

The complaint

Mr M and Mrs M complain about Tesco Underwriting Limited (“TUL”) and the decision to cancel their home insurance policy back to its inception, following the claim they made.

Mrs M has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any actions taken, and comments made, by either Mr M or Mrs M as “Mrs M” throughout the decision where appropriate.

What happened

The claim and complaint circumstances are well known to both parties. So, I don’t intend to list these chronologically in detail. But to summarise, Mr M and Mrs M held a home insurance policy, underwritten by TUL, when they discovered cracking both internally and externally at their property. So, they contacted TUL to make a claim.

But after attempting to validate the claim, TUL took the decision to cancel the policy back to its inception, refunding Mrs M and Mrs M the premiums they had paid to that point, confirming the cancellation hadn’t been recorded internally or externally. They took this decision on the basis that Mrs M had misrepresented the information provided at the policy inception regarding there being signs of, or damage caused, by subsidence. Mrs M was unhappy with this decision, so she raised a complaint about it.

TUL responded to the complaint and didn’t uphold it. In summary, they set out why they felt they had acted fairly, and in line with the Consumer Insurance (Disclosure and Representations) Act 2012 (“CIDRA”) when taking the decision they had. But they paid Mrs M and Mr M a compensatory payment of £200 as a gesture of goodwill, to recognise any distress and inconvenience they had been caused. Mrs M remained unhappy with this response, so she referred her complaint to us.

Our investigator looked into the complaint and didn’t uphold it. Both parties have had sight of this outcome, so I won’t be recounting it in detail. But to summarise, our investigator explained why they thought TUL had acted fairly when cancelling the policy, taking into account CIDRA and what actions this allowed TUL to take. And they explained why they wouldn’t be increasing the £200 good will payment.

Mrs M didn’t agree, providing extensive commentary explaining why. This included, and is not limited to, Mrs M’s belief that the home buyers report both TUL and our investigator relied on didn’t state that the property was previously affected by subsidence. Mrs M set out why she felt TUL’s decision failed to apply CIDRA fairly, and why she felt she had answered the questions posed at the policy inception to the best of her knowledge.

So, she didn’t agree TUL were fair to decline the claim or cancel the policy back to its inception and she instead wanted the claim to be accepted and progressed. As Mrs M didn’t agree, the complaint has been passed to me for a 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.

Having done so, I'm not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant, in line with our services informal approach. So, if I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I explain why I've reached my decision, I want to set out what I've been able to consider, and how. It's not my role, nor the role of the service, to act as a replacement claim handler or to re-underwrite the claim, as we don't have the expertise to do so. Instead, it is my role to consider the actions TUL have taken and decide whether they were fair and reasonable, based on the evidence they had available to them at the time. So, while I'm aware Mrs M has obtained further information since TUL's complaint response she feels supports her position, this isn't something this decision can consider. Instead, she would need to present the new information to TUL for them to consider and should Mrs M remain unhappy, she could complain separately about this.

I also want to recognise the impact this complaint has had on Mr M and Mrs M. I appreciate having their claim declined, and policy cancelled, has had significant implications on them, both financially and emotionally, considering the level of repair work that may be required to resolve the damage currently found at their property. And I want to reassure them I've thought about this at length when reaching my decision.

But for me to say TUL should do something differently, for example reverse the cancellation and accept the claim they made, I must first be satisfied TUL have done something wrong. So, I'd need to be satisfied TUL failed to act within the terms and conditions of the policy, and industry rules, when taking the action they have, based on the information available to them at the time. Or, if they did act within these, that they were unfair when doing so. In this situation, I'm not persuaded that's the case, and I'll explain why.

In this situation, TUL have explained why they felt Mrs M misrepresented the information provided to them at the inception of the policy. And this is why they cancelled the policy and declined the claim. The relevant law that is applicable in this situation is set out within CIDRA. This explains that a consumer needs to take reasonable care not to make a misrepresentation when taking out an insurance policy as well as setting out the actions an insurer can take if a qualifying misrepresentation has been made. So, I've considered the evidence carefully to decide whether TUL were fair to rely on this when taking the action they have.

I've carefully reviewed the Statement of Fact ("SOF") which outlines the questions Mrs M answered when taking out the policy. The question relevant here is Mrs M answering "yes" to the question confirming that the insured property was *"free from signs of, and have never been damaged by subsidence, heave, landslip, tree root damage and neighbouring subsidence"*. And I've seen the guidance Mrs M would have seen when answering this question, which I'm satisfied shows the question Mrs M answered was reasonably clear.

It's not in dispute that when validating the claim, TUL discovered a previous subsidence claim from 2021 recorded on the CUE database for the property in question. So, I'm satisfied the property had been damaged by subsidence previously. But it's also not in dispute that this claim was made before Mrs M owned the property, and that this wasn't disclosed by the

seller she purchased the property from. So, she's set out why she feels she answered the question correctly, based on the knowledge she had available.

But I've also seen the home buyers report Mrs M commissioned prior to the purchase of the property, and crucially before the policy was incepted. And this report discusses existing hairline cracking in several areas of the property, talking on multiple occasions for the possibility that structural engineers and drainage contractors may need to be appointed.

Crucially, it also explains that in a section of the property, there was different colour brickwork, hypothesising that *"this may have been caused by cracking from nearby trees which can lead to structural movement. Your legal advisers must ascertain any previous building insurance claims and you must seek the advice of an arboriculturist regarding the risks posed from large and many trees and bushes near the house itself."*

Further to this, the report later goes on to reiterate this direction, explaining that *"we recommend that you should treat the matters discussed earlier in the report as risks to the building which should be investigated as soon as possible"* before confirming *"cracking must be repointed and monitored with recommendations commented on carried out"*. And it goes on to mention subsidence specifically, explaining that *"over 60% of all subsidence claims are triggered by trees"* before reiterating the need to *"consult a tree surgeon or arboriculturist regarding nearby trees"*.

So, while I recognise Mrs M's position that she wasn't aware of the previous subsidence claim, I'm satisfied the report she obtained and had access to prior to taking out the policy made it reasonably clear that there were signs of damage with subsidence a possible cause. And, that there were clear directions made that set out the actions Mrs M should take before purchasing the property. Importantly, I've seen no evidence to show these actions were taken and considering TUL were able to find a record of a previous subsidence claim, I'm satisfied this most likely would have been found had these actions been followed.

But even if I did have evidence that showed these actions were taken, and the previous claim wasn't found in error, I'm satisfied the report makes it reasonably clear the property itself was showing signs of damage that could be linked to subsidence, or tree root damage. And crucially, the question TUL posed asked Mrs M to confirm the property was free from *"signs of"* subsidence or tree root damage, as well as confirmation it had never been damaged from subsidence at all.

So, I'm satisfied TUL have acted reasonably when determining there was a misrepresentation at the point the policy incepted. And I'm satisfied this misrepresentation was a qualifying one, as TUL have provided their underwriting criteria which shows that had Mrs M answered "no" to the question being considered, they wouldn't have offered cover at all.

CIDRA sets out the actions an insurer such as TUL can take where there has been a qualifying misrepresentation. And these actions differ, based on whether the misrepresentation is deemed careless, or reckless/deliberate. In this situation, TUL have confirmed they treated the misrepresentation as careless, to recognise the fact that the seller didn't disclose the previous subsidence claim during the property sale as they should have. And I'm satisfied this was a reasonable stance for TUL to take here, as it appropriately considers how Mrs M was affected by the seller's omission.

CIDRA explains that where there has been a careless qualifying misrepresentation, an insurer can void the policy back to inception, decline any claim made, with a refund of any premiums that had been paid. But I note in this situation, TUL have taken action that is more favourable to Mrs M than this.

Instead of voiding the policy, TUL have confirmed they cancelled the policy back to inception instead. And they have confirmed they removed any record of the claim internally as well as not recording it externally, meaning the claim and the policy cancellation won't be available for another insurer to see when Mrs M applies for future insurance. This isn't something TUL needed to do and so, I'm satisfied this shows TUL fairly taking into consideration the individual circumstances of this claim to ensure Mr M and Mrs M are reasonably prevented from future foreseeable harm.

TUL have also refunded the premiums Mr M and Mrs M paid, as CIDRA expects them to do, while confirming the claim has been declined.

Alongside this, they paid Mr M and Mrs M a total compensatory payment of £200 as a gesture of goodwill, to recognise the implication of the policy cancellation and claim decline and the emotional impact this will have had. As I'm unable to say TUL made an error when taking the action they did, I'm satisfied this payment is more than fair as ultimately, the impact this payment was intended to address was caused by the misrepresentation itself, rather than any service failings by TUL.

So, considering the above, I'm satisfied TUL have acted fairly and reasonably when taking the actions they have and so, it follows that I'm not directing them to do anything more on this occasion.

I understand this isn't the outcome Mr M and Mrs M were hoping for. And I don't intend this decision to detract from their lived experience, or the financial implications it will have on them moving forwards as ultimately their property still requires repair work that won't be covered by the policy TUL initially put in place. I want to reassure them both I've carefully considered all the representations they have put forward including their references to CIDRA and other financial legislation. But for all the reasons outlined above, I'm unable to say this situation has arisen from something TUL has done wrong.

My final decision

For the reasons outlined above, I don't uphold Mr M and Mrs M's complaint about Tesco Underwriting Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 7 May 2026.

Josh Haskey
Ombudsman