

The complaint

Mr and Mrs K have complained that Chaucer Insurance Company Designated Activity Company ("Chaucer") unfairly declined a claim they made for subsidence to their rental property.

What happened

In 2018, Mr and Mrs K made a claim to their previous insurer for subsidence when they became aware of cracking at their rental property. At that time, the insurer declined their claim on the basis that the issue was settlement and not subsidence, following a particularly hot summer. No major work was undertaken and some minor cosmetic repairs were carried out.

Mr and Mrs K held a policy with Chaucer from March 2022 to March 2023. In August 2022 they made a claim under their policy with Chaucer for subsidence-related damage when further cracks appeared. But Chaucer declined the claim on the basis that its surveyors had concluded that the clay soils on which the property stood were susceptible to shrinkage in hot and dry conditions. As a result, the front elevation of the property had gradually settled downwards.

Mr and Mrs K didn't agree. They said they'd retain their own loss adjusters and in the following months, more cracks appeared at the property. A report was commissioned which said there was subsidence at the property and issues with the construction of the lintel above the windows and front entrance of the property, which had accentuated the issue with the clay shrinkage. A period of monitoring was recommended.

A second report was commissioned which confirmed there had been problems with subsidence in the area, caused by the nearby oak trees. It also highlighted that the foundations at the property were too shallow.

It was confirmed that the adjacent property and other properties in the same row had been underpinned as a result of historic movement. But Chaucer issued a further decline letter, saying the damage wasn't covered because it resulted from defective design or workmanship (with the construction of the foundations being inadequate). It also said the issue was declined by previous insurers as "settlement", but that this was disputed by Chaucer – as it held the view that cracking was a longstanding issue and likely to have been present for many years.

Mr and Mrs K made a complaint. They said the primary cause of the movement wasn't defective foundations but subsidence due to tree-related clay shrinkage, given the size of the oak trees and the known shrinkage behaviour of clay soils. They confirmed other properties near the oak trees were suffering from subsidence and those properties further away from the trees were not.

Chaucer maintained its position to decline the claim, so Mr and Mrs K referred their complaint to the Financial Ombudsman Service. Our Investigator considered the complaint, and didn't think Chaucer had applied the exclusions fairly, so she recommended Chaucer

deal with the claim and cover the damage in line with its remaining policy terms.

Chaucer didn't accept our Investigator's recommendations, so the complaint has now been referred to me for an Ombudsman's decision.

What I've decided – and why

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

As this is an informal service, I'm not going to respond here to every point raised or comment on every piece of evidence Mr and Mrs K and Chaucer have provided. Instead, I've focused on those I consider to be key or central to the issue. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm upholding this complaint. I'll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the "Insurance: Conduct of Business Sourcebook" (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a claim. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

And taking everything into account, I'm not satisfied Chaucer has declined Mr and Mrs K's claim fairly. The policy they hold with Chaucer says the following, in the section which deals with exclusions for damage caused by subsidence – and Chaucer has relied on exclusions a iii and c in order to decline the claim:

- "a resulting from*
- i collapse, cracking (other than a Building's own collapse or cracking as a result of a cause which is not otherwise excluded), shrinkage or settlement of Building(s) or any part thereof;*
 - ii coastal or river erosion;*
 - iii defective design or workmanship or the use of defective materials, including inadequate construction of foundations...*
- ...c which commenced and of which You were aware prior to the acceptance of this insurance by the Insurers."*

Chaucer has now acknowledged that the issue with foundations being too shallow isn't relevant, as the foundations were likely compliant with building regulations at the time they were built. And I've seen evidence which suggests that foundations were built to the standards required at the time. So I don't think it's fair for Chaucer to have declined the claim on that basis, and as Chaucer has accepted this, I won't deal with this point further.

But Chaucer maintains its position that the subsidence was longstanding and the previous insurer failed to deal with it. But the exclusion it's relied on is for damage *"which commenced and of which You were aware prior to the acceptance of this insurance"*. I don't think Chaucer has applied this exclusion fairly. Mr and Mrs K were aware of damage in 2018 and took all the right steps in putting this to their previous insurers. They've provided evidence that the previous insurer considered the damage settlement-related and not subsidence and

Mr and Mrs K accepted what they were told.

It was only when the damage recurred that Mr and Mrs K realised there was an issue. And the expert reports I've seen confirm that the issue is subsidence and not two-way settlement movement caused by excessive heat and dry weather.

Chaucer has said in response to our Investigator's view, that following the hot dry summer of 2018 the property sank and then lifted, which is why cosmetic repairs alone fixed the problem. It says this is the same issue that occurred in the hot dry summer of 2022, and the issues should've been resolved in 2018. But I'm not persuaded Chaucer has done enough to show that the issue is the same issue as that which occurred in 2018 – and not an entirely new, unrelated incident. The reports confirm the damage this time around is likely vegetation-induced, that it's worse than in 2018, other properties near the trees have been underpinned, and a causal link between the 2018 damage and the 2022 damage hasn't been demonstrated.

I've considered the loss adjuster's additional comments, but I don't find them compelling enough to accept that Chaucer shouldn't deal with the claim. He's referred to the disagreement with how the previous insurer handled the claim, but I don't think it's fair to deny Mr and Mrs K a fair outcome to their current claim, because of Chaucer's view of how the previous insurer should've dealt with it. As the incident occurred within the term of Mr and Mrs K's policy with Chaucer, and there's insufficient evidence that it's the same issue that occurred in 2018, I think it's fair for Chaucer to provide the indemnity here.

Putting things right

To put things right for Mr and Mrs K, Chaucer Insurance Company Designated Activity Company should accept their claim and deal with it in line with the remaining policy terms.

My final decision

My final decision is that I uphold this complaint and I direct Chaucer Insurance Company Designated Activity Company to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 28 January 2026.

Ifrah Malik
Ombudsman