

The complaint

Mr and Mrs H complain about U K Insurance Limited's handling of their claim under a landlord insurance policy.

I understand Mr and Mrs H are joint policyholders, but most of the communication regarding the claim and complaint has been from Mrs H. So I'll refer mainly to Mrs H in my decision.

U K Insurance Limited (UKI) has been represented on the claim by its agents. All references to UKI include its agents.

What happened

Mrs H had a landlord insurance policy with UKI, covering her rental property (the property).

In October 2022, she made a claim for damage to the property. After inspecting the damage, UKI said it was likely caused by subsidence.

An Arborist report in December 2022 said the causes were two trees. One belonging to Mrs H and another belonging to her neighbour (the third-party).

In March 2023, Mrs H's tree was removed. But the third-party continued to refuse removal of their tree, despite the information UKI provided them. And in May 2024, UKI put them on notice about future damage, following their failure to remove their tree. The third-party also declined UKI's offer to fund removal of their tree.

Mrs H complained in September 2024. She was unhappy with the time UKI had taken on the claim. She said she was unable to sell the property, and was having to rent it out at a reduced price, because of the unrepaired damage.

UKI issued a complaint response in February 2025. It said it takes time to identify the cause of damage in these circumstances, and it has been challenging convincing the third-party to act, despite the evidence. UKI said it may consider legal options.

Mrs H referred her complaint to the Financial Ombudsman Service. She said the claim couldn't go on indefinitely, and repairs still hadn't been carried out. She reiterated she couldn't sell the property and was renting it out at a reduced value. She also said the delays had put a significant financial and emotional strain on her and her family.

The Investigator didn't uphold the complaint. They said UKI hadn't caused excessive or avoidable delays, and had communicated reasonably with Mrs H. Mrs H didn't agree and asked for a final decision.

I issued a provisional decision upholding the complaint and in it I said the following:

"I agree subsidence claims can take a long time to investigate, including establishing the cause, getting the property ready for repairs and then for repairs to be carried out. But the insurer is still expected to progress the claim efficiently."

In subsidence claims involving clay shrinkage, where third-party trees need to be removed, it can take longer where the third-party that owns the tree, won't agree to it being removed. I understand this was the case here. But we'd still expect the insurer to carry out the necessary investigation within a reasonable time, and consider alternative options if an agreement can't be reached with the third-party. And I don't think UKI has done this in the circumstances. I'll explain why.

I can see from UKI's report in October 2022, it was already aware the third-party's tree was likely implicated, with the Arborist report in December 2022 confirming this. So I think UKI had since at least December 2022 to gather the evidence it considered necessary, to persuade the third-party to remove their tree. But UKI's notes from March 2024, over a year later, show it still needed further evidence to strengthen its case for the third-party tree removal. And it wasn't until September 2024, nearly two years after the claim was made, that UKI considered it had obtained enough evidence to show the third-party tree was responsible for the damage. I don't consider it was reasonable for UKI to have taken this long to obtain the information it needed.

And despite it still not obtaining the third-party's agreement, and putting the third-party on notice in May 2024, UKI hasn't considered alternative options for mitigating the subsidence and repairing the damage. This is also despite monitoring readings showing continued movement. I don't consider this reasonable in the circumstances.

I understand that monitoring can take a long time, especially when it's carried out to establish the cause of any recorded movement. But given that Mrs H's tree was removed in March 2023, I think one year from this date would've been sufficient for UKI to gather the information it needed, to establish the cause of any ongoing movement, and to present this to the third-party.

Instead, I've seen evidence that monitoring was stopped on at least two occasions. In June 2023, monitoring was stopped on the understanding the ground was stable and repairs could begin. But no repairs took place. Further monitoring was instructed in July 2023 and readings confirmed the ground was still moving. In December 2023, monitoring was stopped once again on the understanding the ground was recovering and further site investigations were being considered. But site investigations didn't take place and instead, monitoring was instructed again in March 2024. I consider it likely the interruptions to the monitoring, without further mitigation or repairs, caused avoidable delay on the claim.

In July 2024, despite it being clear the third-party tree was implicated, the third-party being put on notice for not co-operating, and it being over a year since the last attempt at mitigating the subsidence (removal of Mrs H's tree in March 2023), UKI insisted on carrying out further monitoring. I don't think this was reasonable in the circumstances. I think by this time, UKI had been given enough time to gather the information it needed, and to obtain the third-party's agreement. So I think at this point, it ought to have considered alternative methods to stabilise Mrs H's property so it could proceed with repairs.

In addition to the above, during periods of monitoring, there were other parts of the investigation UKI could have progressed, which I don't consider it did. In December 2022, UKI acknowledged the third-party wanted proof their tree was causing damage. And at that time, it also acknowledged there was a need to instruct site investigations (including things like trial pits and boreholes with soil tests). But despite this, the site investigations were not authorised until October 2023, nearly a year later. And the investigations weren't instructed until April 2025, and not carried out until after this date. UKI acknowledged as early as August 2023 there was a lack of evidence to persuade the third-party, so I think it caused avoidable and unreasonable delay by not carrying out the further investigations, until over two years after it first acknowledged this was necessary.

Overall, it's been well over three years since Mrs H made her claim. And for the reasons outlined above, I consider UKI has had sufficient opportunity to try and persuade the third-party to remove the implicated tree. So I intend to require UKI now to consider alternative solutions to stop the movement caused by this tree, that isn't dependent on the third-party removing it. If UKI wishes to try and claim these costs back from the third-party, it can of course do so.

I agree with the Investigator that UKI did keep Mrs H reasonably updated throughout the claim. But I've explained above why I consider it caused significant avoidable and unreasonable delay in the claim. The evidence I've also seen shows it wasn't until September 2024 that UKI considered discussing temporary repairs of the damage with Mrs H. It's not clear if this was offered at this point, but in any case, I consider UKI ought to have done this much earlier on in the claim. So I think this amounts to poor service.

I recognise of course that UKI isn't responsible for the subsidence occurring in the first place, and these claims can take a long time to progress even if everything goes according to plan. So whilst UKI can't be held responsible for everything that has happened to Mrs H, if the claim had been handled well from the outside, I think it's likely UKI would have addressed the cause of the subsidence and carried out the repairs by around August 2024. So I think it should compensate Mrs H for any loss in the rate of rent she received for the property from that date, compared to a reasonable market rate. This will of course be subject to Mrs H providing evidence of the loss. And because I consider she was unfairly deprived of any difference, I think UKI should add interest to each amount, at the rate of 8% simple per year. For any period before this, UKI has said Mrs H is entitled to claim under the terms of the loss of rent cover under her policy. I will leave it to both parties to discuss this, but this, and any limits under that cover, will be independent of what I intend to direct UKI to do for the period after August 2024.

Mrs H has said the delays have impacted her ability to sell the property and the terms under which she is able to rent it out in the meantime. I have no reason to doubt this. She's also said this caused her significant financial and emotional strain. Given the length of the delays, and the poor service outlined above, I'm satisfied UKI's actions caused Mr and Mrs H substantial distress, upset and worry, over a sustained period. Keeping in mind this was Mr and Mrs H's rental property, I don't think it would have caused serious disruption to their daily life, albeit I accept it would have impacted significantly on their ability to sell, and associated plans. With all of this in mind, I think UKI should pay them £1,000 compensation for the distress and inconvenience caused. So this is what I intend to direct UKI to do."

Mrs H didn't reply to the provisional decision. UKI said it can't be said with any certainty the claim could have been concluded by August 2024. And it said it would expect the loss of rental payments to be evidenced. Finally, UKI said it would be fair for interest on the payments to apply to the date Mrs H provides information substantiating the loss.

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.

I accept it can't be said for certain when UKI would have concluded the claim, but for the delays. But my decision was based on what I consider was likely in all the circumstances. And keeping in mind the claim was made in October 2022, and for the reasons outlined in my provisional decision, I'm satisfied it's likely UKI would have addressed the cause of the subsidence and carried out the repairs by around August 2024.

I also outlined in my provisional decision that UKI's payment for any loss in the rate of rent

Mrs H received from August 2024, would be subject to Mrs H providing evidence of the loss. I see no reason to change what I've said on this point.

On the matter of interest, I accept it wouldn't be fair to ask UKI to pay interest on amounts where Mrs H hasn't incurred any loss. But for as long as Mrs H can evidence loss in the rate of rent she received for the property, I consider she would have unfairly been deprived of that difference for each payment. And interest would only apply to each payment of the difference, from the date Mrs H would have received that month's payment – it wouldn't apply from August 2024 as a whole for each and every payment.

And providing Mrs H doesn't unreasonably delay providing the evidence, I still think it's fair for UKI to pay interest up to the date it pays each respective amount of the difference (the settlement). I say this because it's once UKI has paid Mrs H the difference, that she's no longer unfairly deprived of it. So it follows that interest wouldn't apply on payments for any loss after Mrs H provides the evidence, providing UKI doesn't delay payment (settlement) of each.

My final decision

My final decision is that I uphold this complaint.

Subject to my comments above, I require U K Insurance Limited to:

- Consider alternative solutions to stop the subsidence movement.
- Refund the difference between the rental payments Mr and Mrs H received, compared to a reasonable market rate, from August 2024 onward.
- UKI should add interest to the above at the rate of 8% simple per year, from the date of each payment, to the date of settlement*
- Pay Mr and Mrs H £1,000 compensation for the distress and inconvenience caused.

** If UKI considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs H how much it's taken off. It should also give Mr and Mrs H a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 30 March 2026.

Monjur Alam
Ombudsman