the TPO was unsuccessful, it opted for alternative means. So, it hasn't acted unreasonably.

Ms B and Mr H disagreed with our investigator's view and provided additional comments in response.

#### **My provisional decision**

I issued a provisional decision on 7 September 2023. In my provisional findings, I said:

*"What I'm considering in my provisional findings*

*I understand Ms B and Mr H have told our service about ongoing matters and further issues at the property. However, I am only able to comment on events up to UKI's final response to Ms B and Mr H's complaint, issued in August 2022. Any referral to events following this will purely be for the context of answering this complaint.*

*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.*

*I understand Ms B and Mr H feel strongly about what's happened. And I want to assure them I've read and considered everything they've said carefully.*

*My role as an ombudsman is to decide how a complaint should be resolved, quickly and*

*informally. That means my investigation and provisional decision focusses on what I consider the crux of the issues to be.*

*Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument, or question asked, to be able to reach what I think is the right outcome.*

*I intend to uphold this complaint. I'll explain why.*

*Delays, handling of the claim and initial submission of the Tree Preservation Order (TPO)*

*UKI itself has acknowledged there were delays and poor communication with Ms B and Mr H early in the claim.*

*It was confirmed the neighbouring tree was subject to a TPO around June 2019. Monitoring was carried out at the property, which is normal in the circumstances, but this didn't begin until five months later – around November 2019. UKI says it should have shared monitoring data monthly with Ms B and Mr H, but it didn't. And general communication with Ms B and Mr H during this period was sporadic.*

*An initial application to remove the TPO was rejected by the Local Authority (LA) as it was incomplete and missing mandatory information. The application was then not resubmitted until May 2021 – over five months later.*

*UKI would want to ensure a full and lasting repair, hence waiting for an answer on whether the tree could be removed. But given the concerns Ms B and Mr H were raising and UKI anticipating there may be issues with the application, I would have expected it to take steps to mitigate matters as much as it possibly could.*

*Additionally, I'm disappointed to see UKI didn't action a recommendation of its adjuster in how it could further support the application during this time. However, given it wasn't in dispute with the LA the tree was causing subsidence, I don't think this would have likely affected the outcome of the application.*

*Ms B and Mr H expressed concerns about repairs not taking place at the time the TPO application was made. Considering the length of time, the claim had already taken, I think UKI could have been more forthcoming with offering temporary repairs, but this wasn't done until around October 2021, and repairs were not carried out until December 2021.*

*Delays, handling of the claim and resubmission of TPO*

*The TPO application was resubmitted in May 2021.*

*The LA referred this to a structural engineer and confirmed it would consider the application in June 2021.*

*UKI initially estimated it would take around 8 weeks for a decision to be made. However, this was delayed by the LA deferring its decision several times. By nature, applications to remove TPO's are lengthy processes and often take some time to be resolved. However, I would expect to see UKI doing what it could to mitigate matters as much as possible.*

*In the event the application was declined, UKI began considering alternatives to removing the tree such as underpinning schemes, which is what I would expect it to do.*

*I can see UKI also communicated with LA about pursuing alternatives, and when the decision continued to be deferred, UKI told LA if it didn't receive an answer by January 2022 it would proceed with alternative schemes. When the answer was deferred again in January 2022 and no answer received, UKI proceeded to alternatives.*

*However, I do think UKI could have been more proactive in updating Ms B and Mr H. They weren't made aware UKI proceeded to consider alternative repairs until around three weeks later.*

*I acknowledge Ms B and Mr H feel UKI could have done more to escalate matters such as raising a complaint with the LA. UKI says not in its policy to raise complaints and I'm not able to comment on how UKI conducts its day-to-day operations. But in summary, though I think UKI did cause avoidable delays in the initial application, when the application was resubmitted, it did what I would reasonably expect it to do to try to progress matters.*

*I can see it was in contact with the LA and It took legal advice to assist with the application as well as considering alternative options in the event the TPO was rejected.*

#### *Alternative Accommodation (AA)*

*UKI's position early in the claim, and as recent as early 2022, was it would need to provide Ms B and Mr H with AA.*

*However, as the TPO was rejected, UKI has pursued an alternative means of repair. UKI has concluded, supported by comments from its contractors and adjuster, that the work to be carried out would mean Ms B and Mr H wouldn't need to be provided with AA as the property would still be habitable. Ms B and Mr H disagree with this.*

*The policy says it will provide AA where the home becomes uninhabitable. Uninhabitable isn't defined in the policy, so I've applied the general definition which is that the property is not capable of being lived in. And this I would take to mean as not having access to normal living facilities, such as access to a bathroom, a kitchen and a bedroom.*

*UKI said Ms B and Mr H would still have access to a bathroom, kitchen, and bedrooms. I have considered what Ms B and Mr H have said about the disruption of where internal works will be placed, and the noise levels of works, but I'm not persuaded this means the property is uninhabitable. I appreciate this will cause some inconvenience, but some level of inconvenience is normal with repairs in claims of this nature. UKI said it would consider a disturbance allowance where necessary which I think is reasonable.*

*UKI is entitled to rely on the opinions of its experts, and I haven't seen any additional evidence to contradict this. So, I don't think UKI's conclusion that AA was no longer required was obviously wrong.*

*I am aware Ms B and Mr H have raised about elderly relatives being impacted by the works, but AA can only cover impact to residents at the property, and as it has been confirmed they do not normally reside at the property this doesn't change what I've set out above.*

#### *Delays in works beginning in August 2022*

*I can see from early 2022, correspondence references work being estimated to begin in Summer 2022. In April 2022, UKI told Ms B and Mr H that when it had got necessary approvals, a start date and program would be agreed, which it estimated would be in August 2022.*

*Ms B and Mr H were also contacted by UKI's contractor in July 2022, a month before works were to start to inform them of the scheduled start date.*

*I can see Ms B and Mr H had concerns about the start date due to several requests they said were outstanding, and which they said was required to make an informed decision about the works.*

*I've set out my thoughts regarding AA and replacement of the fence in separate sections, so I won't repeat them here.*

*I can see Ms B and Mr H have had to chase UKI for answers to questions. But I can see a response was provided by UKI to these at the end of July 2022.*

*UKI had confirmed in July 2022 and previously, that it could not provide a costed SOW. This isn't unusual for insurers to do this, as the costs between an insurer and its approved contractors is commercially sensitive information. So, I don't think it was unreasonable for UKI not to supply this.*

*UKI confirmed the SOW for the internal works had not changed. However as external works had changed, I think it could've been timelier in confirming there had been no change to internal works to provide assurance. However, the work that was due to begin was the external work, not internal.*

*In summary I'm not persuaded UKI caused an avoidable delay in external repair work starting, but I do think it could have been more prompt in answering some of Ms B and Mr H's questions.*

*I appreciate Ms B and Mr H felt they had been given short notice of works beginning, but from responding to their questions at the end of July, this still gave over 2 weeks until works started. UKI made Ms B and Mr H aware of the implications of postponing the start date. But Ms B and Mr H decided not to agree to the start date.*

#### *Removal of the Hedge and Damage to the Fence*

*Due to the TPO application being unsuccessful, UKI have pursued other means of repair. And it says because of this, it no longer needs to remove the hedge as part of stabilisation and repair works.*

*This isn't unusual when the option of underpinning or piling is taken in cases relating to subsidence. Under the terms of the policy, UKI is responsible for carrying out a lasting and effective repair. And I've not seen any evidence that persuades me this would not be the case here. So, I don't think UKI acted unreasonably here.*

*Ms B and Mr H said UKI's contractors caused damage to a fence when carrying out trimming and maintenance to the hedge. UKI has agreed to review and put right any damage its contractors caused and has asked for Ms B and Mr H to provide photos of the damage in question for it to review. I don't think this is unreasonable.*

*Alternatively, to potentially make matters simpler, I suggest this be inspected by UKI if it returns to the property to carry out other works (if this is agreeable to Ms B and Mr H).*

*I can see UKI agreed to maintain and trim the hedge, but Ms B and Mr H said they had incurred an additional cost of around £20 from UKI's contractor. As UKI had agreed to maintain and trim the hedge, it should meet all the costs. So, if it hasn't done so already, this cost should be reimbursed to Ms B and Mr H.*

## *Service*

*There is often an element of inconvenience in claims of this nature, and they can take some time to resolve. This doesn't always mean something has gone wrong or there is an avoidable delay in every instance where matters have taken time.*

*I've set out in the sections above where I think UKI could've acted quicker in parts of the claim, caused avoidable delays, or could've managed Ms B and Mr H's expectations better. UKI itself acknowledged its handling of aspects of the claim was poor.*

*UKI offered Ms B and Mr H £400 compensation in recognition of this. But I don't feel this adequately takes into account the impact of the avoidable delays caused to what was already a lengthy and inconvenient process for Ms B and Mr H.*

*Having considered the impact UKI's errors had on Ms B and Mr H, and that it was over a prolonged period of time, I think it should pay them £1,200 compensation to recognise the impact its errors had on them.*

## *Further issues*

*As I've set out above, I understand Ms B and Mr H have told our service about ongoing matters with UKI, including those following its final response in August 2022.*

*For example, Ms B and Mr H have referenced issues relating to a patio in their submissions. I can't see this forms part of the complaint addressed in the final response letter. However, I can see UKI have said it will remove and then put back the patio during work. And in the circumstances, we would usually say that an Insurer would need to put back any part of the property disturbed during works, to how it was before work started.*

*If Ms B and Mr H remain unhappy with matters not considered under this complaint, they may consider making a further complaint to UKI and may choose to bring another complaint to our service if unhappy with its response.*

*Having considered everything, I intend to uphold this complaint.*

## *Putting things right*

*To put things right I intend to direct UKI to:*

- Reimburse Ms B and Mr H for the additional cost of trimming the Hedge if it hasn't done so already.*
- Upon receipt of further evidence, consider and put right, if necessary, any damage caused to the fence.*
- Pay Ms B and Mr H £1,200 compensation."*

## **Responses to my provisional decision**

Ms B and Mr H have not provided any further comments following my provisional decision.

UKI didn't agree with my provisional findings. In summary it has made the following points:

- It doesn't agree the TPO application was originally incomplete and referenced issues it encountered with the local authority (LA).

- It says the additional £20 Ms B and Mr H incurred from UKI's contractor was for additional work that wasn't a formally agreed cost.
- UKI says no damage to the fence was reported to it previously. It says it has since inspected the fence and it appears to have reached the end of its useful life and has not suffered subsidence damage, so will not require replacing.
- It disagrees with the amount of compensation I intend to award. It feels £400 is reflective of the avoidable delays its actions caused and asked me to provide a breakdown of how I've reached the amount of compensation I intend to direct it to pay

### **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 considered what UKI said, but it doesn't change my decision – or my reasoning.

In its own correspondence in around May 2021, UKI references that the list of missing information corresponds with a national list of mandatory information, and not a local list applicable only to the LA. I would also add this conclusion was reached by UKI around three months after it was told the application was incomplete.

Regarding the additional £20 cost, as UKI had agreed to maintain and trim the hedge, it should meet all the associated costs. It's reasonable for UKI to require proof of any additional costs of work it authorised, such as an invoice. So should sufficient proof be provided, this cost should be reimbursed to Ms B and Mr H.

Ms B and Mr H said UKI's contractors caused damage to a fence when carrying out trimming and maintenance to the hedge. In my provisional findings I asked it to consider and put right, if necessary, any damage caused to the fence by its contractors. Whether or not the fence has been damaged otherwise, or suffered from subsidence, does not form part of this complaint. If Ms B and Mr H are unhappy with any decision UKI make on this, they would be entitled to raise a new complaint and if necessary, bring that complaint to this service.

As UKI is aware, our approach to compensation isn't formulaic. I've clearly set out my reasoning and the issues, some of which UKI itself identified, such as avoidable delays and poor communication, in my provisional findings.

As I outlined in my provisional decision UKI's errors have impacted Ms B and Mr H over a prolonged period. Therefore, I feel £1,200 compensation is a fairer reflection of the distress and inconvenience they have been caused because of UKI's actions and mistakes.

### **Putting things right**

UKI should:

- On production of sufficient evidence, reimburse Ms B and Mr H for the additional cost of trimming the hedge if it hasn't done so already.
- Pay Ms B and Mr H £1,200 compensation.

### **My final decision**

My final decision is that I uphold Ms B and Mr H's complaint.

To put things right I direct U K Insurance Limited (trading as Churchill Insurance policies – “UKI”) to do as I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms B and Mr H to accept or reject my decision before 24 October 2023.

Michael Baronti  
**Ombudsman**