

complaint

Mr and Mrs S have complained that UK Insurance Limited (UKI) is refusing to offer continuing cover for subsidence.

background

The previous owners of Mr and Mrs S's house were insured by UKI and had made a claim for subsidence in 2012/13. Mr and Mrs S completed their purchase of the property in May 2014. They had contacted UKI prior to the purchase to ensure that UKI would be willing to continue to provide insurance, including subsidence cover. UKI was happy to do this in line with good industry practice relating to properties that have had subsidence claims. So Mr and Mrs S took out residential cover.

Mr and Mrs S received confirmation from the previous owner's solicitor that the subsidence damage had been fully dealt with. They also received some paperwork from the previous owner including the schedule of works required and information about how the previous owner had accepted a cash settlement to resolve the claim.

Although Mr and Mrs S had been planning to live in the house, their circumstances changed and they then needed to rent it out. UKI directed them to its commercial arm to provide commercial landlord cover. But it said that it wasn't able to provide subsidence cover under the landlord policy. This was because subsidence cover wasn't offered on properties where there had been a history of subsidence. UKI also said that the property was in a high risk area for subsidence.

Our adjudicator upheld Mr and Mrs S's complaint because he thought that it was unfair of UKI not to offer subsidence cover due to a change of policy type. UKI disagree and so the complaint has been passed to me for a decision.

my findings

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

Mr and Mrs S have said that they either want UKI to provide subsidence cover on their current landlord policy or to provide written confirmation that the repair works for the subsidence were satisfactorily completed. The latter would allow them to get cover with an alternative insurer.

The previous owner's claim for subsidence was accepted by UKI and an assessment of the damage was arranged. Following this, a contractor provided a schedule of works that was required to fix the damage. But the previous owner then opted to settle the claim by agreeing a cash settlement. As such he was then free to arrange to have the work done himself, rather than going through UKI. If UKI had kept responsibility for the work, a certificate of structural adequacy would have been issued afterwards. Whether or not the contractor that the previous owner chose to do the work provided a certificate, UKI doesn't have a copy. It was said that the previous owner should notify UKI afterwards that the work had been done. And UKI continued to provide cover to the previous owner, so it appears that it was happy with the outcome of the situation.

But I can understand why UKI doesn't feel that it is in a position to provide written confirmation that the works were carried out to its satisfaction. Because it apparently doesn't have this information.

UKI says that Mr and Mrs S should be able to get details about this from the company that did the repairs. It's not clear whether the firm that provided the schedule of works then went on to actually complete the works. It has however indicated that it could provide Mr and Mrs S with some more information, but only if it receives permission from UKI to do so. So far, UKI has cited data protection reasons for not giving Mr and Mrs S information that it holds itself about the previous claim. But I don't see why it can't assist them to get it from the contractor.

UKI has said that the commercial policy is a new policy with new terms and so it can't offer subsidence cover. To be clear, UKI's commercial insurance for landlords can include cover for subsidence as an add-on. But it doesn't offer cover to new business customers if their property has a history of subsidence. In this case, as Mr and Mrs S were moving from the residential arm to the commercial arm of UKI and taking out a different sort of policy, they were essentially classed as new customers.

I appreciate that different parts of UKI act as different business entities, but ultimately they are part of the same business. It doesn't seem fair in this case to refuse Mr and Mrs S subsidence cover just because they are moving from one part of the business to another and taking out a new type of policy.

UKI had insured the property under the previous owner. And it had assured Mr and Mrs S that when they bought the house it would continue to provide cover, including subsidence cover. It seems to me that, if when setting up the commercial policy, UKI had classed Mr and Mrs S as existing customers, they wouldn't have fallen foul of its underwriting criteria and cover for subsidence would have been provided.

I think that Mr and Mrs S have been disadvantaged by UKI refusing to offer subsidence cover as part of its commercial landlord insurance. They haven't been able to get alternative cover because any new insurer wants a certificate of structural adequacy or similar – something that Mr and Mrs S have been unable to get from either the previous owner (who has moved abroad) or from UKI. UKI on the other hand, already knows about the property and the previous subsidence claim. The risk in relation to subsidence hasn't changed as a result of Mr and Mrs S changing from a residential to a commercial policy.

UKI can of course use its commercial discretion in deciding not to offer cover to new customers whose properties have a history of subsidence. But it doesn't seem reasonable that Mr and Mrs S should be caught by this just because they are moving their cover from one part of UKI to another. It follows that I uphold Mr and Mrs S's complaint.

my final decision

My decision is that I uphold Mr and Mrs S's complaint. UK Insurance Limited needs to:

- Treat Mr and Mrs S as existing customers for the purposes of their current commercial landlord policy. This will include providing cover for subsidence. UKI can work out what any additional premiums would be and charge Mr and Mrs S accordingly.

- If Mr and Mrs S wish, UKI must agree to offer renewal of the commercial policy, again including subsidence cover.
- If and when Mr and Mrs S wish to move into the property and therefore require residential insurance, they must again be treated as existing customers and offered cover, including subsidence cover.
- Provide Mr and Mrs S with a letter that they can give to the contractor which gives permission for the contractor to release information about any repair works done on the property in relation to the subsidence claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 12 October 2015.

Carole Clark
ombudsman