

## **The complaint**

Mrs and Mr A complain that U K Insurance Limited trading as Churchill (UKI) removed subsidence cover at renewal from their landlord property insurance policy.

## **What happened**

Mrs and Mr A own a property that they rent out to tenants. They also have a landlord property insurance policy underwritten by UKI.

Construction started on a commercial multi-storey building directly behind Mrs and Mr A's property. During construction of the commercial building, and removal of adjacent retaining land, it was noticed that the garden of Mrs and Mr A's property had started to slide away, and the patio had distorted.

Mrs and Mr A contacted UKI and an inspection of the property was carried out. UKI's expert concluded that there was no damage to the main building or its foundations, and the movement to the garden had been the result of disturbance to the retaining land along the boundary shared with the commercial multi-story building.

UKI's expert recommended a low-level retaining wall be installed by Mrs and Mr A to stop the garden movement, however this wasn't covered by their insurance policy with UKI. Mrs and Mr A have attempted to approach the party responsible for the commercial multi-storey building to pursue the recommended uninsured works.

However, at renewal of the insurance policy in 2023, UKI removed subsidence cover. Mrs and Mr A complained to UKI about this as they've been unable to obtain cover elsewhere. UKI responded to the complaint and said that they were unable to continue to provide subsidence cover as the risk address no longer met the underwriting criteria to do so.

As Mrs and Mr A remained unhappy, they approached the Financial Ombudsman Service.

One of our investigators looked into things and upheld the complaint. He considered the Association of British Insurers (ABI) published guidance on the continuation of cover following a subsidence claim. But the investigator said this guidance didn't strictly apply as UKI hadn't accepted a claim under the policy or carried out repairs.

However, the investigator thought that as UKI's expert had provided guidance on how to resolve the issue, UKI should be prepared to stand by that guidance, and continue to provide subsidence cover, despite it being outside UKI's acceptable underwriting criteria.

The investigator recommended UKI reinstate subsidence cover backdated to renewal in 2023, and he also recommended Mrs and Mr A be paid £150 compensation for the distress and worry being left without subsidence cover had caused.

UKI didn't agree so the case was passed to me for a decision.

I reached the same overall outcome as our investigator, but for different reasons. So, I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

### **What I provisionally decided – and why**

In my provisional decision, I said:

*“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.*

*I’m issuing a provisional decision. Whilst I’ve reached the same overall outcome as our investigator, I’ve done so for different reasons. So, I’m issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.*

*This complaint is about whether UKI has acted fairly by removing subsidence cover from Mrs and Mr A’s insurance policy. Mrs and Mr A are unhappy it’s been removed as they’ve been unable to obtain cover elsewhere.*

*Our investigator considered whether UKI had acted fairly by taking into account the ABI guidance on continuation of cover following a subsidence claim. In summary, this says that where a subsidence claim is made and repairs are underway, an insurer should seek to maintain cover at renewal until the repair work is complete. But it also outlines there may be circumstances where it is not appropriate to maintain cover.*

*However, our investigator concluded that the ABI guidance didn’t strictly apply. This is because the claim was declined by UKI, and they didn’t undertake any repairs that they would have control over in ensuring a lasting and effective repair was carried out. Instead, he said that in the spirit of the ABI guidance, as UKI advised on the repairs required to stop the issue, they should stand by this and continue to provide subsidence cover.*

*I’m minded to reach the same outcome as our investigator (that UKI need to reinstate and backdate subsidence cover for the 2023-2024 policy), but for different reasons, and I’ve not considered the ABI guidance on continuation of cover here as I don’t think this is relevant. I say this because it appears that both our investigator and UKI have overlooked some important facts when discussing whether the ABI guidance and UKI’s underwriting criteria applied in this case. I’ll explain why.*

*Before I do so, I should also add here that my consideration is limited to that 2023-2024 policy period. But, having said that, Mrs and Mr A’s policy renewal for 2024-2025 is due imminently, so UKI may wish to consider what I’ve said when deciding whether to offer renewal and on what terms for future policies too. And Mrs and Mr A would be free to raise new complaints about the renewal terms after 2023-2024 if they were unhappy with what was being offered by UKI.*

*UKI ultimately declined Mrs and Mr A’s claim as there was no damage to the main building. They said this is in line with the policy terms which say:*

*“Subsidence, Ground Heave and Landslip  
Subsidence or ground heave, of any part of the site on which the Premises stand and landslip, but excluding:*

*Damage to yards, car parks, roads, pavements, swimming pools, walls, gates and fences, unless also affecting a structure insured hereby;”*

*The main building wasn’t damaged, and it was solely the garden and patio (yard) that was reported as slipping away.*

*I’ve not considered whether declining the claim was fair as that isn’t the complaint that has been raised with UKI or brought to this service. Instead, the removal of subsidence cover from 2023-2024 policy is.*

*UKI has said in their final response:*

*“We are unable to provide Subsidence cover on a premise if that premise is within 10 metres of an embankment, river etc; If the Risk address (or adjacent property) is showing signs of Subsidence or if the Risk address has suffered Subsidence. This is our standard criteria that must be met.*

*The situation that has arisen relating to your risk address has been reviewed by our Underwriting team who have confirmed cover cannot be offered for Subsidence due to the matter with the garden.”*

*I’ve seen the underwriting guide, and this does outline that if the risk address has suffered subsidence, or if the risk address or adjacent property are showing signs of subsidence (or the risk property is within 10 metres of an embankment or river), then subsidence cover would be declined. And it’s on this basis that UKI has said they are no longer able to provide subsidence cover.*

*However, here is where I think UKI (and our investigator) has overlooked important points. And consequently, I’m minded to conclude that UKI has unreasonably removed subsidence cover and hasn’t demonstrated it has fairly applied the underwriting guidelines when doing so. I’ll explain why.*

*After Mrs and Mr A reported the garden sliding away to UKI, an expert was appointed by them to inspect and establish the cause. They said:*

*“The main area of damage is to the rear garden and shared rear boundary and takes the form of notable distortions to external features, including the paving slabs and rear boundary timber fencing.*

*No damage was noted to the main building to suggest any subsidence movement has occurred to the foundations to the main rear external walls.*

*We consider the movement to the external features has occurred recently. The tenant has confirmed the retaining ground within proximity to the shared rear boundary with the (commercial multi-storey building) walkway was removed approximately 12 months ago.*

*The patio area is now showing signs of slight downward movement since the removal of this ground from the boundary (on the side of the (commercial multi-storey building)).”*

*And they concluded:*

*“Based on the information above, we are of the opinion that damage has occurred to the external features due to the disturbance of the retaining land located along the shared rear boundary, which was removed approximately 12 months ago.”*

*And they recommended:*

*“We consider the damage to the external features will not progress if appropriate measures are taken. We recommend a structural engineer attends site to determine if a retaining wall can be installed to help prevent further movement from the rear garden towards the shared rear boundary.”*

*And:*

*“Consideration should be made for the installation of a low level retaining wall, along the junction of the shared rear boundary / walkway. Provision will also need to be made for the discharge of surface water away from the rear garden, if a retaining wall is to be installed.”*

*So, UKI’s expert didn’t actually identify there was subsidence occurring to either the main property, or the garden or land. Instead, it appears they concluded the garden was suffering from landslip and ground movement due to the disturbance of retaining land which was removed by the third party. This ties in with the claim as reported – the garden was slipping away, which is different to subsidence. And this is why a retaining wall was recommended by the appointed expert in order to stop progression of the land sliding away, rather than to stop movement due to subsidence.*

*Therefore, whilst UKI’s underwriting criteria says subsidence cover would be declined if the risk address or adjacent property is showing signs of subsidence, or has suffered subsidence, I don’t think that’s relevant here, as there hasn’t been subsidence identified. And the underwriting criteria doesn’t refer to the removal of subsidence cover where there has been landslip, or ground movement, unrelated to subsidence. Consequently, I’m not minded to conclude UKI has removed subsidence cover fairly or in line with their underwriting criteria.*

*With the above in mind, unless anything changes as a result of the responses to my provisional decision, I’ll be directing UKI to reinstate and backdate subsidence cover for the 2023-2024 policy period. It’s unclear if this would have attracted a higher premium, but if it would have, reinstating and backdating cover would be subject to Mrs and Mr A paying the relevant premium to have that cover retrospectively in place.*

*Our investigator recommended UKI should also pay £150 compensation for the distress and worry caused to Mrs and Mr A by UKI removing subsidence cover. As outlined, I’m minded to conclude UKI unfairly removed the subsidence cover (for other reasons separate to the ABI guidance) and I agree this has resulted in distress and worry for Mrs and Mr A that their property hasn’t been covered for subsidence. So, I’m also minded to direct UKI to pay £150 compensation.”*

*So, I was minded to uphold the complaint and to direct UKI to:*

- *Reinstate and backdate subsidence cover for the 2023-2024 policy – subject to Mrs and Mr A paying any relevant additional premium*
- *Pay Mrs and Mr A £150 compensation*

## **The responses to my provisional decision**

Mrs and Mr A responded and said they were happy with the provisional decision. However, they also said they'd need subsidence cover going forwards and asked if the final decision can include future years too, so they don't have to raise further complaints with UKI if they decide not to offer subsidence cover at future renewals.

Mrs and Mr A also said they'd carried out repairs to the garden and it's once again secure and in a sound condition. They also said that UKI had maintained the claim wasn't covered, and they'd be making a complaint to this service about that once this complaint was concluded.

UKI responded but they didn't agree. They said that just because their internal guidance doesn't mention landslip, which is included in the subsidence peril, this doesn't mean they shouldn't be able to exclude subsidence where landslip has taken place. They said that where a guide says subsidence, it's clear that this relates to the peril as a whole so includes landslip too.

## **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.

And I've thought carefully about the provisional decision I reached and the responses to it. Having done so, my final decision remains the same as my provisional decision and for the same reasons.

As outlined in my provisional decision, I haven't considered the claim decision reached by UKI, as this wasn't the complaint brought to this service. I note Mrs and Mr A say they intend to raise a separate complaint about the claim decision in due course.

I note UKI's comments in response to my provisional decision, but I'm not persuaded by these or that they've demonstrated they've acted fairly or in line with their underwriting criteria by removing subsidence cover for the 2023-2024 policy period. As explained in my provisional decision, the underwriting guide (and UKI's final response) refers to previous subsidence, which isn't the case here, instead, landslip was identified.

Despite what UKI has said about the underwriting guide relating to subsidence, ground heave and landslip, this isn't what it says. Instead, it says *referral process for Subsidence*, not for subsidence, ground heave and landslip – which are different events. It then goes on to say, specifically, about showing signs of *subsidence* or suffering *subsidence* (or the risk property being within ten metres of an embankment or river) and says *Subsidence cover must be Declined*. Therefore, again, referring to *subsidence* specifically, not the different events of ground heave, or landslip. The policy terms also differentiate and list the three different events too.

With the above in mind, I'm not persuaded UKI has demonstrated they've removed subsidence cover for 2023-2024 fairly, or in line with their underwriting criteria. So, I'll be directing UKI to reinstate and backdate this for the 2023-2024 period, subject to Mrs and Mr A paying any relevant additional premium.

I explained in my provisional decision that my consideration here was limited to the removal of subsidence cover for the 2023-2024 policy period. I recognise Mrs and Mr A have asked for my decision to include future renewals too.

However, I can only consider the 2023-2024 policy and UKI's decision to remove subsidence cover in that policy year. UKI will need to decide at each renewal going forwards whether to offer a policy or not, on what terms if they do, and at what price. And at this stage, it simply isn't known whether they will or won't, if they do on what terms, or if they don't, the reason why.

I outlined in my provisional decision:

*"...my consideration is limited to that 2023-2024 policy period. But, having said that, Mrs and Mr A's policy renewal for 2024-2025 is due imminently, so UKI may wish to consider what I've said when deciding whether to offer renewal and on what terms for future policies too. And Mrs and Mr A would be free to raise new complaints about the renewal terms after 2023-2024 if they were unhappy with what was being offered by UKI."*

So as explained in my provisional decision, if Mrs and Mr A are unhappy at future renewals with whatever decision UKI reaches regarding the renewal, they'd be free to raise a separate new complaint about that at that stage.

### **My final decision**

It's my final decision that I uphold this complaint and direct U K Insurance Limited trading as Churchill to:

- Reinstate and backdate subsidence cover for the 2023-2024 policy – subject to Mrs and Mr A paying any relevant additional premium
- Pay Mrs and Mr A £150 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 15 January 2025.

Callum Milne  
**Ombudsman**