DRN-5356680

The complaint

Mrs Z and Mr Z complain about U K Insurance Limited's handling of a subsidence claim made under their property owners insurance policy.

What happened

The background to this complaint is well known to both parties so I'll provide only a brief summary here, focussing on the key issues. Mr Z and UKI can be assured that I've read and carefully considered all the information and evidence they've provided.

I'll refer below mainly to Mr Z, rather than Mrs Z and Mr Z. Mr Z has been our main contact on this complaint and referring to him alone makes this decision easier to read and briefer.

Mr Z has a property owners insurance policy underwritten by UKI to cover a property he owns and rents out.

He made a claim in early February 2023, having discovered damage to the property which he thought might be caused by subsidence.

UKI sent a loss adjuster to visit the property and accepted the claim. The loss adjuster then arranged for building contractors to attend and put together a schedule of works for the necessary repairs.

When they reviewed the schedule of works, UKI removed a number of items which they said weren't claim-related or weren't covered. They made an offer to cash settle the claim at just over £4,000.

Mr Z asked for a breakdown and explanation of the cash offer, but he says this wasn't forthcoming. He says UKI didn't properly explain their offer or put him in a position to either accept or negotiate the offer.

Mr Z made a complaint to UKI. He said there had been delays and poor service in the handling of the claim. He said he'd lost a tenant as a result, and he wanted UKI to cover loss of rent.

He said UKI had unfairly failed to provide him with a copy of their builder's schedule of works. And he said they had unfairly tried to force him to accept a cash settlement by refusing any interim payment unless he agreed to accepting their offers as a full and final settlement of the claim.

UKI provided a final response to that complaint on 1 August 2023. They said loss of rent wasn't covered under the policy terms. But they admitted some delays and poor service. And they offered one month's loss of rent (£1,900) plus £350 in compensation to Mr Z.

They said the loss adjuster had provided a copy of the builder's schedule of works as soon as they had it (that copy was, as I understand it, uncosted, whereas Mr Z said he wanted to see a fully costed copy).

And they said the most recent cash settlement offer had been fair, given that a number of repair items had been removed as not claim related and/or not covered.

Mr Z wasn't happy with this outcome and brought his complaint to us, in October 2023. I am issuing a decision on that complaint separately.

At the same time, Mr Z brought a second complaint to us that he'd also put to UKI. It's that second complaint that I'm considering in this decision.

This second complaint was about further delays, the fact that Mr Z had to arrange the repair of a leak to a radiator discovered after the claim had been assessed, and the fact that the cash settlement didn't include repairs to the floor and flooring, the front elevation of the property and the staircase.

UKI provided their final response to this second complaint on 13 September 2023. They agreed to cover levelling of the floors (but not the replacement of the laminate flooring itself), and repairs to the front elevation and staircase. And they agreed to cover the cost of the radiator leak repairs.

They also said there had been very minor service failings (after 1 August 2023), but they offered Mr Z £450 in compensation because they agreed they could and should have included the floor levelling, and repairs to the front elevation and the staircase in their original settlement offer.

Mr Z wasn't happy with UKI's response and brought his complaint to us. It's this second complaint alone that I'm considering in this decision. I'm issuing another decision about the first complaint at around the same time. The two decisions should be read together.

Our investigator thought the second complaint should be upheld. She said UKI's cash settlement offer (which stood, at the time, at £7412.60) was fair and reasonable. But she thought UKI should increase the compensation offered to Mr Z from £450 to £600.

Mr Z disagreed and asked for a final decision from an ombudsman.

I agreed with our investigator that the complaint should be upheld. But I came to that conclusion for different reasons. And I disagreed about what UKI needed to do to put things right for Mr Z.

So, I issued a provisional decision. That gave both Mr Z and UKI the opportunity to provide further information or evidence and/or to comment on my thinking before I issue my final decision in this case.

My provisional decision

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 should be clear at the outset about what issues this provisional decision covers and which issues are dealt with in the separate provisional decision about Mr Z's first complaint to UKI.
>
> The first complaint raised issues about delays and poor service (up to 1 August 2023) and loss of rent. I've dealt with those issues in my separate provisional

decision on Mr Z's first complaint.

In his first complaint, Mr Z also said he was unhappy that UKI refused to provide a costed copy of the schedule of works put together by the builder. That has now been provided to him – albeit much later than he would have liked. What I'm considering in this second complaint is Mr Z's dissatisfaction with UKI's cash settlement offer when compared to the costs set out in the builder's schedule of works.

Also in his first complaint, Mr Z said UKI were unfairly trying to force him to accept their cash settlement offer by refusing interim payments unless he agreed that they were in full and final settlement of the claim. I'm going to deal with that issue - and its impact on Mr Z – in this provisional decision. That's because it's only when you consider the time period as a whole that the impact on Mr Z becomes clear.

The cash settlement offer

At the time our investigator gave her view on this case, UKI had made a cash settlement offer of £7,412.60 to Mr Z. It's not immediately apparent to me how UKI arrived at that figure – and so far, they've failed to explain it properly to Mr Z or to us, despite being asked on several occasions to do so.

When UKI's loss adjuster appointed a builder to draft a schedule of works, the builder's schedule proposed costs of £10,784.86 (plus VAT). That's UKI's contractor, so that's the cost to them of getting the repairs done.

UKI offered Mr Z just over £4,000 – for reasons which I can't explain based on the information I currently have. This was later increased to £7,412.60 after UKI agreed – in their response to Mr Z's first complaint – that the works to the front elevation and the staircase, plus the radiator leak repairs – should be included. They also agreed to the floor-levelling at that point.

UKI have told us their cash offer (£7,412.60) is lower than the costs in the builder's schedule because the builder was persuaded by Mr Z to include repairs that weren't claim-related or weren't covered – and they'd reviewed the schedule and taken those out.

In their most recent response to our request for more clarity on this, they've passed on comments from their loss adjuster which still refer to the staircase and front elevation repair costs being taken out – despite UKI agreeing to include them as far back as 1 August 2023.

In short, looking at the builder's schedule of works, the only costs UKI can have taken out relate to the replacement laminate flooring at the property, in the living room and hall. And those costs amount to ££1,764.16 in total. I'll come back to these costs later.

There's an excess on the policy of £1,000. Taking off the excess and the laminate flooring costs still gets us to over £8,000 (not the £7,421.60 UKI have offered). And that doesn't include the radiator leak repair costs (£215) which UKI have agreed to cover but which weren't included in the original builder's schedule. Or the floor-levelling costs which UKI have subsequently agreed to cover – and which weren't in the original schedule. And UKI haven't included VAT, which Mr Z will presumably have had to pay to his own contractors.

So, as far as I can see from the information I have at present, UKI's various cash

settlement offers appear to have been presented to Mr Z in the hope he might accept them rather than being supported by any logical or facts-based assessment of the actual costs.

Mr Z thinks this is a deliberate accept to deceive and defraud him. I can understand why he says that, in the absence of any logical explanation from UKI of their various offers, but I'm not sure there's any real evidence to suggest conscious wrongdoing of that nature from any of UKI's employees or agents. In any case, my focus is on what UKI need to do now to put things right for Mr Z.

I'm going to come back now to the laminate flooring (the costs of which UKI removed from the cash settlement offer).

They did so on the basis that when they were initially investigating the claim, they wanted to dig a trial pit which would have meant removing the existing flooring in that area. They say Mr Z said they needn't worry about the costs of replacing the flooring because he'd already intended to do that and indeed, had the replacement laminate flooring on site.

UKI later agreed that the floors in the downstairs of the property needed to be levelled, because of the effects of the subsidence (the insured peril in this case). Levelling the floors would, of course, have necessarily destroyed the existing laminate flooring.

UKI's rationale is that Mr Z already intended to replace the flooring, presumably because it was old, worn and/or needed replacing for whatever reason. And this was in train before the claim. So, they shouldn't have to pick up the costs for flooring that needed replacing anyway.

I think that misses the point somewhat. It's entirely possible – and UKI have made no enquiries with Mr Z to find out whether this was the case – that the flooring needed replacing because it was either cracking or lifting or separating. And that would likely be a result of the subsidence – which is the covered peril in this case.

If I include the laminate flooring in the claim settlement, for the reasons I've just outlined, I can see no reason at all why UKI have reduced the costs set out – by their own contractor – at the outset. All other repairs set out in the builder's schedule of works appear now to have been accepted by UKI as claim-related and covered.

So, unless I'm provided with any information or evidence to change my mind in response to this provisional decision, I'm minded to ask UKI to settle the claim as follows.

The starting point should be the costs set out in the builder's schedule (with no reductions) – so, £10,784.86, less the £1,000 excess.

To that figure, UKI should add the radiator leak repair costs (£215) and the costs associated with the floor-levelling (which aren't clear to me at present from the information we currently have in hand).

Given that there's no dispute that Mr Z has had the repairs completed now, they should add VAT to that figure.

And given that Mr Z has been out of pocket, having paid for the repairs himself in 2023, they should add interest at 8% per annum simple, calculated from the date

Mr Z made the payments (he will need to show evidence of the date of those payments) to the date UKI reimburse him.

I'm aware Mr Z says he had to take out a loan to pay for the repairs in 2023. He's provided evidence that he took out a loan for £15,000 at 10.39% interest.

I'm sure Mr Z will appreciate that I have no way of knowing whether that loan was directly linked to the property repairs, whether he actually needed to take it out and/or whether he might have obtained better rates elsewhere. And for that reason, I'm minded to require UKI to pay interest on the settlement at the usual 8% per annum simple (the rate usually used by the courts).

UKI's failure to offer interim payments

During the course of the claim, UKI have made a number of attempts to persuade Mr Z to take their cash settlement offers. In principle, it's not unreasonable for them to do that.

Negotiated cash settlements are a routine part of the insurance industry. And they can be the quickest and most convenient way for insurers and policyholders to achieve a satisfactory outcome to a claim.

In this case, UKI made those offers contingent on Mr Z accepting the sum offered in full and final settlement of the claim. Again, that's not unreasonable, in principle.

However, in this case, Mr Z asked several times for UKI to consider paying the amount they'd agreed as an interim settlement, allowing him to come back to them with further argument about the final settlement. The evidence suggests UKI told Mr Z they could not do this.

So, the offer was for Mr Z to take the (reduced) money now, for his convenience, and in return forego any right to argue about the final settlement later. This begins to trespass into difficult territory in terms of fairness to Mr Z.

Ultimately, it may have been a fair approach had UKI proven to be right about the correct level of the offer. But their initial offer of just over £4,000 was clearly well below a fair settlement here. And their later offer of £7,412.60 is still significantly lower than I'm minded to say they ought to pay (see above).

So, I can't blame Mr Z for not accepting any of the settlement offers and choosing to finance the repairs himself.

Of course, the fact that I'm minded to require UKI to pay interest on the settlement is part of the redress to Mr Z for UKI's failings in this respect.

However, he's also been caused a degree of stress, anxiety and frustration – for around two years – because of UKI's unwillingness to settle the claim at a fair rate and/or to offer interim payments. I'm minded to take that into account when I set out my views on compensation in this case (below).

Delays, poor communication and poor service

I'm not going to go into detail about the delays (since 1 August 2023). UKI admitted in their final response (to this complaint) that they could have come to certain conclusions about what works were covered under the claim much sooner. And they

> also admitted there were other very minor failures to meet their own service level agreements in responding to Mr Z's queries.
>
> As for the communications between UKI and Mr Z, in short, I don't think Mr Z has had any proper explanation of the cash offers made by UKI. Nor have we, for that matter.
>
> Taking a broad view, Mr Z's claim has still not been settled – two years on. And he's incurred the cost of the repairs himself. If he hadn't paid for those repairs, and the property had remained untenanted, then Mr Z's losses would have been far greater.
>
> Our investigator thought UKI's offer of £450 in compensation for Mr Z's trouble and upset was too low – and she suggested £600.
>
> Bearing in mind the long delay in this claim being settled, UKI's palpable failure to provide a meaningful explanation of their cash settlement offers, their admission that their initial assessment of the claim unfairly excluded repairs from cover, and the general delays and poor communication – in addition to the failure to consider making interim payments (see above) – I'm minded to say that £1,000 is fairer and more reasonable compensation for the trouble and upset Mr Z has been caused.
>
> In arriving at that figure, I bear in mind that the claim has now been on-going for two years, despite being accepted (as a subsidence claim) in early 2023. For that relatively lengthy period, Mr Z has suffered considerable stress and anxiety about how the repairs would be paid for. He's had to fund the repairs himself. And he's suffered a degree of frustration and inconvenience due to UKI's intransigence and poor communication."

In summary, on the basis of the reasoning above, I said I was minded to require UKI to settle the claim in line with the calculations set out above and pay Mr Z and Mrs Z £1,000 in compensation for their trouble and upset.

The responses to my provisional decision

UKI's response

UKI responded to my provisional decision to say they didn't agree with it. I'll try to summarise their reasons below.

One – the initial cash settlement made to Mr Z was fair when you bear in mind that they weren't intending to cover repairs to the front elevation, staircase or floors at the time. They didn't act in bad faith in removing those costs, although they were later persuaded to include them.

Two – UKI sent the priced scope of works to Mr Z – in response to his subject access request – in error. So, my point that they might as well have sent it earlier is mistaken. And it isn't standard practice for insurers to disclose fully costed scopes of works because they are commercially sensitive.

Three – the costed scope still included works which UKI haven't covered, so isn't the final scope of works for the claim-related repairs. And the total amount quoted is therefore higher that the cost of the covered works.

Four – UKI say they've have explained to us on several occasions how they reduced the figure from that original costed scope of works. They removed non-claim-related works. They said this to Mr Z when they made their cash settlement offers. They also pointed out they'd

add VAT when he provided invoices to show he'd paid it.

Five – UKI haven't therefore made cash settlement offers without any basis, or in bad faith, or in an attempt to deceive or defraud Mr Z.

Six – UKI (or their agents) did in fact offer interim payments, which were not conditional on Mr Z accepting them as full and final settlement of his claim. Having checked the position with our technical helpline, they confirmed that for Mr Z by email on 10 October 2023. And so, adding interest to the proposed cash settlement is unfair, given that Mr Z could have taken the interim offers at any point after October 2023.

Seven – the contractors digging the trail pit only took up the laminate flooring in a way that damaged it after Mr Z told them he was replacing the flooring anyway. Otherwise, they could have removed it in such a way that it would be undamaged and could be re-laid. Mr Z hasn't produced any evidence that the flooring was damaged due to subsidence – and UKI haven't had the opportunity to ask him to do so.

Eight – UKI disagreed with the extra £150 compensation suggested by our investigator because she said this was to account for the mistake they made in sending the fully costed scope of works in response to Mr Z's subject access request. And this didn't form part of Mr Z's original complaint(s), so should be the subject of an entirely new complaint.

Mr Z's response

Mr Z also responded to my provisional decision. I'll summarise below the comments he made which relate to this complaint rather than the linked complaint he's made to us.

One – The service provided by UKI's loss adjuster was poor throughout the claim. He refused to re-visit the property after his first visit, claimed (wrongly) that the flat was inhabitable whilst repairs were carried out, and promised to issue a guarantee of the property's stability (for five years) which he hasn't yet done.

Two – the loss adjuster repeatedly told Mr Z that interim payments could not be paid by UKI, then said they could be paid, but only on condition that Mr Z accepted the payment in full and final settlement of the claim.

Three – Mr Z says UKI have said he persuaded the contractor who drafted the first scope of works to include works which weren't claim-related. This is untrue and Mr Z wants the comments retracted so that they don't affect his future dealings with the insurance industry.

Four – Mr Z says UKI's argument that he was going to replace the laminate flooring anyway is a red herring. The contractor had taken up the flooring (and damaged it) before he spoke to them. And in any case, the floor levelling (accepted eventually by UKI as damage which *was* covered) would have meant the flooring was not re-useable.

Five – the compensation proposed is too low, given the trouble and upset Mr Z and Mrs Z suffered over a prolonged period of time. UKI offered £2,250 in compensation for two months delay (in their final response to Mr Z's first complaint) which contrasts with the £1,000 suggested now for around two years of on-going trouble and upset. The £1,000 doesn't reflect that degree of trouble and upset – and should be in the £1,500-£5,000 bracket, given that Mr Z suffered a stroke as a result of the stress he's experienced.

Six – the floor levelling cost £525 and the replacement flooring £1705.58. This is in response to my saying in the provisional decision that I wasn't aware of what those costs had been.

Mr Z also provided a number of invoices / receipts for the work his contractors carried out. And he provided extracts from medical records, which show that he'd experienced problems with double vision whilst driving.

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.

UKI's response

I agree with UKI that their initial cash settlement offer may have been fair if you disregard the fact they excluded the works (front elevation, staircase, floors) they eventually agreed to cover. However, they've agreed it was a mistake to exclude those repairs, so the offer was, as it turned out, way too low.

As I said in my provisional decision, UKI could have told Mr Z what was included in the original scope of works without giving away commercially sensitive information about their contractor's rates. The key point is that Mr Z was given no explanation of what was and was not included in the cash settlement offer.

UKI say the original costed scope of works wasn't the final decision about what was to be covered – and at what cost. And they say they've told us (several times) why the amount they offered is lower than the total costs set out in that scope or works.

With respect, UKI are missing the point. I absolutely accept that they are within their rights to review their contractor's scope. I absolutely agree that they are permitted to take works out of that scope if they aren't covered. And I agree they have told us that several times.

However, there was no need for them to repeat that message – we got it the first time. What we've done is look in detail – line by line – at the works set out in that scope. And all of them appear to be covered (whether UKI agreed that at the outset or only later).

We cannot see, in other words, what line items in that scope UKI are exercising their right to take out. Everything appears to be covered work (according to what UKI have now agreed to).

We have persistently asked UKI to point directly at which line items (and associated costs) they have subtracted from the overall amount. They still haven't done that, even now – and that leaves me with no option but to assume that all of the work in that scope is now covered (and all of the line item costs are covered and should be paid).

Mr Z admits he had his contractors do non-claim related work at the same time – there's no dispute about that – but none of those works are included in the original scope drafted by UKI's contractors.

Mr Z and UKI have both been very keen to tell us whether they believe UKI and/or their agents acted in bad faith or in an attempt to deceive Mr Z. As I said in my provisional decision, it's impossible for me to decide that one way or the other given the evidence available – and it's not necessary for me to do so. My concern is in making sure we get the right outcome to the complaint in terms of what UKI need to do to put things right for Mr Z.

UKI sent me a copy of a cash settlement offer sent to Mr Z in October 2023. As UKI say, that document does not make the offer contingent on Mr Z accepting it as full and final settlement of his claim. It's entirely agnostic on that point.

However, we have other communications on file which show that when Mr Z asked for interim payments, he was asked to sign forms which said that the cash offered was in full and final settlement of the claim. Mr Z says that's what the loss adjuster persistently told him and I have no reason to doubt that.

If it had been clear to Mr Z that he could have taken the cash offered on an interim basis and still argue for more – and then complain to UKI or to us if he wished – I have absolutely no doubt that he would have taken that offer up.

I don't accept UKI's arguments about the possible re-use of the flooring at the property. The floors had to be levelled – and UKI agreed (eventually) to that work being covered. It seems to me very unlikely that the work around the trail pit and then the floor levelling might have been carried out in such a way that the flooring could be taken up intact and then re-used.

My provisional decision explains why I think £1,000 is fair and reasonable compensation in this case. None of that explanation refers to any amount being added because UKI responded incorrectly to Mr Z's subject access request.

I agree with UKI – Mr Z didn't complain about that to them, or indeed to us – in either of his complaints. He could make a new complaint about it now, if he wished - and I'm glad to see that UKI are happy to consider any such complaint. But UKI's alleged failings in that respect have nothing at all to do with my proposed compensation in this case (whether or not they were part of our investigator's thinking).

Mr Z's response

I'm aware that the service provided to Mr Z by UKI's loss adjuster was poor. That's reflected in the compensation I suggested in my provisional decision.

I'm not going to make any finding or recommendation about the allegation that the loss adjuster promised a stability guarantee but then didn't deliver it. That wasn't part of the complaint(s) Mr Z made to UKI or to us. It seems to me that such a guarantee would be inherently unlikely given that Mr Z's contractors carried out the repair work, but I'll leave that for Mr Z to pursue with UKI.

I agree with Mr Z that he was definitely given the impression that any interim payments were either impossible (at first) or (later) would have to be accepted as full and final settlement of the claim.

UKI say they gave Mr Z reassurances about this at one point. If they did, they were in contrast to other communications with Mr Z. And he was still being asked to sign forms which said he was accepting a payment in full and final settlement of the claim.

I understand why Mr Z is concerned about UKI's assertions that he persuaded their contractor to include non-claim-related matters in the original scope of works. For the reasons I've explained above, I don't think Mr Z did that (the scope seems to include only covered repairs). However, I can't imagine any circumstances in which UKI have – or would – share their views on that with other insurers in any way that might impact Mr Z in future.

I agree with Mr Z about the laminate flooring, as I've explained above. And I appreciate Mr Z now providing copies of invoices / receipts to show the costs associated with the levelling to the floors and the replacement flooring.

On the subject of the compensation, I don't agree with Mr Z that this should be increased. As I said in my provisional decision, I understand his frustration about the way UKI have handled this claim.

As I also said in my provisional decision, I recognise that Mr Z has, for a relatively lengthy period, suffered considerable stress and anxiety about how the repairs would be paid for. And he's suffered a degree of frustration and inconvenience due to UKI's intransigence and poor communication.

I don't though accept Mr Z's suggestion that the fact that UKI paid him £2,250 in compensation for a two-month period in response to his other complaint, shows that the £1,000 I'm suggesting for the two years I'm looking at here is too low.

I'm sure I don't need to remind Mr Z that £1,900 of that £2,250 was to cover loss of rent for a month. So, the compensation for *trouble and upset* over that two-month period was in fact £350.

Mr Z's experience over that early two-month period (when the claim wasn't yet accepted and then not accepted in full) was also, by definition, qualitatively different to his experience of the following two years.

I'm also not convinced that the medical evidence provided by Mr Z shows what he says it shows. He's sent us copies of an otherwise completely blank piece of headed paper from a stroke consultant. It's blank – it tells us nothing about Mr Z's health problems.

He's also provided a copy of a letter from a hospital doctor to, I think, Mr Z's GP. This says the double vision he experienced may have been a "*TIA mimic*" which was possibly an atypical migraine. That wouldn't appear to suggest Mr Z had suffered a stroke, as he's suggested.

The letter also lists previous medical history. I won't go into detail about that here, out of respect for Mr Z's privacy. However, I'd ask Mr Z to understand why that history would make it very difficult for me to assert that UKI had been responsible for any health problems he experienced *after* making the claim.

Summary

Both UKI and Mr Z responded in detail to my provisional decision and I thank them for that. Having considered their responses though, I'm not persuaded to change my mind about the outcome of this case. I've set out my reasons for that above.

Putting things right

I set out in my provisional decision what I thought UKI needed to do now to put things right for Mr Z. As I've said, I haven't changed my mind. And I'll repeat what I'm going to require UKI to do in the section immediately below.

UKI will note that Mr Z has now provided costings for the floor levelling and replacement flooring (both of which should be included in the settlement). If they need Mr Z to provide invoices or receipts, for those and/or other costs (in order to calculate the interest payable or for any other reason) no doubt they will let him know.

My final decision

For the reasons set out above and in my provisional decision, I uphold Mrs Z and Mr Z's

complaint.

U K Insurance Limited must:

- cash settle the claim in line with the calculations set out above; and
- pay Mrs Z and Mr Z £1,000 in compensation for their trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Z and Mr Z to accept or reject my decision before 26 March 2025.

Neil Marshall
Ombudsman