

The complaint

Mr and Mrs B complain about U K Insurance Limited trading as NIG Insurance's decision to void their buildings insurance policy and in turn, decline a claim for subsidence.

Any reference to UKI includes the actions of its agents. As Mrs B has been leading on this complaint, I've referred to her throughout my decision.

What happened

The circumstances of this complaint are well known to both parties, so I've summarised events.

- Mrs B had a buildings insurance policy which was underwritten by UKI. She originally took the policy out through a broker in 2018. In August 2020, she renewed the policy directly with UKI – at which time she completed a statement of fact about her property.
- Towards the end of 2021, Mrs B made a claim on her policy having noticed cracks in her property. UKI's surveyor attended and said:

"[...] my preliminary report shows what appears to be a previous repair to the gable elevation at the junction of the main house which I would consider to likely be pre-inception. However, apart from this there was no evidence of previous repairs to the cracking to indicate this has been a long-standing issue."

"[...] Looking at photographs there is little evidence of damage with the exception of the cracking at the junction of the main property and rear extension / outrigger and cracking in an internal alcove. It would appear they may have [been] evidence of some damage but the majority is recent in nature."

- UKI said Mrs B had carelessly provided information by answering "yes" to the question *"Is the property maintained and in a good state of repair?"* – saying there were signs of subsidence damage at the time the policy was inception. It voided Mrs B's policy, refunded the premiums, and said it wouldn't cover the claim.
- It added that Mrs B had answered "no" to the questions *"Are there any trees within 10m of the property?"* but its surveyor had noted the presence of several large deciduous trees towards the side and rear of the property which were within 10 metres of the property. And had it known about the trees it wouldn't have offered the same level of cover. It said Mrs B also hadn't removed a horse chestnut tree as advised to do so by her surveyor at the time of buying her property in 1995.
- Unhappy with UKI's decision, Mrs B brought a complaint to this Service. An investigator considered it and upheld the complaint.

- In summary she was satisfied it was reasonable for Mrs B to have answered “yes” to the question *“is the property maintained and in a good state of repair”*, and so, she didn’t consider it fair for UKI to void the policy on this basis.
- She explained that whilst there were trees within 10 metres of the property, UKI hadn’t shown why Mrs B wouldn’t have been provided with a policy had she disclosed this – which it needed to do to show Mrs B had made a qualifying misrepresentation. So, she said UKI’s decision to void the policy on this basis wasn’t fair either.
- The Investigator recommended UKI pay £750 compensation to recognise the stress Mrs B experienced due to her home being uninsured after the policy was voided, the worry of seeing the damage worsen, and the delay caused by UKI unfairly voiding the policy and in turn, delaying the claim.
- UKI disagreed with the Investigator’s findings and so, the complaint has been passed to me for an Ombudsman’s 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.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer must show it would have offered the policy on different terms or not at all if the consumer hadn’t made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

UKI has said Mrs B acted carelessly and failed to take reasonable care not to make a misrepresentation when she *answered “yes” to the question “Is the property maintained and in a good state of repair?”* and “no” to the question *“Are there any trees within 10m of the property?”*. It says the former is the principal reason for voiding the policy and declining the claim. But for completeness, I will address both as part of my decision.

But before I do, UKI has since accepted Mrs B did remove the horse chestnut tree - in line with her pre-purchase surveyor’s advice – and so, it’s no longer relying on this to justify its position. And I don’t need to consider it further.

The first issue to consider therefore, is whether Mrs B took reasonable care not to make a misrepresentation when answering the question *“Is the property maintained and in a good state of repair?”*

To decide this, I’ve looked at UKI’s surveyor’s report and subsequent comments, what Mrs B has said about her property including its previous history of subsidence and the remedial work in respect of this, the property’s condition when listed for sale in November 2020, together with the pre-purchase survey.

Notably the surveyor's report from when the property was inspected in November 2021 says that overall, the property is in "*reasonable condition*" – which doesn't support UKI's conclusion that the property hadn't been maintained and was in poor state of repair.

In subsequent correspondence the surveyor explains there was no evidence to suggest repairs had been attempted to the crack damage he saw – which had there been, would have supported it was a long-term issue. And, in his opinion, the photos from the property's sale listing show "*little evidence of damage*" with the exception of "*cracking at the junction of the main property and rear extension / outrigger and cracking in the internal alcove*" – which he said indicated the damage was recent. These findings in my opinion, don't paint a picture of a property which hasn't been maintained and is in a poor state of repair. Especially when I consider that UKI has itself said Mrs B's home was aesthetically well maintained.

Whilst the property listing shows crack damage in one room, I agree with the Investigator that this alone isn't evidence of the property having not been maintained. Especially when I consider that Mrs B had carried out the recommended remedial works relating to the subsidence (which was present at the time of purchasing the property), had felled the horse chestnut tree as advised, along with the surveyor and UKI respectively recognising the property was overall in a good condition and maintained.

Ultimately, it's for UKI to prove the information Mrs B provided was incorrect but based on what I've seen I'm not satisfied it has done that and so, I'm more persuaded Mrs B took reasonable care and didn't carelessly misrepresent information. Meaning CIDRA doesn't apply, and I don't consider UKI's decision to void the policy and decline the claim based on a qualifying misrepresentation to be fair and reasonable in the circumstances.

Did Mrs B misrepresent information regarding the distance of trees to her property?

It doesn't appear to be in dispute there are trees within 10 metres of Mrs B's property – and so, it's reasonable UKI has concluded Mrs B misrepresented information when answering "no" to the question "*Are there any trees within 10m of the property?*". But UKI needs to show it would have done something differently had it known this information at the time of agreeing cover - and for the information Mrs B gave to be considered a qualifying misrepresentation.

UKI has told us that if Mrs B had answered "yes" she would have been required to fill in a subsidence questionnaire and this would have been considered along with its underwriting criteria. The questionnaire asks if there are any trees or shrubs within 20 feet of the building and if they are more than 10 feet tall. If they are, then details regarding the type of tree, its height and distance from the property are required.

UKI had also provided underwriting information which explains several factors would have been taken into consideration – such as the size of the tree, the distance from the property, the type of property, and the composition of the soil the property was built on. So, it seems its decision to provide cover would be dependent on the specific circumstances.

And whilst UKI has *told* us it would not have offered cover had it known about the trees along with the property having suffered subsidence before, it hasn't *shown* how it reached this decision with specific reference to Mrs B's trees – despite being asked to provide this several times.

Given the information it has provided suggests it would have taken an individualised approach – it ought to be able to *show* why Mrs B's trees would have led it to offer different cover, or no cover at all.

UKI has said the trees were in 2-3 metres from the property and were evergreen and that this, along with the previous subsidence, means UKI wouldn't have provided cover – but given the underwriting information requires greater detail than this (with reference to the type of tree, expected growth, soil composition) when determining if cover is to be provided, I'm not persuaded, without first hand evidence from the underwriter about Mrs B's particular trees, that UKI has sufficiently shown cover wouldn't have been offered.

Because of this - there is no remedy under CIDRA for it to take any action. And as there's no qualifying misrepresentation, I don't consider UKI's decision to void the policy and in turn decline the claim to be fair, and so, I'm upholding this complaint.

Compensation

Understandably, being without insurance for her property has been a great worry for Mrs B and the difficulty in finding alternative cover has been a stress for her. This has no doubt been compounded by the fact she's been living in a property where the damage has worsened over time, and she's had the overriding concern of not knowing if and when her property will be repaired.

As I'm satisfied UKI unfairly deemed Mrs B to have made a qualifying misrepresentation, it in turn caused and avoidably delayed the handling of her subsidence claim and has unnecessarily prolonged the distress and inconvenience she's experienced. And so, it needs to recognise this by paying compensation – and I agree with our Investigator that £750 reasonably reflects the difficulties Mrs B has experienced.

My final decision

My final decision is I uphold this complaint and direct U K Insurance Limited trading as NIG Insurance to:

- Reinstate Mr and Mrs B's policy from the time it was cancelled so continuous cover remains in place. Mr and Mrs B will be required to pay the premiums for the time they would have been covered had the policy not been voided.
- Consider the subsidence claim under the policy.
- Pay £750 compensation. UKI must pay the compensation within 28 days of the date on which we tell it Mrs B and Mr B accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 28 December 2023.

Nicola Beakhust
Ombudsman