complaint

Mr and Mrs C complain that U K Insurance Limited ("UKI") hasn't underpinned their property. This relates to a claim they made under their Home insurance, following damage caused by subsidence.

background

Initially, the claim was settled by means of one or more trees on Mr and Mrs C's property being removed and the damage to the building being repaired. But, soon after that, more damage occurred. UKI's loss adjusters thought the new damage was caused by trees on neighbouring land. As there was little ongoing movement, UKI decided to settle the claim by arranging the necessary repairs. But yet more damage soon occurred. Underpinning wasn't carried out. Instead, continued attempts were made to get the neighbour to remove the relevant trees. Eventually, the neighbour agreed.

Our adjudicator thought UKI should increase its offer of compensation to a total of £4,500. And it should pay for an expert to decide how the necessary repairs are done. UKI disagreed. I issued a provisional decision. Relatively early in the claim, the loss adjusters were satisfied the neighbour's trees were responsible. So, I thought that, until those trees were removed, a recurrence of damage was foreseeable. A number of years passed before the neighbour agreed to remove the trees. I thought the time taken by UKI to repair the damage was unreasonable. But as the trees had finally been removed, I said it should carry out the remaining repairs as soon as possible. I didn't think it was necessary to involve another expert.

I thought the compensation totalling £3,400 that UKI had offered was fair for the consequences of the long time the matter had taken. But, because UKI pursued the removal of the neighbour's trees, Mr and Mrs C have been left with the possibility that their home will be damaged by heave. The risk of that was thought low, except for the conservatory. Nevertheless, I thought UKI should give an undertaking that, if heave does cause damage, it will pay to repair that damage. And it should also pay fair compensation for the further trouble and upset this causes Mr and Mrs C.

UKI responded to my provisional decision by saying it agreed the repair work should proceed as soon as the loss adjusters considered the evidence showed the damage won't recur. With regard to the undertaking I suggested it should give, it said it would continue to provide Mr and Mrs C with cover against damage by heave.

In their responses, Mr and Mrs C said that, within months of the claim being made, it was known that the neighbour's trees could cause damage. They said UKI didn't act on the recommendation that these trees should be reduced in size. This caused several years of avoidable delays. Also, they said some repaired cracks are starting to reappear, so they're not convinced the removal of the trees has worked. And they suggested it might be better to monitor the situation for a time before proceeding with the remaining repairs.

my findings

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

I've taken account of all that Mr and Mrs C have said. But I remain of the view that compensation of £3,400 is fair for the delays, especially when taken together with the undertaking that I suggested UKI should give.

UKI seems to have misunderstood the nature of that undertaking. I didn't say it should continue to insure Mr and Mrs C's home and include cover against damage by heave. After all, they may not want to continue with insurance from UKI. In fact, I specified that the promise to pay to repair any heave damage that arises from the removal of their neighbour's trees should apply regardless of whether UKI still insures their home at the time.

Having carefully considered the responses, I remain of the view that I set out in the provisional decision. Both parties agree that the necessary repairs should wait until it's clear the property is stable.

my final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend the business to pay the balance.

determination and award: I uphold Mr and Mrs C's complaint. My decision is that U K Insurance Limited should pay:

1. to carry out the necessary repairs as soon as it's been shown that the property is stable;
2. to repair any heave damage to Mr and Mrs C's home that arises from the removal of their neighbour's trees, regardless of whether it still insures the home at the time;
3. fair compensation to Mr and Mrs C for the further trouble and upset any damage as set out in 2., above causes them

up to a maximum payment of £150,000.

recommendation: If the sum payable in respect of 1., 2. and 3, above, exceeds £150,000, I recommend that U K Insurance Limited pays the balance. This recommendation isn't part of my determination or award. It doesn't bind U K Insurance Limited. It's unlikely that Mr and Mrs C can accept my decision and go to court to ask for the balance. They may want to consider getting independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 15 February 2016.

S Lilley
ombudsman