

## **The complaint**

Miss F complains about U K Insurance Limited's handling of her subsidence claim.

## **What happened**

The background to this case is well known to both parties, so I'll provide only a brief summary here concentrating on the key issues as I see them.

Miss F has been represented by a family member in making this complaint, but I'll refer below to information and comments coming from Miss F, simply for brevity and ease of reading.

Miss F has an insurance policy underwritten by UKI which covers her home and its contents, amongst other things. She made a claim in October 2018 after noticing damage to her conservatory.

UKI appointed a loss adjuster, who arranged for specialist to visit the property in February 2019. Having considered their report, UKI accepted the claim in May 2019. They accepted that the issue was subsidence, very likely caused by a large tree in a neighbour's garden.

They began monitoring movement in the conservatory, contacted the neighbour about the tree and, in late 2019, carried out temporary repairs to make the conservatory safe.

In May 2020, the loss adjuster reported that the neighbour was refusing to remove or restrict the tree. And in October, they reported that the separation between the conservatory and main house was increasing.

Monitoring continued through into 2021. In July 2021, the loss adjuster reported that the neighbour had now agreed to remove the tree. And they proposed that the conservatory needed to be demolished and re-built.

There were some discussions with Miss F at this point because it appeared the tree was re-growing from the stump. Miss F was also concerned about the guarantee period for the conservatory works.

In February 2022, the loss adjusters appointed contractors to carry out the work. The installation of the new conservatory was scheduled for late March 2022 but was then delayed because the contractor needed to order the new roof panel(s). Work actually began in late April 2022.

In June 2022, Miss F reported issues with the new conservatory, including damp. A site visit was arranged in July 2022. And the loss adjuster chased the neighbour about the re-growth of the tree.

In February 2023, UKI asked the contractor to re-visit the property and report back, because the issues appeared not to have gone away. And they asked the loss adjuster to approach the neighbour to ensure that the tree would not re-grow and cause further issues.

At around this point, the loss adjuster and UKI appear to have been uncertain whether the conservatory was still moving.

In June 2023, Miss F reported that the neighbour was intending to remove the tree altogether as part of planned garden renovations.

The contractor also visited the property to assess the on-going damage. They reported back saying that they'd carried out work to level a gutter above the conservatory which appeared to have been draining the wrong way (away from the downpipe).

But they also said the damp issues at the conservatory were due to the lack of a cavity tray inside the house cavity wall against which the conservatory stood.

And they said water had likely entered the wall cavity due to poor mortar and pointing above the conservatory – and had not been diverted back out by a cavity tray (as it should have been).

Miss F made a complaint to UKI about the delays, the need for re-work and the fact that the conservatory was now damp and showing increasing signs of further damage.

UKI provided a final response to that complaint in March 2024. They admitted some minor delays in May or June 2023 – for which they paid £150 in compensation to Miss F.

But they said earlier delays were unavoidable and due to either COVID or the neighbour's unwillingness to engage. And they said the current issues with the conservatory were due to poor design or workmanship – specifically, the lack of a cavity tray in the back wall of the house.

Miss F wasn't happy with this and brought her complaint to us. Our investigator looked into it and thought the complaint should be upheld.

She said UKI should complete any necessary repairs to the conservatory (including installing a cavity tray if necessary) and pay Miss F a further £500 in compensation for her trouble and upset, in addition to the £150 they'd already paid.

UKI disagreed and asked for a final decision from an ombudsman. They thought the compensation suggested was too high – and could identify only a few weeks' avoidable delays at the outset of the claim (other than the delays in May or June 2023). And they said the installation of a cavity tray amounted to betterment.

I agreed with our investigator that Miss F's complaint should be upheld. But I took a slightly different view about what UKI needed to do to put things right for Miss F. So, I issued a provisional decision. That allowed both UKI and Miss F the chance to provide further information or evidence and/or to comment on my thinking before I made 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.

*The delays*

In their final response to Miss F's complaint, UKI identified avoidable delays in May / June 2023. And in response to our investigator's view, they've said there were a few weeks' avoidable delay in responding to the claim at the outset.

I'd strongly advise UKI to read the section immediately above before they respond to this provisional decision. If they think I've missed something or over-simplified things they can let me know and explain their thinking.

However, as things stand, it appears to me that it took UKI more than three and a half years (October 2018 to April 2022) to carry out repairs to Miss F's conservatory. Repairs which appear now to have been entirely ineffective given the current state of the conservatory.

I understand the need for monitoring in cases of subsidence. I understand the impact of COVID. And I understand that the neighbour wasn't cooperating at times. But even taking all of that into account the three and half years is excessive.

In particular, I can see from the evidence we have on file that:

- (a) it was four months after the claim that the loss adjuster visited the property;
- (b) it was another three months before UKI accepted the claim;
- (c) it was around a year after the claim that UKI's agents carried out "make safe" repairs;
- (d) monitoring appears to have gone on from mid-2019 to at least mid-2021 (it's not clear why);
- (e) it was July 2021 when the loss adjuster identified the need to re-build the conservatory, but it was February 2022 before they appointed contractors – and April 2022 before the contractors installing the conservatory began work (after a seemingly needless further delay for ordering parts, the need for which might have been obvious at the outset);
- (f) it was June 2022 when Miss F reported issues with the new conservatory, but the contractors were asked to carry out a further assessment only in February 2023 – and they only provided a full report in June 2023.

In short, it's more than six years now since Miss F made her claim. And she still doesn't have a useable conservatory.

The period of COVID lockdowns no doubt impacted the timetable here. But that's a small proportion of six years or more.

I can also see that the neighbour wasn't responding to the loss adjuster. But UKI were instructing the loss adjuster to "*be firmer*" with the neighbour as late as February 2023.

If the loss adjuster and/or others were chasing the neighbour, they appear not to have done so with any degree of urgency or persistence. And in fact, the tree appears to have finally been fully removed only by happenstance when the neighbour decided to renovate their garden.

So, I don't accept UKI's excuses for the delays which they gave to Miss F in their final response to her complaint. In fact, I can understand if Miss F found that supposed explanation to be insulting to her intelligence.

Our investigator suggested increasing the £150 compensation UKI had already paid to £650 in total. Despite UKI's objections to that increase, I'm minded at present – unless I get further persuasive information in response to this provisional decision – to increase that to a total of £1,000.

The delays in this case are largely avoidable, chronic and prolonged. And in the relevant period, Miss F has experienced considerable stress due to not knowing whether and when her conservatory will actually be useable again.

She's also been frustrated by UKI's responses to her reports of on-going damage and by their failure to respond properly when she reported the re-growth of the tree.

She's lost the use of her conservatory for a far longer period than was necessary. And she's had the considerable inconvenience of re-worked repairs and having to chase UKI's agents for progress and/or updates.

### *The repairs*

Before issuing this provisional decision, I've been in touch with both parties to help me to better understand the current situation.

It's absolutely clear from Miss F's response that the conservatory is very damp. And that damp is causing paint and plaster to blister and/or detach from the walls in large patches. It's also clear that the sealant around the conservatory is detaching and gaps are appearing.

I think it's inherently unlikely that that degree of damp, manifesting very soon after the repairs were completed, is caused by water ingress through the pointing above the conservatory into the cavity wall.

It's also inherently unlikely that the gaps appearing in the sealant are anything to do with damp ingress through the cavity wall.

UKI have very helpfully agreed with me that they asked the contractors, in effect, to check their own work. They agreed that their own surveyor hasn't visited the property to assess the situation at present – and nor have the loss adjusters, it would appear.

The contractors seemingly didn't provide a report of their findings. There are photographs which appear to show that the gutter above the conservatory did need levelling.

They also show the brickwork above the conservatory. Whilst this isn't perfect, it certainly doesn't show the degree of wear and damage that might allow sufficient water to penetrate the cavity wall and cause the current damp issues in the conservatory.

UKI have also confirmed for me that there was no reported issue with damp in the conservatory before or at the time the claim was made – and no report of any damp when the loss adjusters inspected the property.

Miss F has an insurance contract with UKI. UKI have accepted a claim and agreed to

repair the damage. In those circumstances, the nature of the contract requires them to put Miss F back in the position she was in before the insured damage occurred.

Before the insured damage (caused by subsidence) occurred, Miss F had a perfectly useable, dry, sound conservatory, built around five years previously.

Despite accepting her claim, and more than six years on, UKI and/or their agents have failed to put her back in that position. In my view, they need to do so now – and they need to do that as quickly as is practically possible.

In responding to my recent questions, UKI have said that, with hindsight, they should arrange for an independent inspection of the conservatory. Their response says they'll arrange for an "independent company" to do that.

I'm not entirely sure what they mean by that, but I'm minded as things stand to clarify exactly what we'd expect.

In short, I'm minded to require UK to appoint an independent qualified surveyor or engineer to carry out an inspection at the property. The purpose of that will be:

- (a) to establish whether there is any possibility that any part of the building is still moving – and, if so, to specify what monitoring now needs to take place and for what period of time;
- (b) to set out what damage there is to the conservatory which needs to be repaired;
- (c) to identify the cause(s) of that damage; and
- (d) to set out a scope of works for any remaining repairs that need to be carried out to ensure Miss F has a useable conservatory in future.

For the sake of absolute clarity, I'm also minded to say that UKI must then complete any repairs identified by the surveyor / engineer, and they must do so within a reasonable timeframe after receiving that report.

I should be clear that if Miss F is unhappy with UKI's response to that report and/or with the speed at which the repairs take place, she'd be entitled to make a further complaint to UKI - and then to us if she's not satisfied with their response. Of course, I sincerely hope that won't be necessary."

So, in summary, I said I was minded to require UKI to:

- pay Miss F a further £850 in compensation for her trouble and upset (in addition to the £150 already paid);
- commission an expert surveyor or engineer to inspect the property and report back as outlined above; and
- carry out any monitoring or work specified by that expert to ensure the lasting and effective repair of Miss F's conservatory.

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

Miss F responded to my provisional decision, to say she accepts it, as long as it's clear that

UKI's independent surveyor will address whether there is on-going movement and what repairs might be needed (including to the wall) to alleviate the dampness and other issues with the conservatory.

UKI also responded to my provisional decision. I'll summarise below the points they've made.

One – they've said they're arranging a further inspection at the property, as my provisional decision suggested. However, they will need to review the inspection report before agreeing any repairs.

Two – they think my provisional decision contained some inaccuracies around the delays in the claim. They agree that an increase in the compensation they originally paid is justified but propose that should be a further £350 (to bring the total to £500) rather than the additional £850 I suggested. Their specific points (in summary) were as follows:

#### *The initial visit*

Their initial review of the claim was a desktop review. The visit in February 2019 (four months after the claim was made) was in fact by a specialist they'd commissioned to carry out in-site investigations (bore holes, trial pits etc.).

#### *Claim acceptance*

After that visit, the claim was accepted in April 2019 (not three months later). This was a "surge event" (their words) - and 10 weeks from report to claim acceptance was reasonable given the legitimate need to validate the claim.

#### *The "make safe" works*

The "make safe" works in October 2019 were carried out soon after Miss F requested them, so there were no delays.

#### *Monitoring*

Monitoring from mid-2019 to mid-2021 was so lengthy because UKI's solicitor advised that might be necessary to provide evidence if costs were later to be recovered from the neighbour with the tree which had caused the subsidence.

### *Schedule of works and repairs*

In July 2021, contractors were appointed to put together a schedule of works for demolition and rebuild of the conservatory. That was completed by August (no delays).

At the start of September 2021, it was confirmed no new foundations were required and the contractor was asked to complete a schedule of works for rebuilding the conservatory using a new frame but with the existing roof. This was completed without delay.

September to November 2021, Miss F was considering the proposal (any delay is her responsibility at this point). After Miss F gave the go ahead, the contractors were lined up to carry out the work and made the arrangements in January 2022 (no delays).

In March 2022, the contractor set to install the new conservatory advised that a new roof would be required after all. The new roof panels were ordered immediately, but had a 21-day lead in time, after which the work began reasonably promptly.

### *Issues after completion of the works*

I won't summarise UKI's comments here in any detail. They admit things went awry at this stage, mainly because the contractor delayed re-visiting the property after Miss F reported the damp and other issues and/or failed to report back to the loss adjuster promptly.

It's for these particular failings that UKI think the further £350 in compensation they've suggested is justified.

### *The neighbour's tree*

UKI say their loss adjuster was proactive in contacting and chasing the neighbour to get them to take action on the tree. Their actions were as follows.

Mid-April 2019, they tell Miss F the issues are likely caused by the neighbour's tree.

July 2019 – they approach the neighbour and then chase them for a response.

September 2019 – the neighbour agrees to fell the tree, so the loss adjuster rightly waits for that to happen.

November 2019 – they ask the neighbour why the tree isn't down yet.

December 2019 – they write to the neighbour and say if no response is received within 21 days, they'll be passing the matter on to their solicitors.

Mid-January 2020 – they ask Miss F to take photographs of the tree, so they can proceed with legal route. When Miss F says she doesn't have the means, they do it themselves (two weeks later).

February 2020 – UKI change their approach and offer to pay for the tree removal.

Early March 2020 – a legal letter is sent and the neighbour is given 21 days to reply.

Late March 2020 – solicitors are involved and they (at some point) write to the neighbour to tell him he may be liable for the costs of any stabilisation scheme (which UKI have now scoped) which will be necessary if they don't remove the tree.

July 2021 – the neighbour confirms removal of the tree.

So, UKI say they and their loss adjuster have been proactive in chasing the neighbour. Leaving aside the four months at the outset when the claim was being assessed, the issue with the tree is dealt with in “*around one year*” (UKI’s own words).

### *The length of the claim generally*

UKI agree that the claim has a long lifespan, but also point out that the COVID outbreak cost around five months.

The need to devise a stabilisation scheme, once it became clear that the neighbour might not remove the tree, cost another five months.

Miss F took around two months or so to agree the proposed works (between September and November 2021).

UKI considered the claim complete in August 2023, and heard nothing back from Miss F until November 2023, after they sent the final documents and certificate of structural adequacy to her.

### **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.

Both parties made comments about what the independent surveyor’s inspection might cover and what it might find out.

I stand by what I said in my provisional decision. The expert must be asked to: establish whether the property is still moving; identify what damage there is to the conservatory and the causes of it; and set out a scope of works for any repairs necessary to ensure Miss F has a dry and useable conservatory in future (as she had before the subsidence occurred).

UKI say they can’t commit to carry out all repairs before they see the report. I accept that – if the report says, for example, that some of the damage is not related to the original subsidence claim, then that damage won’t be covered by this claim (although it might be covered if caused by a different insured peril).

I want to be clear though. Miss F had a dry and functioning conservatory before the claim. It’s for UKI to put her back in that position. It should not, on the face of it, be necessary to install a cavity tray. The previous conservatory appears to have managed without one (assuming the contractor is right that there wasn’t one). And I suspect the current issues are nothing to do with that – as I said in my provisional decision.

However, if the expert’s view is that a cavity tray is absolutely essential (to guarantee indemnifying Miss F) then UKI should accept that as part of the claim. In that case, we’d see this as an essential part of providing a lasting and effective repair for the covered damage.

Turning to UKI’s comments about the delays, I’m afraid I don’t agree with many of them. I’ll explain why.

### *The initial visit and claim acceptance*

It took around seven months from the date of the claim for UKI to say they accepted it. I’m sorry if I made assumptions about who visited when (that’s part of the reason for issuing a provisional decision, when the information we have isn’t entirely clear).



No-one could reasonably object to UKI carrying out a desktop assessment of the claim initially. And, as they say, they were entitled to then send out experts to carry out site investigations.

However, the speed (or lack of it) of those activities meant that it was seven months before UKI accepted the claim. I maintain that, given what those activities were, that's longer than necessary.

### *The "make safe" works*

I accept that UKI may have carried these out promptly after Miss F specifically asked for them to do so. However, this was around a year after the claim was made – and it's not unreasonable to think that UKI shouldn't have needed to be prompted by Miss F if the loss adjuster had been proactively managing the claim.

It's true to say that these works could be run alongside the main claim too, so they should not have added to the overall time it's taken to deal with the claim.

### *Monitoring*

I understand now why UKI may have wanted to monitor movement at the property for so long. That may have been necessary if costs were to be recovered from the neighbour (and it looked, at the relevant time, like UKI might want to recover those costs).

However, it's still not clear to me why UKI appointed contractors to scope the work only after that monitoring was completed. Again, these activities could and arguably should have run in parallel.

I note that the neighbour confirmed he'd removed the tree at the same time the monitoring concluded. But again, if the primary trigger for the loss adjuster to appoint contractors was the removal of the tree (rather than the end of the monitoring), I'm equally unsure why UKI had to wait for that point before they scoped the works.

### *Schedule of works and repairs*

UKI's own account appears to suggest that contractors were appointed to put together a schedule of works in July 2021 – and that was done by August (so, no delays).

But after that – in September 2021, when it was confirmed no new foundations were needed – contractors were asked to complete (another) schedule of works for rebuilding the conservatory using the existing roof.

And then that proved impossible and so new roof panels were ordered in March 2022, with another month or so delay in the works starting.

There appear to be a number of false starts in that timetable, by UKI's own account. And if these were partly the fault of the contractors, they were acting as UKI's agents.

### *Issues after completion of the works*

UKI admit there were delays in their contractor going back to the property and reporting to the loss adjuster when Miss F reported on-going problems after the re-build was supposedly complete. I don't disagree with their analysis on this period of time. Again, the contractors appear to have been primarily responsible for the delays, but they were acting as UKI's agents, not Miss F's.

### *The neighbour's tree*

I'm not sure whether UKI intended to suggest that the tree took a year to get removed. Their response to my provisional decision is slightly unclear on that.

If that is what they're suggesting, I don't agree. The tree finally went in July 2021. Even allowing for the period of the initial handling of the claim – before the neighbour was first asked to deal with it – that's July 2019 (UKI's first request to the neighbour) through to July 2021 (when the neighbour confirms the tree is gone). Which is two years.

If UKI are suggesting COVID (five months) and the need to put together a stabilisation plan (five months, according to UKI), should be subtracted from that two years, I'm unclear as to why. COVID didn't prevent communication with the neighbour. The drafting of the stabilisation plan could run alongside other activities to chase the neighbour.

To get to the point, I can see UKI's argument that the loss adjusters were active at times in trying to resolve the issue with the tree. However, even by UKI's account, there are a number of false starts, failed approaches, and times of inactivity – particularly towards the end of the period up to July 2021, when the neighbour took down the tree seemingly of his own volition.

UKI also admit they told Miss F the tree was the problem in April 2019 – and yet only approached the neighbour for the first time in July 2019.

I also note that it was a year or so in (after UKI told Miss F the tree was the issue) before UKI's agents advised the neighbour he might be liable for costs if he didn't remove the tree. I understand that hindsight is a wonderful thing, but that trigger might have been pulled significantly earlier.

### *The length of the claim generally*

As I said in my provisional decision, we're now more than six years on from the claim being made. I'm satisfied that, despite the challenges UKI and their agents faced in dealing with this claim, that's excessive.

The claim is about the conservatory, not the main house. And the (single) cause of the subsidence was identified early on.

COVID no doubt made some things difficult and delayed the claim. The neighbour's intransigence and unwillingness to engage no doubt caused some delays which were outside UKI's – or their agents' – control. Miss F took close to two months to agree the scope of works at one point.

But taking that all together, this claim should not be still on-going more than six years on (or anything like it). I understand UKI thought it was resolved at one point, but the fact that it wasn't is primarily the fault of UKI's agents, who haven't provided a lasting and effective repair to the conservatory. The delays at that stage certainly aren't Miss F's doing.

### *Summary*

I understand UKI's response to my provisional decision. And I'm grateful to them for clarifying why and how certain delays may have occurred in the handling of the claim.

Fundamentally though, I don't see anything in UKI's explanations to make me change my mind about the outcome of this case.

It's taken six years (and counting) to (properly and effectively) replace a conservatory and get a tree removed. UKI's own account shows errors, failings, false starts, wasted activity and effort and, at times, delays which are unjustifiable and/or not accounted for. It also shows an unwillingness or inability, at times, to run tasks in parallel.

Their customer, in this case, is vulnerable. And they've been denied the use of the conservatory facility for far longer than was necessary. They've also been subject to frequent (unnecessary) re-visits by UKI's contractors – and they've had to struggle to get across their point that the new conservatory is damaged and not useable.

Taking all of that into account, I'm satisfied that the next steps and compensation I suggested in my provisional decision are fair and reasonable in all of the circumstances.

### **Putting things right**

I set out in my provisional decision what I was minded to require UKI to do to put things right for Miss F. For the reasons set out above, my view hasn't changed. I'll repeat that outcome in the section immediately below.

### **My final decision**

For the reasons set out above and in my provisional decision, I uphold Miss F's complaint.

U K Insurance Limited must:

- pay Miss F a further £850 in compensation for her trouble and upset (in addition to the £150 already paid);
- commission an expert surveyor or engineer to inspect the property and report back as outlined above; and
- carry out any monitoring or work specified by that expert to ensure the lasting and effective repair of Miss F's conservatory.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 16 April 2025.

Neil Marshall  
**Ombudsman**