

The complaint

Mr C complains about how U K Insurance Limited (UKI) is handling a claim he made on his commercial property insurance policy following damage caused by subsidence.

Reference to UKI includes its agents.

What happened

Mr C holds a commercial property insurance policy with UKI. When his property was damaged by subsidence in 2021, he made a claim to UKI for the damage caused.

UKI accepted the claim, and it was thought the property would be repaired by mid-2023.

Unfortunately, this didn't happen, and the property remains unrepaired. Mr C complains about UKI's claim handling and delays to the claim. He's said while the property remains unrepaired, he's not able to rent it out, causing him a loss.

Key to the dispute is the monitoring of the property following the installation of a root barrier in July 2023. Following this installation UKI agreed to monitor the property but did so for a period of three weeks.

In January 2024, UKI wanted to commence superstructure repairs, but Mr C didn't think this was fair. He didn't think UKI had shown that the property was stable and no longer moving.

He didn't think work should start until there was evidence that the property was stable. He provided a report which said monitoring should take place for at least 12 months, to take into account the full seasonal cycle.

UKI didn't think this was necessary, it said it wasn't standard practice to continue monitoring once a root barrier was installed. And it said if the property was continuing to move, this would become evident during the repair process or shortly after.

Mr C didn't think this response was fair, he didn't think it was reasonable to make him go through the repair process again if the property was still moving, causing more distress and inconvenience if it turned out that the property was still moving.

Mr C pointed out that some of the remedial work undertaken already isn't of standard and pointed out the scope of works didn't address aspects he thinks it should such as the internal floors and external pavement areas.

One of our Investigators looked into the complaint and recommended it be upheld. They recommended a period of monitoring for six months. They made no comment on loss of rental income, scope of works or quality of previous repairs.

UKI accepted this assessment. Mr C didn't and asked for an Ombudsman's decision. He said the monitoring should be carried out for longer, and he thought UKI should pay his loss of rental income from January 2024 up to the point the property became habitable again. He

also thought UKI should cover the reduction in his rental income between January 2022 and January 2024. He also thinks UKI should pay for the council tax and utility bills from January 2024 up to the point the property becomes habitable again.

Mr C also thinks UKI should pay for costs his daughter incurred travelling to oversee the root barrier installation and thinks he should be compensated for the distress and inconvenience this claim has caused him.

I issued a provisional decision which said I was thinking of upholding Mr C's complaint. It said:

- *I'm more persuaded by Mr C's evidence that further monitoring is needed. Three weeks is insufficient considering the cause of the subsidence was soil shrinkage due to vegetation. I understand UKI thinks it's removed the cause by installing a root barrier, and that may be the case, but I agree a full seasonal cycle of monitoring should be undertaken to confirm this is the case.*
- *I can see Mr C's perspective that no work should be carried out until the property is confirmed to be stable. But at the same time, I can see UKI's point that it's confident the cause of the subsidence has now been removed, and so repairs can begin.*
- *I think if UKI can evidence that it can carry out repairs while simultaneously monitoring the property for further movement for a full seasonal cycle, and if it can show that those repairs will not hamper the effectiveness of that monitoring in any way, then it's reasonable to let it begin those superstructure repairs. In doing so, the property will be returned to a habitable condition sooner. Which is beneficial to all parties involved.*
- *However, if after the repairs are completed, the monitoring shows further movement or instability, I'd expect UKI to carry out the required work to remedy it.*
- *If it's not able to evidence that the above is possible, then it should only commence repairs once the monitoring period has ended and shown that the property is stable.*
- *Up to this point, UKI's not evidenced that, so it should cover the loss of rental income from January 2024 up to the point the property becomes habitable again, in line with the policy terms and limits.*
- *Should the property need to be vacated again (because further work is needed), I'd expect UKI to cover loss of rental for that period too, up to the point it becomes habitable again.*
- *Mr C says between January 2022 and January 2024 he received less rental income as a result of the subsidence damage. I've seen the tenancy agreements, but I'm not persuaded they show the reduced amount is a result of the subsidence damage. But if he can evidence that, UKI should cover that loss too, in line with the terms and limits of the policy.*
- *Mr C thinks UKI should cover the cost of his council tax and utility bills between January 2024 up to the property is returned to him. This isn't something the policy covers him for. But if these costs are caused by UKI's actions or inactions, as opposed to being incurred simply because of the claim itself, then UKI should pay for them.*

- *As set out above, UKI shouldn't have stopped monitoring when it did, and it's not to this point shown it can monitor the property and carry out repairs concurrently. So I am persuaded UKI delayed progress on the claim. So it should cover the council tax and utility bills from January 2024 (because these would have been covered by the tenant according to the tenancy agreement were it rented out), the point Mr C became aware the monitoring had stopped – it's at this point I think UKI cause delay - to the point it began (or begins) the monitoring again.*
- *I'm not persuaded the cost of Mr C's daughter's travel is something UKI need to pay. I've not seen anything to show her presence at the root barrier installation was necessary. I appreciate it's something Mr C wanted for peace of mind, but it's not something I'll be asking UKI to pay.*
- *In putting the property right and carrying out the required repairs, UKI needs to cover all the areas affected by subsidence. So I'd expect that schedule of works to include any flooring damaged by subsidence, whether internally or externally such as the pavement. If UKI doesn't think it needs to repair this, it should evidence why this is the case.*
- *Additionally, I'm persuaded by Mr C's report in relation the quality of some of the repairs undertaken to this point – specifically the helibars. So I'd expect these to be addressed when carrying out the required superstructure repairs.*
- *UKI should also reimburse Mr C the cost of his engineer's report. It agreed to an independent report being carried out at its cost. I don't think that should be limited to the list of engineers it then puts forward.*
- *Subsidence claims are distressing and inconvenient even when handled well. But here it's clear UKI added to the distress and inconvenience Mr C suffered. As set out above, it never should have stopped the monitoring when it did. Doing so delayed the claim. For the inconvenience that delay caused, it should pay Mr C £800 compensation.*

Mr C broadly agreed with my decision. He provided evidence he said supported the reduction in rent. He made a point about his premiums – which won't be covered in this decision. And he said he thought I should allow him to appoint a loss assessor and require UKI to pay for it.

UKI responded not agreeing. It maintained further monitoring wasn't needed and that repairs would effectively perform that role – but it provided no new evidence to support that. It agreed to rectify previous poor repair work when carrying out a new revised scope of work. It questioned why it was being asked to pay for loss and reduction of rent and pointed to Mr C not having cover for that in his policy.

Following this, I wrote a second provisional decision which said:

"I've not seen anything to persuade me that the finding I made in relation to further monitoring is unfair. I appreciate UKI's points in response to my decision. But these are simply the same points it's already made and ones I've already considered.

Therefore I still require UKI to carry out a full seasonal cycle of monitoring for the reasons set out in my provisional decision above.

That decision also sets out that UKI can begin repair, if it can show these can take place

while monitoring is happening without hampering the effectiveness of that monitoring. So, that recommendation also still stands.

UKI has agreed to include any rectification of previous repairs to bring them in line with standards. I'm satisfied that's reasonable.

I'm not going to require UKI to pay for any loss assessor Mr C decides to appoint, should he decide to appoint one. I can understand his want for one, but I'm not persuaded it's necessary to move the claim along. Of course, should further issues arise, he'd be entitled to dispute those with UKI. And included in that dispute may be the reimbursement of costs he's incurred – similar to my recommendation in this decision that UKI reimburse Mr C for his engineer's report. That too, is something I still require UKI to do.

UKI has pointed out that Mr C isn't insured for loss of rent or indeed reduction in rent. So, for that reason I don't think it's reasonable to require it to pay loss of rent, or reduction in rent as set out in my provisional decision.

There is however an important distinction to be made between what the policy provides cover for and what may have been caused by UKI's unfair action or inaction. In other words, where UKI has caused avoidable delay, it should make up for the financial loss caused by that. Here, as set out above in my provisional decision, I think UKI has caused avoidable delay.

And as that decision sets out, I consider that delay to be between January 2024 and whenever the further monitoring I'm recommending begins. Once monitoring begins, I consider this to be the reasonable progression of the claim, and therefore don't require UKI to pay loss of rent following this point. That decision however is based on the claim progressing smoothly and promptly. If it doesn't, Mr C would be able to complain about further delays and this decision should not prohibit him from further compensation payments in relation to those delays, should they occur.

The same logic applies to my recommendation for council tax and utility bills. UKI only need pay, at this stage, between January 2024 and when the monitoring begins."

I explained I was still thinking of upholding the complaint. I recommended UKI:

- *Carry out a full seasonal cycle of monitoring – UKI may also begin repairs if it can show these repairs will not hamper the effectiveness of that monitoring.*
- *Pay Mr C loss of rent between January 2024 and when it begins the full season of monitoring.*
- *Reimburse Mr C what he's paid in council tax and utility bills between January 2024 and when the seasonal monitoring begins – subject to Mr C providing UKI evidence of this. Simple interest at a rate of 8% per annum should be added to this payment. Interest to be calculated from the date Mr C made the payments to the council/utility provider up to the date UKI pays him.*
- *Reimburse Mr C what he paid for his engineer's report. Simple interest at a rate of 8% per annum should be added to this payment. Interest to be calculated from the date Mr C made the payment to the engineer up to the date UKI pays him.*

- *Include in any new schedule of works the rectification of the poor repairs as set out in Mr C's engineers report. The flooring should also be included in this schedule unless UKI can show why it's not been affected by the subsidence.*
- *Pay Mr C £800 compensation.*

Both Mr C and UKI responded to that second provisional decision.

Mr C said he wanted remedial work to be carried out prior to the monitoring beginning. He also said he'd appointed a loss assessor at his cost but wanted any future scope of work to be agreed with him (via that loss assessor).

He stressed the importance of wanting to make the property habitable again and thinks UKI should compensate him for loss of rent up to the point that happens. He also pointed out the impact this claim has had on him.

He pointed out the increased premiums and thinks this should be addressed in the scope of this complaint.

UKI responded with a counter proposal. It maintained it's position that a full seasonal cycle of monitoring was not needed, and was worried about the precedent any decision requiring it may set.

Its proposal was based on their being some 21 months since the root barrier was installed. It said if there was any further movement, it would be evident on inspection. It said there's effectively been almost two full seasonal cycles so doesn't think a further 12 months of monitoring is necessary.

It too stressed the importance of progressing the claim and so proposed to:

- Visit the property and assess whether there's evidence of progressive movement
 - If there is, investigate the cause and monitor
 - If there isn't, repair the property

UKI said it tried to begin monitoring in July 2024 but was denied by Mr C. So it thinks it's not responsible for any delay after that point. It doesn't think it needs to pay any loss of rent payment, or payment for reduction in rent or council or utility bills.

It agreed to include the rectification of previous repairs in any new scope of works, including the flooring unless it could be shown it wasn't affected by the subsidence.

Based on this I issued a third provisional decision which said:

"I think the basis of UKI's proposed settlement is reasonable. There's been a significant time since the root barrier installation. Almost two full seasonal cycles. Therefore UKI's proposal to look for signs of movement is reasonable.

If there's no signs of movement, this will allow the property to be repaired which is in both parties' best interests, as stressed in both their responses.

I'm not going to require UKI to agree to the scope of works jointly with Mr C's loss assessor. But I would expect them to be working together in any case, to bring this matter to a close. Any dispute about that new schedule of works isn't covered in the scope of this complaint. Hopefully there is no dispute in any event, but if there is, it's a new and distinct issue that Mr C will need to raise and UKI to deal with as appropriate.

Similarly, as our Investigator let M C know, any dispute around his premium does not form part of this complaint. So, if that's something he's unhappy with, he should address that concern to UKI. If he's not happy with its response, that may be a separate complaint we can consider.

I've seen UKI tried to begin monitoring in July 2024. So I agree from this point on I can't fairly hold it responsible for any delays. Mr C's original argument was that monitoring should take place before repairs. That was supported by our Investigator (albeit for six months as opposed to 12.) I can't fairly say it was reasonable of Mr C to not allow that to happen at that stage, especially considering his response to my previous decision, reversing that stance and wanting repairs to be carried out prior to any monitoring.

I still think UKI need to pay Mr C loss of rent and council tax and utility bills, but I only require it to do so between January and July 2024. That is the delay I consider UKI responsible for. Anything past that date up to the point UKI now send out an engineer to assess progressive movement I don't consider a delay caused by UKI – because it offered to monitor the property and wasn't given the go ahead.

I've seen no persuasive evidence to make me change any other finding reached in my previous decision."

I therefore recommended UKI:

- *Carry out a site visit, with the insured and anyone they wish to represent them present, to inspect the property and assess whether there is progressive movement
 - *If there is, UKI should investigate the cause, monitor and deal with as required*
 - *If there isn't, UKI should move to repair the property.**
- *Pay Mr C loss of rent between January 2024 and July 2024.*
- *Reimburse Mr C what he's paid in council tax and utility bills between January 2024 and July 2024 – subject to Mr C providing UKI evidence of this. Simple interest at a rate of 8% per annum should be added to this payment. Interest to be calculated from the date Mr C made the payments to the council/utility provider up to the date UKI pays him.*
- *Reimburse Mr C what he paid for his engineer's report. Simple interest at a rate of 8% per annum should be added to this payment. Interest to be calculated from the date Mr C made the payment to the engineer up to the date UKI pays him.*
- *Include in any new schedule of works the rectification of the poor repairs as set out in Mr C's engineers report. The flooring should also be included in this schedule unless UKI can show why it's not been affected by the subsidence.*
- *Pay Mr C £800 compensation.*

UKI agreed with that decision.

Mr C didn't. He said his stance hadn't changed throughout the complaint and felt it unfair to suggest it had.

He also didn't think it was fair to end UKI's liability for delay in July 2024. He said at that point he was still disputing the outcome of the case and didn't want to prejudice that by

letting UKI commence monitoring. He doesn't think it's fair he's penalised for the time taken to reach this point.

He was concerned at the prospect of no monitoring and said there's already evidence the property has moved since the root barrier installation. He's concerned that a visual inspection of the property won't evidence this and he'll be left accepting repairs on a property he feels is still moving, without the prospect of monitoring.

Mr C also made a further point about the latest insurance renewal from UKI and says it's removed subsidence cover.

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.

Having done so, while this will come as a disappointment to Mr C, I see no reason to depart from the position set out in my latest provisional decision.

I understand Mr C's concerns. But if as he says the property is still moving, or has been, and there's evidence of that, the proposed resolution remedies that. It includes a direction for UKI to take. That would be to identify the cause of the movement, monitor it, and put right.

If there's no evidence the property is moving, or has been, then I think it's reasonable to say that it's stable, pending any evidence to suggest otherwise. Both parties have expressed a desire to move things forward. So if there's no evidence of movement, I think allowing repairs to commence, is the best way of pragmatically achieving that. If while repairs are being carried out, or if after they've been completed, there's further evidence of movement, I'd expect UKI to address that appropriately.

Turning to limiting UKI's responsibility for delays to July 2024, I understand Mr C's point here. But I'm not persuaded by it. There was nothing to suggest that accepting UKI's proposal to monitor at that point (even if for less time than Mr C thought needed – our Investigator recommended six months, Mr C thought 12 was more appropriate) would have prevented him from further disputing the matter. It was Mr C's wish at that point that monitoring happen before repairs, so not allowing that to happen in July 2024, does, I'm satisfied, stop UKI being accountable for any delays from that point on.

The points Mr C has raised about his new policy, as previously explained, don't form part of this complaint.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint. To put things right U K Insurance Limited needs to:

- Carry out a site visit, with the insured and anyone they wish to represent them present, to inspect the property and assess whether there is progressive movement
 - If there is, UKI should investigate the cause, monitor and deal with as required
 - If there isn't, UKI should move to repair the property.
- Pay Mr C loss of rent between January 2024 and July 2024.

- Reimburse Mr C what he's paid in council tax and utility bills between January 2024 and July 2024 – subject to Mr C providing UKI evidence of this. Simple interest at a rate of 8% per annum should be added to this payment. Interest to be calculated from the date Mr C made the payments to the council/utility provider up to the date UKI pays him.
- Reimburse Mr C what he paid for his engineer's report. Simple interest at a rate of 8% per annum should be added to this payment. Interest to be calculated from the date Mr C made the payment to the engineer up to the date UKI pays him.
- Include in any new schedule of works the rectification of the poor repairs as set out in Mr C's engineers report. The flooring should also be included in this schedule unless UKI can show why it's not been affected by the subsidence.
- Pay Mr C £800 compensation.

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

Joe Thornley
Ombudsman