complaint

Mr and Mrs C complained about the outcome and handling of their claim for subsidence damage to their property made under their UK Insurance Limited (UKI) policy.

background

Mr and Mrs C made a claim for subsidence damage to their property in September 2006. The property had previously suffered damage due to mining subsidence, which was dealt with by the Coal Authority in the mid-1990s.

A loss adjuster (adjuster A) was appointed to consider the damage and determine its cause. It determined that the damage had been caused by the clay beneath the foundations of the property shrinking, resulting in downward movement; i.e. subsidence. It considered that vegetation that had recently been removed by Mr and Mrs C had been the cause of the damage, although a further tree was also removed as it might have been contributing to the clay shrinkage and would likely have been a danger to the property in the future.

Significant discussions and numerous inspections took place regarding the damage that was present to determine what was covered under the insurance policy. Eventually, a schedule of works was agreed upon and works commenced in 2009. This schedule of works did not include all of the works Mr and Mrs C considered should be covered by the claim. Works were completed by summer 2009, other than problems with the drive and having the carpets relayed due to a dispute regarding damage to the carpet underlay.

A few months later, Mr and Mrs C made adjuster A aware of further damage that had become apparent at their property; damp where the damp proof course (DPC) had been replaced and new cracking. It was not until early 2011 that a further inspection of the property was undertaken, at which time it was agreed that additional repairs were needed. Adjuster A, however, maintained its stance on the issues that had previously been decided were not caused by subsidence.

By this time, Mr and Mrs C had moved into a new property they had built. They have confirmed that they intended to rent or sell the property that is the subject of the claim, but weren't able to do so due to its condition. It had subsequently become apparent during the investigation of this complaint that it is more likely than not that the property would have been sold, had this been possible.

A new loss adjuster (adjuster B) took over the claim in August 2011, at which time it confirmed that it would be assessing the claim again and would inspect the property to view the items in dispute. It confirmed, following further investigation, that mining subsidence was involved in causing the damage to Mr and Mrs C's property. However, it did not consider that it had sufficient evidence of this for it to approach the Coal Authority. The final results of its continuing monitoring evidenced that the property was stable and that it had, overall, suffered very little movement or distortion.

In addition, adjuster B identified that there was a damaged drain outside the kitchen, which it arranged to be repaired. It did not consider that this damage had been caused by subsidence and completed the repairs as a gesture of goodwill. Mr and Mrs C were advised that this was the cause of the damp in the kitchen. UKI had ceased to insure the property by this time, so Mr and Mrs C were advised they should make a claim to their then current insurer. However, Mr and Mrs C had not obtained new insurance.

Following this, Mr and Mrs C complained about the extent of repairs to their property, and also about the way in which the claim had been handled. Adjuster B was of the opinion that UKI's liability had been discharged, apart from the driveway and minor plaster works.

During the course of the further investigations completed by adjuster B, the company that had originally installed Mr and Mrs C's DPC confirmed that the works that were completed in 2011 had been completed under the guarantee that had been provided following the works in 2009.

Following much discussion, further works were completed to the property in the second half of 2012. Mr and Mrs C appeared to be happy with these works at the time; however, some of them subsequently failed and adjuster B accepted that they were '*not as robust*' as they should have been. It estimated that re-doing the failed repairs would cost around £2,000 and the drive repairs would cost £8,000; it made Mr and Mrs C a cash offer of £12,500 as a final settlement to the claim. During this service's investigation of the complaint UKI stated that the cost of repairs to the DPC were included in sum offered, although this was not clear from the correspondence from the time.

Subsequently, and prior to any further works being completed, Mr and Mrs C sold the property. They stated that the sale price was lower than it should have been because of the outstanding works that they consider UKI was responsible for.

UKI confirmed that Mr and Mrs C's policy wasn't renewed because it didn't consider that they had co-operated fully with its investigation and settlement of the claim. Mr and Mrs C subsequently confirmed they were told that the policy was cancelled because the property was empty.

Following my first provisional decision, both parties made further submissions. In relation to the damp that was present in the kitchen, Mr and Mrs C repeated that that they believed that this was due to subsidence. They also explained that the new owner of the property had discovered that the damp proof course was intact when the kitchen was stripped out and that the water ingress was through a crack on the inside of the wall, where the external pipe repaired by UKI entered the property. This led them to conclude that both of the damp specialists were wrong about the cause of the damp.

Mr and Mrs C highlighted the change in UKI's position regarding the cause of the subsidence, i.e. that mining was a factor, and that as a result they considered that it was quite clear that both of the loss adjusters were incorrect in their assessments of the full scope of repairs needed. Mr and Mrs C believed that when UKI acknowledged that mining subsidence was involved, it should have accepted all of the damage to the property. They were also of the opinion that they should not have been advised to make a claim to the Coal Authority to cover any aspects of the damage that were not covered by UKI. In addition, the fact that the cause of damage was amended meant that their refusal to accept the conclusions of the loss adjusters wasn't unreasonable.

Mr and Mrs C also alleged that UKI's representatives employed adversarial tactics with both themselves and the contractors appointed to complete works at the property. They also commented about specific areas of repairs being completed poorly. When considering the issues with delays in settling the claim, Mr and Mrs C consider that I should consider the number of times the works were completed and the poor quality of the repairs.

Regarding the cancellation of the insurance policy, Mr and Mrs C confirmed that they cooperated throughout. They were also of the opinion that the continued questioning of the experts had been justified given the cause of the subsidence had been altered later in the process.

Mr and Mrs C confirmed that they had been through the same claim and repair process with the Coal Authority several years earlier, so they understood the timescales involved in subsidence claims. What they hadn't been prepared for were the effects on their health that dealing with the loss adjusters had caused.

Mr and Mrs C confirmed that they moved into their new home in October 2009, at which time they arranged for the property to be valued, with a view to putting it on the market for sale. They, however, delayed doing so while UKI completed the agreed further works to the property that were necessary due to poor repairs. If these works had not been necessary, Mr and Mrs C believed that they would have been able to sell their property within six months of it being put on the market. They stated that they received £65,000 less than the 2009 valuation because of the way that the claim was handled. They asked that UKI be responsible for the costs of establishing their financial loss by the appointment of '*chartered assessors*'. Mr and Mrs C didn't explain what they considered an appropriate chartered assessor would be.

Mr and Mrs C also stated in response to my comments about the potential reasons that the property was not rentable following the 2009 repairs, that the reasons for this were all UKI's responsibility - the damp on the lounge walls, missing skirting boards, carpets that needed relaying, radiators having been removed, plaster repairs being needed and the damage to the drive. As Mr and Mrs C consider that the kitchen damp was also due to the subsidence, any effect that this had on the ability for the property to be rented was also UKI's responsibility. However, they accepted responsibility for the condition of the garden as following Mr C having surgery he had been unable to do as much as previously. The neighbour was paid to mow the lawns and do any heavy work, with Mr and Mrs C completing the lighter-weight maintenance. Mr C said that the stress of the situation with the property contributed to his health problems.

In relation to compensation for non-financial loss, they asked that the '*despicable, dishonest and downright disgusting manner*' in which they were treated be fully considered. They highlighted that they spent eight years in very stressful limbo, not knowing when or if the property would ever be fit to live in. They had also spent years being treated for stress related illness. As such they didn't consider that £2,500 was sufficient to compensate them, although they didn't say how much would be. Mr and Mrs C, however, confirmed that a written '*unconditional*' apology from UKI would go a long way toward appeasing their feelings in relation to this matter.

UKI reiterated that Mr and Mrs C had caused delays with the claim progression, as they had been difficult to deal with and had not been willing throughout to accept the expert opinions, but hadn't provided contradictory evidence. It also confirmed that it had undertaken works that were not related to subsidence in order to move the claim forward, for example undertaking works to a floor that suffered movement due to substandard materials. It confirmed that it was with this in mind that a cash settlement had been offered to Mr and Mrs C in order to draw the claim to a close.

In relation to the damp that was present in the property, UKI stated that the handling engineer had simply acted as an intermediary between Mr and Mrs C and the contractor that

had originally installed the DPC. The purpose of this was to get the contractor to take action under the guarantee for the earlier works.

UKI reiterated that both of the loss adjusters were in agreement about the issues that were in dispute, including the kitchen damage, and that they were not related to the subsidence. It was satisfied that there was no evidence that the kitchen issues were related to the subsidence, despite Mr and Mrs C saying they had evidence to the contrary. It also confirmed that no evidence had been provided by Mr and Mrs C in relation to the overall scope of works to show that it was insufficient.

In relation to compensation for financial loss, UKI commented that a means to complete matters had been available for some time, initially in the form of repairs and subsequently as a cash settlement. As such, it considered that compensation should be a maximum of £1,000.

Following receipt of significant further evidence following my provisional decision, I concluded that the circumstances had changed significantly since the parties had provided the evidence on which I had relied. As such, I issued a second provisional decision. When doing so, I dealt with each of the issues in turn.

UKI's decision to decline to renew Mr and Mrs C's policy

I remained satisfied that it was inappropriate for UKI to have declined to renew Mr and Mrs C's insurance policy. UKI would have been aware of the difficulty that they'd experience in arranging alternative cover having to declare that there was an on-going claim in progress, especially if that claim related to subsidence.

Furthermore, I explained that the decision hadn't followed the ABI domestic subsidence agreement. This meant that an insurer should provide on-going insurance for domestic residences that had suffered subsidence. Although I acknowledged Mr and Mrs C's property hadn't been lived in for some time due to the fact that the repairs not being completed, I considered that UKI should reasonably have continued to consider the property to be a domestic one.

As Mr and Mrs C had sold the property, I was satisfied that they didn't require the policy to be reinstated. So no action in respect to this issue was required of UKI. However, I did consider the concern this matter had caused Mr and Mrs C when I determined my award for non-financial loss.

cause of loss and scope of repairs

Mr and Mrs C had maintained from the beginning of their claim that the damage to their property was caused by mining subsidence. UKI accepted at a late stage that mining subsidence was involved in the movement that had been suffered by the property. I didn't consider that the time it took for this determination to be made was ideal and that it would have been appropriate for the investigations to include a geotechnical expert much earlier.

I also pointed out that it would be usual for a drainage survey to be completed at a relatively early stage of a claim, as adjuster B had done. As such, I considered that the damage to the drainage outside the kitchen should reasonably have been identified at an early stage of the claim.

Mr and Mrs C had said that they considered that it was inappropriate for UKI to tell them to make a claim to the Coal Authority for the damage to their property that UKI would not accept. I admitted to being at a loss to understand this advice. Given that UKI was confident that it had included all of the subsidence damage in the scope of works, there appeared to have been no benefit to Mr and Mrs C making a claim elsewhere. The only possible benefit would be to UKI, as if a claim made by Mr and Mrs C were accepted, any funds paid out under that claim would revert to UKI, not to Mr and Mrs C. It seemed to me that the purpose of this advice was for UKI to attempt to reclaim its expenditure without having to enter into legal action. I didn't consider that this was appropriate.

I went on to explain that although all of the causes of the subsidence were not identified earlier in the claim, this would not have made a material difference to the scope of repairs An insurer is responsible for repairing the damage caused by subsidence, irrespective of whether the subsidence was caused by mining, clay shrinkage, poor soil strength, an escape of water or a combination of more than one. UKI had assessed the property and identified the damage it considered to have been caused by subsidence. The fact that Mr and Mrs C weren't happy to proceed on that basis, seeming to believe that if it was accepted that mining subsidence was affecting the property that a wider scope of repairs would be agreed, wasn't in my view reasonable.

I also clarified, in light of Mr and Mrs C's response to my first provisional decision, I didn't consider that, when UKI accepted that mining subsidence was a factor in the damage, it should have accepted all of the damage was caused by subsidence. I said this as subsidence will become apparent in physical ways that are easily identifiable. It was not unreasonable for UKI to decline to deal with damage that was not consistent with the movement of the foundations beneath the property when it attempted to settle the claim.

One of the main areas of contention in this case had been the damp issue; firstly whether the damp in the kitchen was caused by the subsidence and secondly which party was responsible for the failure of the DPC in the hallway and lounge. I consider the second of these issues first.

I was satisfied that the evidence was clear that Mr and Mrs C had damp-proofing works completed to these areas prior to the subsidence. UKI was intimating that the DPC failed due to reasons other than subsidence and its representatives simply acted as an intermediary in getting the damp contractor to complete works under the guarantee. However, I was satisfied that the adjuster A had accepted that the damage to the DPC in the main house was due to the subsidence and had arranged for repairs to be completed and paid for by UKI in 2009. Whilst some later works may have been done under the guarantee given for the 2009 works, I didn't consider that this negated UKI's responsibility for the problem. I concluded that UKI should have arranged for any further works necessary when it was notified of the failure.

In relation to the damp in the kitchen, I confirmed that the damp experts had concluded that it was rising damp. Also that UKI had identified no movement or subsidence damage to the walls in that room. As such, I didn't consider that it was unreasonable for this as this issue not to be dealt with under the claim.

I went on to highlight that the adjuster B had confirmed that the damage in the kitchen was directly linked to the leaking drain that was discovered outside the kitchen. It had also told Mr and Mrs C that they had a valid insurance claim for that damage.

I noted Mr and Mrs C's comments on this matter, in which they had recounted what they were told by the new owners of the property. Whilst I accepted that this is what they had been told, neither this service nor UKI have been provided with any evidence of the reported damage in the form of photographs or independent expert evidence. In the absence of such evidence, I was unable to find that UKI's conclusions about the cause of damage were incorrect.

In relation to the drive repairs, all parties had accepted that the repairs were not completed correctly. When UKI required the contractor to address this issue, rather than completely re-doing the works, it put forward an alternative of resurfacing the drive. Whilst Mr and Mrs C appeared happy with this way forward, the rectification works were never completed. I also noted that for a period, UKI took the stance that this was for Mr and Mrs C to sort out directly with the contractor, which I considered was entirely inappropriate. The substandard repairs were completed on UKI's behalf and, as such, it remained responsible for those works. I also pointed out that whilst UKI did eventually make Mr and Mrs C a cash offer in this regard, it was based on a quote for resurfacing the drive, rather than for completely re-doing the poor quality work.

In relation to the damage to the roof and chimney, photographs of the damage that was relatively recently present were assessed by UKI's engineer. It was determined that the damage was not consistent with that which would be caused by subsidence. Rather, it was gradual deterioration and, therefore, was a maintenance issue. Although Mr and Mrs C did not accept this, I again had seen no expert evidence that contradicted the engineer's findings. As such, I was unable to conclude that it was inappropriate for UKI to decline to include these works within the subsidence claim.

I noted that UKI made Mr and Mrs C a cash settlement offer for the outstanding repairs it accepted liability for, including the plaster and decorative works. As it had elected to repair the property and accepted that the repairs it did were not of an appropriate quality, I pointed out that it remained liable to complete the repairs to a satisfactory level. However, as the property was no longer available to repair, I proposed that Mr and Mrs C's loss be established by an assessment of whether the property value was lower than it would otherwise have been, had the repairs been completed to a satisfactory standard.

<u>delays in settling the claim and poor service</u>

I reiterated that subsidence claims will often take a significant amount of time to resolve as there are often many investigations to be completed to establish the cause of damage, the stability of the property and what works need to be done. Mr and Mrs C had confirmed that they were aware of this when the claim was made. However, I was satisfied that the claim had gone on for several years longer than it should have and was still not resolved when the property was sold.

I had previously expressed the opinion that there were delays caused by both of the parties and both objected to that conclusion. Having reviewed all of the correspondence, communication records and event logs in this case I remained of the view that both parties contributed to the delays. Furthermore, I was also satisfied that there were additional service issues, such as, but not limited to, UKI denying responsibility for repairs that had been completed unsatisfactorily on its behalf.

Whilst the poor service and communication were a matter for me to consider in relation to compensation, I also believed that delays that occurred should be factored into the assessment of financial loss suffered by Mr and Mrs C.

losses associated with renting/selling the property

Mr and Mrs C had said that they intended to either rent of sell the property following the completion of their new home. They had provided confirmation that they moved into their new home in 2009 and that following the completion of the 2009 repairs, they arranged for a valuation of the property to be undertaken, with a view to selling it. Mr and Mrs C had also confirmed that they didn't go forward with marketing the property because of the poor quality of some of the repairs that had been undertaken. I considered that this was entirely plausible in the circumstances and as such, I was persuaded that, but for the problems with this claim, Mr and Mrs C would have placed their property on the market for sale once the repairs had been completed to a satisfactory standard.

I concluded that it was obvious that, had the property been placed on the market following the 2009 repairs, it would have sold several years before it did. It followed that had the property been sold at an earlier date, Mr and Mrs C wouldn't have had to pay out to maintain the property. This would include any property maintenance costs, including the garden, utility bills and council tax.

redress

I considered that the most appropriate way to determine Mr and Mrs C's loss would be to assess what the value of the property would have been at the point of sale, had the repairs that UKI was responsible for been completed. I also concluded that that had the repairs been completed to a satisfactory standard the first time they were attempted, it was likely that the property would have been placed on the market following the 2009 repairs.

In addition, I considered the matter of the kitchen damage further. The adjuster B confirmed that the leaking drain was repaired as a gesture of goodwill and that the kitchen damage was as a result of that leaking drain. Mr and Mrs C were told that their then current insurer should be approached to have this damage repaired. As such, reasonably, UKI can be held responsible for the damage to the kitchen caused by the escaping water as it should have been the insurer at that point.

However, I noted that the damaged drain was not identified until some time after the 2009 repairs were completed; it was discovered by adjuster B when it was reviewing the cause of damage. In light of this, and the fact that it is common practice for drainage to be checked when a subsidence claim is made, I considered that had the initial investigations been more complete in 2006/2007, this damage is likely to have been identified at that time. Therefore, it appears that the kitchen damage (subject to a further claim being made) would reasonably have been covered by the policy at the same time as the subsidence claim.

It was not possible to be sure of whether Mr and Mrs C would have made the additional claim. However, I believed that if this would have placed them in a better position when selling their property, it was more likely than not that they would have made a pragmatic choice and made the claim.

Therefore, I proposed that the first stage of the loss assessment would be to establish when it was likely that Mr and Mrs C's property would have sold (received an offer) if it had been

ready to sell following the 2009 repairs. Given the changes in the housing market over the last few years, I didn't consider that it would be appropriate for the same timescales that applied to the sale that completed in 2014 to be applied to a sale in 2009/2010. The appropriate process would involve research with estate agents local to the property to establish how long, based on their experience properties of that type (which had previously suffered from subsidence) were taking to sell at that time. This would produce a hypothetical sale date. For the hypothetical completion date, three months should be added to the hypothetical sale date.

UKI should then commission a surveyor experienced in property valuation. If the individuals who bought the property had it valued, I pointed out that it might be sensible of UKI to use that surveyor, as it would have a good level of knowledge about the condition of the property at the time of the actual sale. The surveyor was then to assess the value of the property with the repairs that UKI was responsible for completed (including the kitchen being dry and repaired), as at the hypothetical date of sale. This would produce the hypothetical sale value.

Mr and Mrs C's loss was to be established by the following calculation:

a) hypothetical sale value plus interest at 8% simple per annum from the hypothetical completion date to the actual completion date; less

b) the actual sale value in 2014; plus

c) interest on the resulting sum at 8% simple per annum from the actual completion date to the date of settlement; less

d) the excess that would have been charged for the claim for the damage to the kitchen.

In addition, I considered that UKI should refund to Mr and Mrs C any costs they incurred in maintaining the property after the hypothetical completion date. Such costs were to include utility bills, council tax charges and insurance premiums. Interest at 8% simple per annum would be added to these costs from the date they were paid to the date of settlement. Mr and Mrs C were to be responsible for providing UKI with appropriate evidence.

Mr and Mrs C had mentioned that they sold their holiday home for less than its true value due to the financial burden of maintaining the property subject to the claim. I considered that this was a potentially serious matter and if Mr and Mrs C could evidence both the loss and the reasons for it, UKI may well be responsible for that loss. However, it wasn't something that UKI had had the opportunity to consider, which it was entitled to prior to this service becoming involved.

I explained that if Mr and Mrs C wished UKI to consider this matter further, they would need to provide evidence of the sale, that the property was sold below market value and that this was because of the cost of maintaining the above property, including evidence of the resultant funds being used to subsidise these maintenance costs.

I reiterated that I considered that Mr and Mrs C had suffered a considerable amount of inconvenience and distress due to the duration and handling of their claim. I also concluded that both parties were responsible for some of the delays and problems that occurred and I had to take this into account when determining any compensation that was warranted. Having carefully considered the matter again, I remained satisfied that the sum of £2,500 was appropriate, based on the evidence I had been provided with.

Mr and Mrs C had asked that UKI apologise for its poor service in this matter. Having considered this request, I didn't consider that this was an unreasonable request. As such, I required that a suitably senior member of staff at UKI write to Mr and Mrs C and apologise for its poor handling of the claim.

Mr and Mrs C responded to my second provisional decision and provided copies of correspondence with adjuster B and photographs. They have said that they don't consider that a second excess should be deducted from any settlement as they have already paid a £1,000 excess on the subsidence claim. They also highlighted that the cheque that they provided for the excess was cashed earlier than promised.

In addition, Mr and Mrs C consider that adjuster A failed in its duty of care toward them when assessing the damp in the kitchen and its cause. They indicated that they still believe that the damp in the kitchen should be considered as part of the subsidence claim. In addition, they have alleged that at the time the repairs were first undertaken, UKI's representatives completed some works in the kitchen in order to hide the evidence of structural movement. Also, they believe that UKI only arranged for the DPC to be examined in the areas where it was still under warranty.

Mr and Mrs C made further comments about the scope of works completed by UKI. They also disagreed that some works that it had completed to the property were done as a gesture of good-will – they believe that they were necessary due to the movement of the building.

Mr and Mrs C also said that my conclusion that they contributed to the delays is unfair and untrue. They would like clarity on how I came to this conclusion. They went on to explain where they considered the main delays occurred and why they believe that they are entirely down to UKI.

Mr and Mrs C commented in some detail about the redress proposed. They put forward a '*simpler*' method of calculation and suggested some assumptions that should be made about values and dates.

Finally, Mr and Mrs C asked for the compensation payment to be reconsidered. They commented on the factors that I should consider and suggested that £25,000 would be a more appropriate amount.

UKI confirmed that it agreed that had there not been problems with the repairs to the property, that it was likely that Mr and Mrs C would have marketed it in 2009. It informed me that the property had been marketed in 2010 in its unrepaired condition, and speculated that the reason it did not sell at that time was because Mr and Mrs C had over-priced it. It put forward considerable comment about the value of the property at various points and explained how it considered that Mr and Mrs C's loss should be calculated. In addition, it considers that as the only reason that the property did not sell in 2010 was because of Mr and Mrs C's unreasonable expectations about value; my conclusion about it being liable for the maintenance costs to the point of the actual sale should be reviewed.

In addition, UKI provided an explanation of the reasons it would refer a consumer to the Coal Authority. The first of these reasons did not apply at the time UKI referred Mr and Mrs C to the Coal Authority. The second is where the nature of the damage is consistent with subsidence and the circumstances in which it occurred might be subsidence. In such

circumstances, it would be for the Coal Authority to prove that it was not subsidence damage, rather than for the consumers to prove that it was.

my findings

I have considered all the available evidence and arguments, including the most recent submissions from the parties, to decide what is fair and reasonable in the circumstances of this complaint.

I believe that the first point I should address is Mr and Mrs C's belief that further action should be taken against UKI to '*protect other customers*' who do not have the determination they have. This service is not the industry regulator, but rather a complaint resolution service. We consider individual complaints. Should Mr and Mrs C feel that there are matters that they believe that the regulator should consider, they can refer their concerns directly to it. The regulator is the Financial Conduct Authority.

Mr and Mrs C have said that they don't believe that they should pay an additional excess for the repairs to the kitchen to be taken into account when settlement is calculated. However, as the repairs needed were not caused by the subsidence, but rather an unrelated escape of water, they would have been covered by a separate claim. Under the policy terms and conditions, an excess is payable for each claim. Therefore, I remain satisfied that it is appropriate for the excess applicable to an escape of water to be deducted from any settlement made.

I have considered Mr and Mrs C's comments about UKI having only limited areas of the DPC examined – those still under warranty. The implication being that UKI did not intend to pay for any repairs to the DPC. I have seen no documentation from the time that indicates that this is the case. Furthermore, the fact that UKI paid for works to the DPC in 2009 does not support Mr and Mrs C's suggestion.

As for Mr and Mrs C's statement that the repairs completed in 2009 were designed to hide evidence of movement in the kitchen, I am not persuaded that this is the case. UKI had determined that the kitchen had not suffered any movement long before any repairs were carried out.

Whilst I have noted Mr and Mrs C's comments about the scope of repairs, my conclusions remain the same. Mr and Mrs C have specifically highlighted the issues regarding the roof and parapet walls. I would confirm that the comments I made in my second provisional decision about the damage in these areas were based on the most recent assessment of the damage present at the time. I would also comment that the photograph of the damage to the exterior kitchen wall that Mr and Mrs C provided, which they believe evidence subsidence cracking, appears to show general deterioration of the mortar between the brick courses, not subsidence cracking.

UKI explained why it referred Mr and Mrs C to the Coal Authority. The first of these reasons is not applicable as it is because it would involve the policyholder disagreeing that the cause of the subsidence being mining and refusing to allow repairs.

The second reason is where the policyholder would be better served by submitting a claim to the Coal Authority because the onus of proving the damage was not caused by subsidence is on the Coal Authority, rather than the policyholder having to prove that it was. However, I

note that this is for situations were there is a question over whether the damage is subsidence damage, when that damage is consistent with that caused by subsidence.

In Mr and Mrs C's case, there was no question about whether the damage to the main part of the property had been caused by subsidence and UKI accepted liability for all of that damage. In relation to the kitchen damage, there does not appear to be a question that the type of damage caused was consistent with subsidence. As such, it does not appear that circumstances of the claim were such that a referral to the Coal Authority was the appropriate advice for UKI to have given to Mr and Mrs C.

Mr and Mrs C have asked me to clarify why I have come to the conclusion that they contributed to the delays. An example of this is that Mr and Mrs C spent a considerable amount of time arguing that the cause of the damage was mining subsidence rather than having been caused by clay shrinkage. Whilst UKI eventually accepted that previous mining may have contributed to the subsidence, this was a needless distinction as it would never have altered the scope of the works needed to repair the property.

I have noted all of the comments both UKI and Mr and Mrs C have made about the calculation to establish whether Mr and Mrs C have suffered a loss due to the delays and poor repairs. The suggestions made by the parties are rather different and I do not believe that either would be happy with those suggested by the other. Although I understand the points that both have made, I remain satisfied that it is appropriate for the loss to be calculated as I have described above, as it will be established based on independent opinions, rather than assumptions made by one or the other involved party.

UKI has asked that I review my conclusion that Mr and Mrs C should have the maintenance costs refunded because it has assumed that the property would have sold in 2010, had Mr and Mrs C been more realistic about the value of the property. UKI has not provided any evidence relating to why the property did not sell in 2010, such as information from the marketing estate agent. As such, I do not consider that it is appropriate to make any assumptions about why it did not sell. Indeed, I consider that it is as likely that the property did not sell because it had suffered two bouts of subsidence; such properties will usually take longer to sell than an equivalent that has not suffered subsidence and it may simply have not been on the market for long enough to do so.

Overall, I remain satisfied that the loss calculation I proposed was the appropriate one and that UKI should be responsible for any costs that Mr and Mrs C paid out for the period after the property sale is likely to have completed, had the 2009 repairs been done to an appropriate standard and the kitchen repairs due to the escape of water had been made.

I considered the further comments Mr and Mrs C have made in relation to the loss they have stated they believe UKI is responsible for in relation to their holiday home. They have also now mentioned that they also sold a rental property to provide them with funds. As I said in my provisional decision, it is for Mr and Mrs C to evidence any such loss and that this was incurred as a direct consequence of needing to maintain the property that was subject to the claim. It is also entirely at their discretion whether to pursue this loss with UKI.

my final decision

My final decision is that I uphold this complaint in part. I require UK Insurance Limited to:

- complete the loss assessment detailed above to determine Mr and Mrs C's loss on the sale of the property;

- pay Mr and Mrs C any costs they incurred due to maintaining the property after the hypothetical completion date, plus interest at 8% simple from the date of payment to the date of settlement. This is subject to Mr and Mrs C providing evidence of these costs;

- pay Mr and Mrs C £2,500 for the inconvenience and concern the poor handling of the claim caused them;

- send Mr and Mrs C an apology for the poor service they received during the course of their claim, as detailed above; and

- assess if it has any liability for any losses Mr and Mrs C suffered on the sale of their holiday home, if it is asked to do so. Mr and Mrs C will need to provide all appropriate evidence.

If UKI considers that it is required to deduct tax from any of the interest elements of the redress, it should supply Mr and Mrs C with a tax certificate to enable them to reclaim the tax if appropriate.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs C to accept or reject my decision before 27 April 2015.

Derry Baxter
ombudsman