

The complaint

Mr and Mrs S are unhappy U K Insurance Limited trading as Direct Line Home Insurance (UKI) have refused to cover their retaining wall and are insisting on settling the remainder of their subsidence claim by a cash settlement.

What happened

Mr and Mrs S have brought several complaints to our service in relation to a claim they made to UKI about subsidence damage to their home.

One of my ombudsman colleagues has already given a decision on whether UKI's decision to decline to cover the retaining wall at Mr and Mrs S's home was fair and reasonable, based on the evidence provided at that time. And our service dismissed a subsequent complaint which was raised on the basis that the subject of that complaint had already been considered under the prior complaint.

Mr and Mrs S have now complained that UKI has maintained its decision on the retaining wall element of their claim, despite them having provided further evidence in support of their position. They've also complained that UKI insisted on settling the parts of the claim it had accepted by cash settlement.

Our investigator considered this new complaint and felt UKI's position was in line with the terms of the policy and was fair and reasonable. She didn't think the expert evidence provided by Mr and Mrs S could be considered as new, because it didn't contain any substantively new arguments which my ombudsman colleague wouldn't have already considered when reaching his final decision. She also said UKI was prepared to carry out the works to the house, instead of paying a cash settlement, but only if Mr and Mrs S had the retaining wall repaired first, which she thought was reasonable.

Mr and Mrs S didn't accept our investigator's opinion. So, as no agreement had been reached, the complaint was passed to me to decide.

I issued two separate decisions on this complaint. The first was a decision setting out why I didn't think it was appropriate for our service to consider or answer Mr and Mrs S's complaint about the retaining wall. I explained that I didn't consider Mr and Mrs S had provided new, suitably persuasive, evidence which was likely to affect the outcome our service reached previously when considering essentially the same complaint.

I also issued a provisional decision explaining why I thought UKI's decision to settle the claim by cash settlement was fair and reasonable. Here's what I said in that provisional 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.

I should firstly clarify that this decision covers only Mr and Mrs S's complaint about UKI insisting on settling their claim by cash settlement. I've issued a separate decision explaining why I don't think it's appropriate for our service to consider or answer their complaint about the retaining wall.

Having considered the complaint about the method of claim settlement, I'm minded to agree with the outcome reached by our investigator. I'll explain why.

The terms and conditions of Mr and Mrs S' policy allow UKI to decide how to settle a claim. This includes by choosing to pay a cash settlement. But our service would also consider whether it's fair and reasonable, in the particular circumstances of a situation, for an insurer to rely on such a term to insist on settling a claim by cash.

However, in this case UKI said it was willing to carry out the repairs which it accepts are covered under the claim, rather than paying a cash settlement. But only if Mr and Mrs S carried out repairs to the wall first. So, UKI hasn't insisted solely on a cash settlement. Rather, it moved forward with a cash settlement due to the ongoing dispute over who was responsible for repairing the wall.

Given that our service has already decided the retaining wall isn't covered, and considering all parties seem to agree that it's at risk of collapse due to its condition, I don't think it was unreasonable for UKI to insist on the wall being repaired by Mr and Mrs S before agreeing to carry out the claim related repairs. This was due to the potential for injury to its contractors during repairs, as well as to prevent foreseeable and avoidable damage to the property should the wall collapse. And as no agreement on this could be reached, I think it was reasonable for UKI to pay a cash settlement for the accepted claim repairs instead.

Should Mr and Mrs S decide to carry out repairs to the wall themselves, and subsequently wish for UKI to complete the accepted claim repairs instead of using the cash settlement it has paid them, they should discuss this directly with UKI in the first instance. Should they remain unhappy with UKI's hypothetical decision at that stage, they can refer those concerns to our service as a new complaint, subject to our normal rules and timescales.

But based on the position as it currently stands, given the ongoing dispute over the retaining wall, I think UKI's decision to pay a cash settlement for the works accepted as part of the claim was fair and reasonable in the circumstances."

I asked both sides to send me any further evidence or arguments they wanted me to consider before I reached my final decision.

UKI confirmed it had nothing further to add to my provisional decision.

Mr and Mrs S confirmed they didn't agree with my provisional conclusions. They maintain the wall should be covered under the claim. To summarise, they said:

- The movement of the wall is rotational which is a combination of lateral and downward (subsidence) movement.
- The wall clearly provides support to the building foundations and some of the earlier expert reports support this.

- They disagree the wall hasn't been affected by subsidence, but even if they accept it, the evidence supports that its repair is necessary for a lasting and effective repair to the buildings.
- Our service doesn't have the necessary expertise and must rely on the opinions of experts. The weight of expert evidence supports their case.
- UKI's expert appears to have referred to the wrong trial pit when concluding the amount of ground beneath the foundations affected would be less than 150mm. It would actually be 1080mm.
- UKI's advertising states that policyholders can choose how their claims will be settled, which contradicts what I said about the policy allowing UKI to decide.

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 also thought carefully about the responses to my provisional decision. And having done so, while I appreciate it will come as a disappointment to Mr and Mrs S, my conclusions remain the same. I'll explain why.

The majority of the points provided in response to my provisional decisions focused on the retaining wall. As with my provisional decision, I've issued a separate decision on the dispute over the retaining wall. This decision focuses only on UKI's decision to cash settle the claim for the house and garage.

Mr and Mrs S say UKI's advertising suggests policyholders will always be given the choice as to how their claim will be settled. They say my provisional findings would contradict clear government legislation by allowing UKI to pay a cash settlement against their wishes.

I haven't seen the advertising materials Mr and Mrs S have referred to. And I should explain that even if I had, it would not be my role to consider whether or not UKI's actions amounted to a breach of advertising standards. My role is to consider whether UKI's actions are fair and reasonable, taking into account all the evidence and circumstances.

As explained in my provisional decision, UKI's policy allows it to decide how to settle claims. Page 12 of the policy booklet sets this out, under the heading "*If you claim*" it says:

"How we settle claims

If the buildings are damaged by any of the causes listed in [Section 1], we will either:

- *repair or rebuild the damaged part using our suppliers*
- *pay to repair or rebuild the damaged part using your suppliers*
- *make a cash payment"*

Terms like the above are standard within the home insurance market, and there is nothing inherently unfair about them. But as already explained, our service would always look beyond the strict wording of policy terms and consider whether the insurer is acting fairly and reasonably in the way it is seeking to apply policy terms.

In this case, UKI didn't insist on a cash settlement from the outset. It said it was willing to carry out the works it accepts as being covered, through one of its suppliers, if Mr and Mrs S have the retaining wall repaired first.

Our service has also already decided that the retaining wall issue isn't covered under the policy. And I've issued a further decision about this today. In light of this, I remain of the view that it was reasonable for UKI to require Mr and Mrs S to remedy the issues with the wall before it would consider carrying out the repairs to the buildings it accepts are covered by the claim.

The dispute over responsibility for the retaining wall has been ongoing for a long time. So, in those circumstances, irrespective of any potential advertising materials or communications suggesting Mr and Mrs S could choose how they wanted their claim settled, I don't think it was unfair or unreasonable to UKI to decide to pay a cash settlement – in line with the policy terms – in order to bring finality to the claim.

That all being said, as explained in my provisional decision, should Mr and Mrs S decide to carry out repairs to the wall themselves, and wish for UKI to then complete the accepted claim repairs instead of using the cash settlement it has paid them, they can discuss this option directly with UKI. And if they remain unhappy with UKI's position on their request, at that stage, they can refer those concerns to our service as a new complaint, subject to our normal rules and timescales.

Ultimately, as things stand, I think UKI's decision to cash settle the accepted elements of the claim was fair and reasonable in the particular circumstances of this claim and complaint.

My final decision

For the reasons I've explained above, and in my provisional decision, I'm not upholding Mr and Mrs S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 7 March 2024.

Adam Golding
Ombudsman