

## The complaint

Mr and Mrs S have complained about the service provided by Arch Insurance (UK) Limited ('Arch') following a claim for flood damage under their home insurance policy. For the avoidance of doubt, the term 'Arch' also includes its representatives, agents, and contractors for the purposes of this decision letter.

## What happened

Mr and Mrs S suffered flood damage to their landscaped garden in August 2020 following torrential rain. They were insured with Arch at the relevant time and made a claim to Arch for the resulting damage. Arch approved Mr and Mrs S's claim and appointed contractors to carry out the necessary remedial works. Mr and Mrs S were unhappy with the work carried out in 2022 and felt that the contractors had created further damage. The contractors admitted liability, but Mr and Mrs S wanted financial settlement and engaged their own landscape gardener to provide an estimate. Arch considered that the estimate was too high and offered the sum of just under £730 as a cash settlement plus £200 compensation. Mr and Mrs S were unhappy with Arch's offer and sought settlement for just under £16,250.

Arch maintained its stance and so Mr and Mrs S referred their complaint to this service. The relevant investigator didn't uphold Mr and Mrs S's claim. It was her view that Mr and Mrs S should allow Arch the opportunity to carry out the necessary repairs. The investigator also noted large discrepancies between the parties' respective schedules of works. She said that the policy made it clear that Arch wouldn't pay for any undamaged item which formed part of a matching design. It was her view that Arch had fairly offered to alter the new slabs to match existing ones to achieve a uniform appearance and to also to ensure that the issue of uneven sleepers was remedied. She considered this to be a fair and reasonable approach.

Mr and Mrs S were unhappy with the outcome of their complaint. The matter has therefore been referred to me to make a final decision in my role as Ombudsman. In March 2024, I issued a provisional decision for this complaint and explained why I was minded to uphold Mr and Mrs S's complaint as follows; -

*'As Arch has accepted the claim, and its contractors have accepted that its work to remedy the insured damage wasn't acceptable, the key issue for me to determine is the extent of the damage caused by Arch's contractor. The next question is to decide whether its offer of settlement and compensation was a fair and reasonable. I don't consider that it was in all respects, and I'll explain why. In considering this matter, I've also considered the submissions of the parties as summarised below.*

*I turn firstly to what Mr and Mrs S have said about the matter. They'd been assured that Arch would engage professional landscapers. However, Arch had engaged an odd-job contractor who 'subsequently ruined our garden.' They said that the contractor informed them 'that he was a kitchen fitter and the sign writing on his van was general building maintenance.' As to the patio slabs, Mr and Mrs S said that the contractor attempted to remove the stain left on the slabs after treating the timbers. He did this firstly by jet-washing and when this was unsuccessful, by using a blunt tool. They said that whilst scraping the surface, he destroyed the top layer of the slabs 'leaving unsightly discolouration' and so they were beyond repair.*

*Mr and Mrs S said that they'd then corresponded at length with Arch. They said a second contractor appointed by Arch to rectify the damage 'when viewing the same flatly refused to carry out the work due to the dreadful state left by the original company'. Mr and Mrs S then provided an estimate from their own contractors, as requested by Arch as they no longer had confidence that Arch would provide a competent company to rectify the issues. They were looking for a cash settlement to get the work done. They said that Arch had originally agreed to this, but then withdrew the offer once it received their estimate.*

*Mr and Mrs S said that their garden remained unsafe for their grandchildren, and in an atrocious mess. They felt that their entire garden, which had previously been professionally landscaped and which was a great source of enjoyment, was 'ruined due to incompetent contractors who were not professional landscapers as we were informed would be the case.' They felt that the garden was getting worse because of the defective work, and they'd found the situation very stressful. Finally, Mr and Mrs S felt that the £200 offer of compensation was derisory as they'd been trying to resolve the situation for nearly two years.*

*I now turn to Arch's submissions. It said that a schedule of works was prepared and authorised in May 2021, and further works were subsequently agreed. Reference was initially made to four damaged sleepers following the flood. Works were then suspended on Mr S's request until April 2022 due to personal health reasons. By May 2022, it was noted that a further 28 sleeper timbers were required as these were damaged and rotten following water damage. The relevant works were then completed in mid-June 2022.*

*Arch recorded that Mr and Mrs S had only complained in August 2022 that they were unhappy with the work. A further visit was arranged for early September 2022 to complete a 'snagging' list. Arch noted that Mr and Mrs S didn't want the original company to return to rectify the works, although the relevant company did undertake landscaping works as part of its work range. It apologised however that Mr and Mrs S didn't have a good experience and it agreed that Mr and Mrs S could use their own contractor.*

*Arch said that its agents had provided details of a second contractor who could provide a quote, however Mr and Mrs S rejected this and advised that they were going to submit their own quote. Arch noted that Mr and Mrs S's quote referred to full patio replacement, however it considered that only seven paving slabs had stains on them, and that there was damage to two timber sleepers. It accepted responsibility for these but said it would need a revised estimate for these items only, and this was never provided. It acknowledged that its agents had accepted liability for the damage caused and that it would 'put it right.'*

*Arch reiterated that a full replacement of the garden and patio wouldn't be covered by the policy. If the sleepers weren't the right size, it queried why this wasn't mentioned by Mr and Mrs S at the time. The original contractor said it had replaced the sleepers on a like for like basis and said that they were never informed that they were the incorrect size, just unaligned. In conclusion, it offered a cash settlement of just over £730. Arch also accepted that Mr and Mrs S had been caused distress and inconvenience by the relevant events and it offered £200 compensation.*

*I now turn to the reasons for my provisional decision. The relevant work involved provision of several new timber sleepers and a new patio. However, after the work had been carried out, it became clear that the contractor's workmanship was poor. The photographic evidence clearly shows significant problems with the standard of work, with cement being used to fill gaps and mis-matched and poorly fitted sleepers. There had also been an attempt to remedy the staining caused to some of the patio slabs, but this caused further damage. I also have no reason to doubt Mr S's evidence that the second set of contractors appointed by Arch to remedy the damage caused by the first contractor refused to undertake the work due to 'in*

*their words the mess carried out by the previous contractor which they felt was unrepairable.'*

*As the service's investigator correctly noted, the key issue here is the 'massive discrepancy' between the parties in terms of the work which each considers needs to be done to remedy the problem, 'which is reflected in the prices quoted by both parties.' I see that Mr and Mrs S asked Arch to clarify the exact works which were required to rectify the damage. Arch in turn asked Mr and Mrs S to provide a revised estimate to carry out the remedial work as opposed to full replacement of the patio. Mr and Mrs S said that they had indeed done so, and the parties then reached a stalemate over these points.*

*Whilst I can understand that there may be concerns around ensuring that any new patio slabs match with the existing ones, I can't say that it's unreasonable for Arch to commit to replace only the seven slabs which its contractor had damaged and not the whole patio. This is what the policy allows, and on a provisional basis I consider this to be a fair and reasonable approach. As for the sleepers, I note that by May 2022, Arch had accepted that there was a need to replace 28 sleepers as well as the four originally identified as having been damaged in the flood. At that point then, I'm satisfied on a provisional basis that the parties had agreed the extent of the insurance liability. However, the two available quotes both refer to removal and replacement of around 80 to 90 sleepers. It would however be surprising if all newly replaced timber sleepers needed to be replaced again, or that some of them couldn't be incorporated into the final landscaping work.*

*In the circumstances, the extent of works required to remedy the contractors' poor workmanship remains in dispute. Arch thinks that the necessary work will cost £730 and Mr and Mrs S have obtained quotes following Arch's agreement in principle to pay for remedial works, one being for over £16,000 and the other for over £19,000. Neither quote is clear in explaining the exact extent of the work being proposed. Even if this involved replacement of two sleepers only as suggested by Arch, as well as the seven slabs, I don't consider that £730 in this respect is likely to be a fair and reasonable cash settlement offer. On the other hand, from the available photographic evidence, I don't consider it fair and reasonable that work to remedy the elements of the contractors' poor workmanship would cost as much as £16,000 or £19,000.*

*Even if the flooding incident hadn't happened, there would be natural deterioration of the landscaping over time. I wouldn't expect Arch to remedy such damage or to put Mr and Mrs S back in the 2012 position in terms of brand-new landscaping for the whole garden. It would only be required to remedy any sub-standard replacement works carried out in 2021. I don't consider that this should extend to 80 to 90 replacement sleepers.*

*I consider however that Arch had the opportunity to resolve any misunderstandings in December 2022, as a surveyor had been appointed to investigate the issues due to the work of the original contractor. His report would have been critical and it's most unfortunate that Arch has been unable to produce a definitive costed schedule of work to remedy the defective workmanship. I consider that this has led to the current stalemate.*

*In the circumstances, and on the balance of probabilities, and in the absence of a clear professional report on the issue from Arch, I consider it fair and reasonable to assume that the poor workmanship shown in the photographic evidence does mean that the lowest tender produced by Mr and Mrs S provides a starting point for any settlement. There's no doubt that Arch has expended a considerable amount of money in attempting to place Mr and Mrs S back into the position they would have been in before the flash flood. However, in view of the admitted poor workmanship, that matter is for the insurer and contractor to resolve between themselves. It's not a matter for which Mr and Mrs S should bear loss.*

*On a provisional basis, I consider that to place Mr and Mrs S back into the position they*

would have been in prior to the insured event, it should enable them to engage their own contractor to complete the work. I consider that it's fair and reasonable that Mr and Mrs S would wish to instruct their own contractors. I'm persuaded that Arch had assured Mr and Mrs S that professional landscaping contractors would be engaged to complete the repair work, however the work didn't demonstrate specialism. It is then understandable that Mr and Mrs S lost faith in Arch.

In conclusion, and whilst this cannot be an exact calculation and of necessity must be a global response to the stalemate, I consider that a fair and reasonable approach to break the stalemate would be for Arch to make a cash settlement in the sum of £8,500 for the work to replace the defective, badly aligned sleepers and damaged patio slabs in full and final settlement of the claim.

As to the very significant delays in resolving this issue over a period of three-and-a-half years, I can't say that the delay was all due to Arch's actions or inactions. It appears that the claim wasn't registered for many months at the outset, as damage may not have become immediately apparent. The original repair work was also delayed at the request of Mr and Mrs S and then, due to inclement weather. However, the poor quality of the work and subsequent dialogue over the following year would undoubtedly have prolonged the unnecessary distress and inconvenience for Mr and Mrs S. This would inevitably have reduced their enjoyment of their garden. In addition, Arch would have been aware of Mr and Mrs S's health issues at this time.

In the circumstances, I also consider on a provisional basis that compensation of £500 for the distress and inconvenience caused would be within the range which the service would expect to see for unnecessary distress and inconvenience caused through no fault of Mr and Mrs S over a period of many months.'

In my provisional decision, I asked both Arch and Mr and Mrs S if they had any further comments or evidence they would like me to consider before I made a final decision.

### **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.

Mr and Mrs S accepted the provisional decision and confirmed that the recommended settlement and compensation would go a long way towards rectifying the damage to their garden.

Arch didn't provide any further submissions or evidence in response to the provisional decision. However, it offered to pay Mr and Mrs S the recommended sums and these sums were duly accepted and received by Mr and Mrs S.

In all the circumstances, I consider that the provisional decision provides a fair and reasonable outcome to Mr and Mrs S's complaint.

### **My final decision**

For the reasons given above, I uphold Mrs and Mr S's complaint and note that Arch Insurance (UK) Limited has carried out the following in response to their complaint:

- Paid a cash settlement of £8,500 in total, and
- Paid compensation of £500 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 3 May 2024.

Claire Jones  
**Ombudsman**