

## The complaint

Miss S and Mr M have complained about the Salvation Army General Insurance Corporation Ltd's (SAGIC's) decision to decline a claim they made for damage to their property, caused by subsidence. They're also unhappy about SAGIC's decision to not renew the insurance for the property on the same terms and conditions, while the claim was outstanding.

## What happened

I issued a provisional decision on 15 September 2023 explaining why I was intending to uphold this complaint. Here's what I said in my provisional decision:

### What happened

*Miss S and Mr M are the owners of the ground floor flat which is the subject of this decision. Miss S is also a director of N, a right to manage company set up by the owners of the three flats in the property. One of N's responsibilities is to arrange the insurance for the building so N is named as the policyholder on the certificate of insurance.*

*When I refer to Miss S in this decision, I'm referring to her in her capacity as an owner of the property and as a director of N. I've addressed this decision to Miss S and Mr M because they have the insurable interest in the property and would be the parties to whom any redress would be payable, following a decision to uphold this complaint and / or to accept the claim.*

*Miss S notified SAGIC of the claim for damage to the ground floor flat, which she thought may be caused by subsidence, in January 2022. Before it would consider the claim SAGIC required Miss S to obtain a surveyor's report on the damage, which was done and provided to SAGIC in February 2022.*

*SAGIC sent its loss adjuster, C, to the property in April 2022 to inspect the damage. At that time, C installed subsidence monitoring pins in the property and issued their technical report on 8 April 2022.*

*On 1 August 2022, C wrote to N and said that the damage pre-dated the inception of the property and confirmed the property wasn't suffering problems with its foundations.*

*In response to a request from Miss S for the evidence on which those conclusions had been based, C wrote to apologise for the confusion and expressed the view that the damage claimed for was evident on the pre-purchase survey from 2012. C said that carrying out any further investigations of the damage and the foundations was therefore beyond their brief.*

*On 2 September 2022, SAGIC repudiated the claim and refused to carry out any investigations. However, it said that if N obtained evidence that contradicted their conclusions, they would review the evidence.*

*Miss S complained to SAGIC and received its final response letter (FRL), not upholding the complaint on 9 September 2022. SAGIC explained that the information it had gathered demonstrated that the damage has been visible since the pre-purchase survey, especially in relation to the flooring. SAGIC went on to say that the pre-purchase survey makes comments regarding previous settlement damage, and the position of the deterioration seems to have been occurring over a significant period of time known to Miss S and her tenant.*

*The FRL also quoted the policy wording requiring a claim to be reported as soon as possible, and the related exclusions, and concluded that the claim had been fairly declined. Compensation of £150 was offered for the inconvenience caused by having to remove the monitoring pins installed by SAGIC's loss adjuster. SAGIC also said it would extend the policy for 60 days beyond renewal to 6 September 2022.*

*Unhappy with its response, Miss S referred the complaint to this service in September 2022. In the complaint form, Miss S said that SAGIC should cover the cost of the investigations necessary to determine the cause of the existing damage and cover the costs of remedying the damage.*

*Our investigator looked into what had happened and issued her first view in December 2022, upholding the complaint and concluding that SAGIC should accept and settle the claim for subsidence. SAGIC didn't agree with our investigator's first view and sent detailed submissions in response. Our investigator considered those submissions and issued a second view upholding the complaint, for slightly different reasons. Again, SAGIC disagreed with the view and sent further detailed comments in support of its position. SAGIC requested an ombudsman's decision on the complaint.*

*I've set out the key submissions made by SAGIC in the section below, 'What I've decided – and why' when giving my provisional reasons for my decision.*

#### *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.*

*Having done so, I'm currently intending to uphold this complaint. I will explain why, under the following headings:*

- Is the damage claimed for covered by the policy?*
- Has SAGIC fairly declined the claim, by relying on 'Claims Procedures', paragraphs 2 and 5?*
- Has SAGIC fairly declined the claim, by relying on 'General Conditions' 3 and 5?*
- Renewal of policy and alleged misrepresentation;*
- Triggering of the excess payment;*
- Current position; and*
- Next steps and putting things right.*

#### *Is the damage claimed for covered by the policy?*

*I've first considered whether the damage claimed for is covered by the policy.*

*Page 25 of the policy terms sets out the insured perils that are covered by the policy. Under the heading: 'WHAT IS COVERED' it says: 'We will pay for loss of or damage to buildings caused by an Insured Event 1. to 11. and 12-23 below.'*

*Paragraph 4 details: 'Subsidence or heave of the site beneath the buildings or Landslip causing the buildings or part of it to collapse'. Subsidence isn't defined in the policy; however, the Association of British Insurers defines it as follows: 'Subsidence is when the ground beneath a building sinks, pulling the property's foundations down with it. Subsidence usually occurs when the ground loses moisture and shrinks due to prolonged dry spells, or the presence of trees and shrubs which cause the soil to lose moisture.'*

*So, it's clear the policy intends to cover damage to a property caused by subsidence.*

*I've next considered whether the available evidence suggests an insured event may have occurred which ought reasonably to have been considered by SAGIC.*

*After SAGIC was first notified of the subsidence claim in February 2022, it declined to consider the claim unless a structural engineer's report was also provided. So, Miss S instructed a company who I'll refer to as S, to investigate the property. S issued their report on 11 February 2022. In the report they commented, among other things, that:*

- the tenant had lived at the property for approximately 4 years and reported the cracking appears to have worsened during his tenure;*
- certain trees near the property were highlighted as possibly contributing to subsidence;*
- movement was identified in the main rear elevation internal wall which was likely to be due to either subsidence as a result of variations in the moisture content of the soils, or subsidence as a result of the loss of fines in the shallow granular soils, which could be caused by leaking drains close to the foundations;*
- there was possible subsidence in the foundation beneath the wall at location 6, which appears to be between the kitchen and the shower room. It was observed to be minor and non-structurally significant given the age and construction of the property;*
- subsidence at that location was suggested to be seasonal in nature so decorative repairs were likely to result in cracks reoccurring in the future; and*
- while the subsidence may be seasonal in nature, if it is found to be progressive, soil stabilisation or underpinning may be necessary.*

*The report recommended the drains be checked, the floorboards be lifted to facilitate an investigation to determine the cause of the dropping floor, and the cracks be monitored over a series of months.*

*After receiving S' report, SAGIC sent its loss adjuster, C, to the property to carry out an initial investigation of the claim. C issued a report to SAGIC in early April 2022, providing preliminary advice on the subsidence claim. The report explained that the tenant had lived at the property since 2018 and over that period had been aware of*

worsening cracking within the flat. Sloping floors and gaps at the internal wall/floor junctions were noticed in 2021. C said that damage evident within the tv room and adjacent hallway is indicative of localised subsidence. With regard to the floor, C suggested the dip in the suspended timber floor might be associated with movement of the supporting sleeper walls, or the floor joists may be rotten. Further investigations would be required but at that point C was still investigating whether liability would engage.

In the Technical Report on Subsidence Claim issued on 8 April 2022, diagonal cracking was noticed on the rear wall and ceiling junction in the right hand tv room and it was observed that the rear door suffered distortion and was difficult to operate.

Horizontal cracking was reported in the hallway and the suspended timber floor was found not to be level and dipping towards the right-hand side of the hallway, creating a 17mm gap between the floor surface and architraves. The gaps were observed along the tiled rear partition from the hallway into the right-hand shower / wc room, and in the rear dining room and kitchen. Hairline cracking was also evident towards the right-hand side of the front partition at the ceiling junction in the rear dining room and kitchen. An external crack below the kitchen window was also observed, but due to the lack of corresponding internal damage, was considered to be long standing.

While the categorisation of the cracking was described as 'slight', the report did say that the cracks evident to the solid rear wall of the tv room and solid walls of the adjacent hallway are consistent with some localised downward foundation movement having taken place in the vicinity. The report also said that the pattern and nature of the cracks was indicative of an episode of subsidence. C indicated they thought the cause of movement might be due to an escape of water from adjacent drains, although no further comment was provided in support of that assumption. With regard to the sunken floors, the report said that was consistent with excessive deflection of the floor joists and was likely due to rot or lack of a supporting sleeper wall, rather than subsidence.

By contrast, Miss S' report suggested that the tree to the rear of the property, suspected to be an Ash tree, and a Fig tree in the neighbouring property may have contributed to subsidence. It suggested alternatively that the subsidence could be the result of the loss of fines in the shallow granular soils, which could be caused by leaking drains close to the foundations.

Taking everything into account, while the cause of the subsidence at that point hadn't been established, I think it was clear, in April 2022 that the damage to the property could reasonably have been caused by subsidence. On that basis I think it would have been reasonable for SAGIC to carry out a period of monitoring to establish whether there was ongoing movement affecting the property, that was covered by the policy. However, instead, SAGIC declined the claim for a number of reasons which I will address next.

In justifying its decision to decline the claim, SAGIC has relied on paragraphs 2 and 5 of the Claims Procedures, General Exclusion 8 and General Conditions 3, and 5 of the policy terms and conditions. So, being provisionally of the view that there was sufficient evidence of possible subsidence for cover to potentially engage under the policy, I've addressed each of the paragraphs SAGIC has referenced, in turn, to provisionally decide whether SAGIC has fairly declined the claim, on the basis of the evidence then available.

Has SAGIC fairly declined the claim, by relying on 'Claims Procedures', paragraphs 2

and 5?

*I've first considered whether paragraphs 2 and 5 of the claims procedures set out in the policy terms and condition were breached by N or Miss S, and if so, whether it was fair for SAGIC to consequently decline the claim.*

*As detailed in the final response letter, the claims procedures set out on page 14 of the policy terms and conditions detail the insured's responsibilities in respect of claims involving loss or damage to the insured policy.*

*Paragraph 2 says that the claim must be reported to SAGIC 'as soon as practicable and in any event within 31 days of the occurrence'.*

*This is the first point of contention. Miss S said the cracks in the wall had been patched previously, and reappeared again not long after moving in. She said all of the rooms had been redecorated by 2015 and the cracks gradually appeared after that. The property had been rented out since October 2018 and the tenant also noted increasing cracking in the walls. However, Miss S said they believed this was to be expected in a 100-year-old property.*

*With regard to the sunken floors, Miss S said they were first noticed in the summer of 2021 on her first visit to the flat after lockdown. She called a builder in to inspect the floor and property with a view to preparing the property for sale, and it was only then that she was made aware the issues with the property could be caused by subsidence.*

*Miss S says promptly following the initial advice received from their builder, in the context of the delays associated with the covid 19 pandemic, she notified SAGIC of the claim as soon as was practicable. However, that doesn't appear to be within 31 days of the occurrence, in this case being the builder's suggestion that the cracked walls and sunken floors might be indicators of subsidence. The builder came to the property on 23 September 2021 and the claim was submitted to SAGIC on 12 February 2022, four and a half months later.*

*So, paragraph 2 wasn't complied with in this case. However, that doesn't mean the claim should therefore be declined. Given the potential cost to the owner to repair the damage, should it be established that the damage has been caused by subsidence, SAGIC needs to explain why its position has been prejudiced to the point that justifies its decision to decline the claim. Our investigator asked SAGIC to provide its comments on this and it said the late notification of the claim had prohibited SAGIC from being able to realistically validate or quantify the claim at the correct point in time. SAGIC also said that if it had been involved earlier, and investigations were undertaken earlier, those investigations could potentially have prevented further damage.*

*With regard to the alleged breach of paragraph 2, the delay in notifying the claim was four and a half months. I don't accept that this short delay prevented SAGIC from being able to realistically validate or quantify the claim. And given SAGIC didn't undertake any investigations, following the notification of the claim, I'm not persuaded that if it had been notified four and a half months earlier, it would have carried out any investigations.*

*On the one hand I accept that SAGIC may be faced with a potential increase in the costs to repair the damage (should subsidence be evidenced) due to the four-and-a-half-month delay in receiving notification of the claim. However, when that potential*

*detriment is weighed up against the costs of monitoring movement at the property over a reasonable period and addressing any subsidence and associated damage found, I'm not currently persuaded that it provides a fair or reasonable basis on which to decline the claim. SAGIC's decision to decline the claim on this basis, while it may be permitted to do so by the policy terms, is therefore not fair or reasonable in the circumstances of this complaint. I also consider its decision to do so is a breach of its obligation in ICOBS 8.1(3) to not unreasonably reject a claim.*

*I've next considered paragraph 5 of the claim's procedure, which says that the insured must: 'At your expense provide us with estimates, proof of ownership and/or value to support your claim'. Miss S provided a report from a structural engineer in support of her claim that suggested the property may be affected by subsidence on 23 February 2022. However, at the current time, investigations are still ongoing to establish whether or not the damage to the property has been caused by subsidence. It therefore wouldn't be reasonable to expect Miss S to provide estimates to support her claim. So, it's not clear to me why SAGIC have relied on this paragraph in declining the claim.*

#### *General Exclusion 8*

*I've next considered SAGIC's reliance on General Exclusion 8 to decline the claim. Pages 16 and 17 of the policy terms and conditions set out what the policy does not cover. Paragraph 8 says: 'EXISTING DAMAGE Any loss or damage occurring before the cover by this Policy commences'.*

*In C's letter dated 1 August 2022, to N advising the claim had been declined, C said that the damage is noted to pre-date the inception of the policy. SAGIC later clarified that the damage C had been appointed to investigate pre-dates the policy inception because it was included on the pre-purchase survey from 2012, which was completed prior to SAGIC insuring the property.*

*In particular SAGIC has pointed to paragraph F4: Floors on page 12 of the pre-purchase survey in support of its view that the property suffered from pre-existing subsidence damage. That paragraph of the report says:*

*'All floors are of suspended timber construction with the exception of the floor to the kitchen where it is of solid construction. The timber boarding in the main reception room had moved and you may consider it prudent to obtain a quotation for re-laying these floor coverings. There are some areas where the floor is slightly uneven (for example adjacent to the doorway to the bathroom) and you may consider it prudent to lift the floor covering and undertake localised repairs'.*

*However, directly beneath that paragraph the pre-purchase survey said:*

*'No significant defects were noted however to any of the floors, and all remain level within acceptable tolerances'.*

*Given the property being surveyed was 100 years old, I think it reasonable to expect there would be some areas that may need localised repairs. I don't consider these comments provide a reasonable basis for declining a claim for subsidence, ten years after the date of the survey, on the basis that the damage pre-dated the policy's inception.*

*I also note that the surveyor's overall opinion of the property was: 'Whilst there are of*

*course some matters that will require routine repair, maintenance and attention the flat has been maintained to a reasonable standard and generally remains free from significant defect’.*

*SAGIC also highlighted the part of the report which made reference to the sleeper walls being supported by concrete as evidence of pre-existing subsidence. SAGIC believes the mention of such support shows the property had previously been underpinned. However, the report actually says:*

*‘The sleeper walls have been reconstructed with concrete to provide additional support. All appears to remain in satisfactory condition free from significant defect’.*

*SAGIC’S conclusion, on the basis of this brief statement, that the property has previously suffered from subsidence (which wasn’t disclosed) and has been underpinned in my view is unreasonable. It might provide one possible explanation for the concrete reinforcement. But equally, adding support to a sleeper wall could be a proactive improvement made by a homeowner. On balance, I’m not persuaded that this brief statement in the pre-purchase survey provides a reasonable basis for SAGIC’s decision to decline the claim.*

*Miss S said that for the damage to be pre-existing it would need to have the same cause as that described in the later reports. The pre-purchase survey didn’t identify a particular reason for the issues identified with the property, but neither did the two reports later commissioned by SAGIC and Miss S respectively. C’s report suggested the cracks in the tv room and hallway walls might be caused by subsidence as a result of scaped water from drains. However, S’s report suggested the presence of trees might be an alternative cause of subsidence. With regard to the dropped floors, both reports suggested they may be caused by weakening of the floor joists due to rot or the absence of a supporting sleeper wall, and both recommended further investigation to establish a cause. Miss S says that at a minimum, SAGIC needs to pay for the investigations necessary to establish the cause of the current damage. Only then is it appropriate to establish whether it has the same cause as the damage described in the pre-purchase survey.*

*I’ve considered the damage claimed for, the pre-purchase survey and the more recent reports commissioned by SAGIC and Miss S, to decide whether SAGIC has fairly concluded the damage claimed for was evidenced prior to the policy inception.*

*On page 5 of the pre-purchase survey, it confirms that the flat had been maintained to a reasonable standard and generally remained free from significant defect. On page 10, with regard to the walls, it went on to say:*

*‘Whilst there is some evidence of minor historic movement evident for example in the form of cracked cills and some minor distortion to the brickwork there is no evidence of any significant structural movement. All movement noted is considered to be long-standing, to be within acceptable tolerances and the chances of any further movement are remote.’*

*In summary, the pre-purchase survey only addressed the state of the property broadly, it didn’t go into the detail of the later reports. It also concluded that the property remained free from significant defect, and there was no evidence of any significant structural movement, rather, the movement appeared to be longstanding and within acceptable tolerances.*

*Where SAGIC seeks to apply an exclusion to a claim it has to demonstrate that the exclusion applies. I'm not satisfied SAGIC has done that in this case. I therefore think SAGIC's decision to decline the claim on the basis that the damage had occurred prior to inception of the policy was not fair or reasonable in the circumstances.*

*SAGIC has also said that the evidence provided by the pre-purchase survey suggests that a misrepresentation was made at policy inception, so I've considered the issue of disclosure when the policy was taken out. There doesn't seem to be any mention of 'cracking', or the flooring being in a particular state of repair, in the policy documents that I've been provided with, nor has SAGIC provided any evidence to show N failed to make a fair presentation of the risk when taking out the policy. I'm therefore not persuaded that a misrepresentation was made at policy inception.*

*Has SAGIC fairly declined the claim, by relying on 'General Conditions' 3 and 5?*

*SAGIC has also relied on General Conditions 3 and 5, set out on page 21 of the policy terms and conditions, in declining the claim.*

*General condition 3, in relation to claims says:*

*'In the event of a claim you must follow as far as is practicable the CLAIMS PROCEDURES set out on page 14. Failure to do so may result in your claim being rejected or reduced or we may cancel your Policy from the start of the current period of insurance'.*

*For the reasons given in this provisional decision, under the heading 'Claims Procedures paragraphs 2 and 5' above, although paragraph 2 wasn't complied with, I don't consider it has sufficiently prejudiced SAGIC's position so as to support its decision to decline the claim.*

*General condition 5, 'Duty of Care', says: 'You must*

*(a) do all that is reasonably possible to:*

*(i) protect the property insured;*

*(ii) prevent, or reduce the extent of, damage;*

*(iii) prevent accidents or bodily injury;*

*(b) keep any property insured under this Policy in good condition;*

*(c) carry out internal and external inspections of the buildings at least every 3 months and maintain a log of those inspection and retain that log for at least 24 months.'*

*SAGIC says Miss S didn't prevent or reduce the extent of the damage or keep the property in good condition. It says the reported cracking is evidence of this. It also says that it hasn't been provided with evidence of maintenance works applicable to the areas in question, as highlighted in the pre-purchase survey and asked for copies of evidence the areas under discussion had been maintained. Miss S has told us that the house was completely redecorated between the date of purchase and 2015, but the cracks reappeared. She has also explained that the property has been regularly inspected since it has been rented to the tenant.*



*I don't think it's reasonable for SAGIC to seek to rely on the appearance of cracking as evidence that Miss S and Mr M haven't kept the property in good condition or have failed to protect the property or reduce the extent of the damage. While cracks can be a sign of subsidence, they are often present where subsidence isn't an issue. Cracking can also be due to changes in moisture levels in different seasons, and movement within acceptable tolerances.*

*SAGIC has submitted that the nature of the contractual elements set out in general conditions 2 and 5 referred to above is to avoid situations like there where a policyholder ignores the gradual deterioration of their property until such time as the alleged damage is significant / breaches their maintenance budget / or requires works prior to sale etc.*

*I accept that may be true, however, what SAGIC hasn't persuaded me of here is that Miss S ignored the gradual deterioration of the property until such time as financially suited her. I haven't seen any evidence to show the property was neglected, and I don't think that the appearance of cracks on a redecorated wall is indicative of neglect to maintain a property by a homeowner.*

*However, Miss S has explained that the property was redecorated periodically and having reviewed the photos included in her structural report, and the comments in both of the reports, I'm not persuaded there is sufficient evidence to support SAGIC's assertions here.*

*When seeking to enforce a policy condition, to support a decision to decline a claim, SAGIC has to provide evidence, in this case, of the failure to keep the property in a good condition, and also to show how that impacted on the claim. SAGIC has done neither here. I'm therefore intending to conclude that SAGIC has unfairly declined the claim, in relying on a breach of these conditions of the policy.*

#### *Renewal of policy and alleged misrepresentation*

*While it's possible that had the property been damaged by subsidence prior to the inception of the policy, SAGIC may have declined to offer subsidence cover, that doesn't appear to be the case here. No persuasive evidence of the property being damaged by subsidence prior to the inception of the policy has been provided.*

*Miss S said she accepted that they were obliged to inform SAGIC at the time of renewal of any known damage to the building or other material information relevant to the decision to offer a renewal of the policy. However, she said they had no reason to know the cracks in the walls and the gap in the floor constituted 'damage' of a material nature. N had noted on the claim form that there had previously been crack in the walls, and at that time, as the building was more than 100 years old they didn't think the cracks were indicative of anything more than signs of age and wear. It was only when the builder came to assess the work that would need to be done before marketing the property for sale, in September 2021 that Miss S became aware the cracks and gap in the floor could indicate a more serious underlying issue. She says she raised this with her insurers as soon as was reasonably practicable. Miss S therefore strongly refutes a misrepresentation was made at the time of renewal.*

*For the reasons I've already given, I'm not persuaded by SAGIC's suggestion that a misrepresentation was made pre-inception. However, SAGIC have also pointed to misrepresentation as its reason for declining to renew the policy in September 2022. As I've explained when considering where a misrepresentation was made, pre-inception, I've also not seen any evidence to suggest that a fair presentation of the*

*risk wasn't made at each renewal. I've also not seen anything to suggest that the cracks noticeably worsened prior to a renewal date. SAGIC declined to carry out any monitoring or investigation of the claim on the basis of the arguments I've already considered, and discounted. So, in the absence of any evidence to support its allegation of misrepresentation, I'm struggling to understand why SAGIC initially declined to renew the policy.*

*Although I understand that SAGIC did eventually decide to renew the policy for a further year, but without subsidence cover, I think its actions in initially declining to renew and then to renew on different terms were unfair and unreasonable, particularly given the claim hadn't been concluded. I accept that SAGIC communicated its decision to decline the claim to N, however, it was promptly notified that the complaint had been referred to this service, and the views it received from our investigator upheld the complaint. So, I think there was reasonable evidence to make SAGIC aware the claim hadn't been finally concluded.*

*In addition, SAGIC is a member of the Association of British Insurers so will be aware of its guidance regarding cover for domestic properties where there is a subsidence claim, which also represents good industry practice, and supports the 'smooth functioning of the property market'. A reasonable interpretation of this guidance would mean that insurers are expected to continue cover for the property, at the very least, until such time as the claim has been concluded.*

*I'm currently of the view that SAGIC's actions, in relation to the renewal of the policy, have caused Miss S and Mr M distress and inconvenience that they should be compensated for. I will address this in more detail under the related heading, below.*

#### *Triggering of the excess payment*

*Before I address the current position and next steps, I first want to address a comment made by SAGIC in relation to the payment of the excess.*

*Our investigator expressed the view that SAGIC should reimburse the cost of the expert report Miss S had obtained. In response SAGIC said that if the complaint is upheld, the policy cover would be triggered and the policy excess would be payable. However, that suggests an excess is payable on making a claim but it's standard practice for an excess to be paid by an insured in respect of a claim prior to the insurers making a payment under the policy. If the claim is declined, and no payment is made by the insurer, then I would not expect the excess to be collected by the insurer.*

#### *Current position*

*SAGIC has clarified that cover has been provided that from the renewal date (excluding subsidence cover). However, the policy was due to expire on 6 September 2023.*

*Miss S has clarified that after obtaining their own technical report, and following SAGIC's declination of the claim, they have proceeded to carry out the recommendations in the technical report. The report recommended a drain survey be commissioned, which has now been undertaken and found no damage. The report also recommended 12 months of subsidence monitoring to ascertain the cause of the damage. Miss S engaged a company recommended by her structural engineer to undertake the monitoring. Two reports have been provided so far. Once the monitoring has been completed, the intrusive investigations will be carried out with*

*regard to the flooring. All of the data will then be provided to their structural engineer to assess and then provide advice on the next steps.*

*Next steps and putting things right*

*Having considered all of the reasons given by SAGIC for declining the claim for subsidence, I'm currently of the view that its decision was unfair and unreasonable. I'm therefore intending to uphold this complaint and make the directions set out below.*

*From the information provided by Miss S it seems that the monitoring commenced in November 2022. Usually, monitoring is undertaken for an initial 12-month period to measure any movement of the property throughout all of the seasons. As the monitoring should be nearing its completion, I'm intending to direct Miss S to provide SAGIC with all of the evidence she has obtained as recommended in the technical report, together with the analysis of the data from her structural engineer, within three months of acceptance of the final decision. I'm also intending to direct SAGIC to then reconsider the claim promptly on the basis of the information provided by Miss S and provide its decision to Miss S and Mr M within four weeks of receiving that information. If, at that time, SAGIC considers further investigations need to be undertaken, they should be completed within a reasonable time.*

*If SAGIC accepts the claim then it will need to reimburse the cost of the technical report obtained by Miss S, together with the cost of the monitoring, inspections and investigations instructed by Miss S to establish whether or not the damage to the property has been caused by subsidence, together with 8% interest on those sums from the date of payment by Miss S, to the date of settlement. I'm intending to make this conditional award on the basis that if SAGIC hadn't unfairly declined the claim, it would have been responsible for these costs in the event of subsidence being established. However, if the evidence doesn't show the damage was caused by subsidence, or any other insured peril, then these would have been costs that Miss S and Mr M would have needed to incur to establish what, if any, repairs needed to be completed to the property. In that case SAGIC would not be responsible for those costs.*

*In addition, if SAGIC accepts the claim, then looking forward I would remind it of its obligations in terms of continuation of cover.*

*In the event that SAGIC makes a decision on the claim that Miss S and Mr M are unhappy with, they can raise a new complaint with SAGIC about that and if SAGIC doesn't resolve the complaint to their satisfaction, they may refer it to this service.*

*I'm also intending to award Miss S and Mr M £750 compensation for the distress and inconvenience they've been caused by SAGIC's unfair and unreasonable decision to decline the claim and the stress and worry they've been caused by SAGIC's actions in relation to renewing the policy.*

I asked the parties to let me have any final comments or information they'd like me to consider before I issue my final decision on the complaint. Both parties have now responded to the provisional decision.

In its response, SAGIC made the following points:

- It is prepared to re-open the claim with the status of 'subsidence' and will arrange for its underwriting department to offer a policy renewal for a further 12 months, with the

subsidence exclusion removed. But the excess for the last year and the current year would be increased to £2,500, given the ongoing claim;

- SAGIC would prefer to be involved now with the investigation into the claim, rather than waiting for three months and has requested that the supporting documentation that has already been provided to this service, be sent on to SAGIC. It will appoint a loss adjuster once that information is received;
- SAGIC agrees that if the claim is accepted the cost of the technical report would be reimbursed but it doesn't accept it should reimburse that cost before then;
- SAGIC remains of the view that the excess would be payable on acceptance of the claim, not on acceptance of indemnity;
- SAGIC don't agree it should pay the 8% interest I indicated I would award, should indemnity be accepted; and
- With regard to the flooring, SAGIC says it may treat that as a separate claim.

Miss S and Mr M responded to say:

- SAGIC was first notified of the claim on 9 January 2022, with the claim being filed in February 2022;
- They would like the three-month deadline for information to be provided to SAGIC, to be reconsidered as the investigations into the floor are complicated by the presence of underfloor heating, requiring a specialist builder to carry out the investigations. They also can't be sure how long it will take the structural engineer to provide his report, and the holiday period over Christmas and New Year may cause some delays; and
- They have also raised the impact SAGIC's actions have had on one of the other owners in the building.

I have taken these comments into account in making my final decision on this complaint.

### **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.

Before I proceed to give my final decision on this complaint I will first address the additional points made by the parties, under the headings below.

#### *Excess*

SAGIC has made two points about the excess that I will address under this heading.

First, SAGIC has said it will retrospectively increase the excess that was applicable when the claim was made and it will increase the excess in the renewal year, on the basis there is an open claim.

The excess applicable to this claim should be the excess that was payable, under the policy terms and conditions, at the time the claim was first notified to SAGIC. With regard to any excess that SAGIC chooses to apply to future claims, I would expect SAGIC to renew the policy on the terms it would have renewed on if it had not declined the claim. That may lead

to an increased excess being applied to later claims. If Miss S and Mr M are unhappy with the way SAGIC deals with any further claims they may make, including in relation to the application of any excess, then they are free to make a new complaint about that.

Second, with regard to the application of the excess in relation to the current claim, there appears to be some misunderstanding here, on the part of SAGIC. So, I have explained this in some more detail, below. It is only on acceptance of indemnity, not acceptance of the claim, that the excess would become payable.

As SAGIC will be aware, an excess is an amount that is deducted from each claim and is paid by the insured. That means in practice that if no claim is paid by the insurer, the excess is not deducted. The excess represents the risk that the insured party takes on before the insurer steps in and provides the rest of the indemnity for repairing the damage caused by the insured event. If there is no insured event, and no indemnity, then no excess is payable.

SAGIC's policy terms also support this position.

The definition of a 'Claim' is *'A single loss or series of losses arising from one event for which cover is provided by this Policy'*.

'Excess' is defined as: *'The amount of the claim for which you are responsible'*.

In Section 1 – Buildings, under the heading *'What is not covered'* on page 25 of the policy terms and conditions it says: *'We do not pay for loss of or damage to buildings caused by the following: (i) The excess detailed in your Schedule.'*

So, SAGIC won't pay the part of the claim that is covered by the excess amount. And the excess is only payable in relation to losses which are covered under the policy. So, if SAGIC isn't satisfied that the damage to the property was caused by subsidence, or another insured peril, Miss S and Mr M's losses in relation to that damage won't be covered by the policy and no excess will be due.

### *Investigation of the claim*

SAGIC has asked for copies of the documentation from Miss S and Mr M's investigations to be provided to it now, rather than waiting for three months. SAGIC says on receipt of that information it will appoint a loss adjuster.

Miss S has said that the three-month timeframe is too inflexible and has asked that I provide some additional flexibility in relation to the timing of the provision of information to SAGIC.

I think it's reasonable for SAGIC to now be provided with copies of the reports and investigation results obtained by Miss S, in relation to the claim, to date. As the outstanding reports and investigation results become available, Miss S should promptly share those with SAGIC.

It seems that setting specific timeframes for the parties, in relation to the ongoing investigation of the claim isn't helpful in these circumstances. So, following acceptance of this decision by Miss S and Mr M, the parties should work together to achieve a resolution of the claim without unnecessary delay.

### *Reimbursement of investigation costs*

SAGIC has said that it shouldn't be expected to pay for Miss S' technical report before it has been established that the damage to the property was caused by an insured peril. That was

what I had endeavoured to set out in my provisional decision, but I will provide some additional explanation to provide some further clarity on that point, here.

In my provisional decision I said:

*If SAGIC accepts the claim then it will need to reimburse the cost of the technical report obtained by Miss S, together with the cost of the monitoring, inspections and investigations instructed by Miss S to establish whether or not the damage to the property has been caused by subsidence, together with 8% interest on those sums from the date of payment by Miss S, to the date of settlement. I'm intending to make this conditional award on the basis that if SAGIC hadn't unfairly declined the claim, it would have been responsible for these costs in the event of subsidence being established. However, if the evidence doesn't show the damage was caused by subsidence, or any other insured peril, then these would have been costs that Miss S and Mr M would have needed to incur to establish what, if any, repairs needed to be completed to the property. In that case SAGIC would not be responsible for those costs.*

I remain of the view that SAGIC unfairly declined Miss S and Mr M's claim as it failed to evidence that it had fairly applied the exclusions and conditions to the claim.

If the claim had been fairly considered by SAGIC, it wouldn't have been declined on that basis, and it would have fallen to SAGIC to carry out the investigations that Miss S and Mr M have had to pay for.

If, following the conclusion of the investigations, SAGIC decides there isn't sufficient evidence to show the damage was caused by subsidence, or an insured peril, then Miss S and Mr M would have had to meet the costs of any investigations and reports out of their own pocket.

However, if it is found that the damage was caused by subsidence and is therefore covered by the policy, then Miss S and Mr M have been out of pocket for expenses that SAGIC ought reasonably to have incurred in the first place and they have therefore been deprived of the opportunity to use those funds for other purposes. In that case, 8% interest should be awarded in relation to each invoice Miss S and Mr M have paid, for the technical report and for all of the other reports and investigations that they had to carry out, from the date those sums were paid.

#### *A separate claim for the floor*

SAGIC has said that it is likely the claim for damage to the floor will be registered as a separate claim.

However, before accepting, or rejecting liability for the claim, SAGIC will need to take a view on, among other things: the likely cause of the damage that has been included in the claim; whether or not there are primary or secondary causes of subsidence; and whether or not the damaged areas have been caused by the same insured peril.

Again, if Miss S and Mr M are unhappy with SAGIC's decision on the claim including in relation to the number of excesses it seeks to apply to the claim or claims, they are free to make a new complaint about that.

#### *Date of notification of the claim*

I note Miss S' advice that the claim was notified to SAGIC a month earlier than I had said in

the provisional decision. As it was in fact notified to SAGIC in early January 2022, all references in my provisional decision to a delay of '*four and a half months*' should be amended to '*three and a half months*'. While I apologise to Miss S for the inaccuracy, it doesn't have a material impact on the outcome of my decision.

### *Impact on other leasehold owner in building*

Miss S and Mr M have provided some detail of the financial impact SAGIC's actions have had on one of the other owners of a flat in the building. However, I am unable to consider that in this decision. The other owner will first need to raise a complaint with SAGIC, and if he is unhappy with SAGIC's response to his complaint, he can then seek to refer his complaint to this service.

Having considered all of the available evidence, for the reasons given in my provisional decision and this final decision, I uphold this complaint.

### **Putting things right**

I require the Salvation Army General Insurance Corporation Ltd to:

- Reconsider Miss S' and Mr M's claim for damage caused by subsidence, subject to the remaining terms and conditions of the policy, upon receipt of the report from Miss S' structural engineer setting out the next steps, together with the data that has been obtained during the investigations and survey's that have been carried out in relation to the damage that was the subject of the claim;
- If SAGIC accepts liability for the claim, to promptly settle the claim fairly and reasonably;
- If SAGIC accepts liability for the claim, to also reimburse the cost of the technical report obtained by Miss S, together with the costs of the monitoring, inspections, investigations and subsequent report(s) relating to the claim instructed by Miss S ('Miss S' investigation costs');
- Add interest to Miss S' investigation costs at 8%\* simple per year from the date Miss S paid the relevant invoice to the date it pays these awards; and
- Pay Miss S and Mr M an additional £750 compensation for the distress and inconvenience they've suffered as a result of the Salvation Army General Insurance Corporation Ltd's decision to unfairly decline the claim.

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

### **My final decision**

My final decision is that I uphold this complaint and require the Salvation Army General Insurance Corporation Ltd to pay the awards and carry out the actions, detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S and Mr M to accept or reject my decision before 3 November 2023.

Carolyn Harwood

**Ombudsman**