

The complaint

Mrs S complains U K Insurance Limited ["UKI"] unfairly declined a claim she made on her buildings insurance following damage to a wall in the garden of her property.

What happened

UKI is the underwriter of this policy, i.e. it's the insurer. Part of this complaint concerns the actions of its agents for which UKI has accepted accountability. Any reference to UKI includes the actions of its agents.

The background to this complaint is well known to the parties, so I have provided a summary here.

- Mrs S owns a property insured under a buildings insurance policy underwritten by UKI. Mrs S reported to UKI her garden wall had been damaged - she said she wanted a fence as a replacement for the wall.
- She provided UKI with a photo of the damage together with a quote for the fence and her contractor's opinion that the damage was as a result of adverse weather. UKI accepted the claim under the storm damage peril.
- It asked for further information to validate the claim but this took some time so it made a settlement offer of £2,500 to replace the damaged section of wall. Mrs S didn't think she'd be able to get the work done for this figure so asked UKI to instruct its own contractor instead.
- The contractor attended the property but decided the damage wasn't as a result of adverse weather but due to subsidence caused by vegetation. UKI reviewed the report and agreed the damage wasn't caused by a storm. It let Mrs S know the claim wouldn't be covered as the policy excluded damage caused gradually and subsidence claims for walls where the main property wasn't damaged at the same time by the same cause.
- Mrs S complained and UKI maintained its position but did pay Mrs S £250 for the delays in receiving the contractor's findings and report. Mrs S remained unhappy and raised a complaint with is Service.
- Our Investigator considered all the evidence but, ultimately, she didn't uphold the complaint and thought the £250 UKI had already paid was fair in the circumstances. So Mrs S asked an Ombudsman to make a 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.

- When a policyholder makes a claim on an insurance policy, the onus is on them to show the claim is covered under the policy terms. When an insurer relies on an exclusion or policy condition to decline a claim, the onus is on it to show the exclusion applies. I'll be reviewing this complaint in the light of this principle, while keeping in mind what I consider to be fair and reasonable.
- UKI has declined the claim and said the following exclusion and policy condition apply:
 - *"This policy doesn't cover*
 - *Any damage caused gradually*
 - Your buildings are covered for loss or damage caused by*
 - ✓ *Subsidence or heave of the site on which your home stands or landslip*
 - This includes cover for:*
 - ...
 - *outdoor swimming pools...garden walls, gates or fences – but only if your home is damaged at the same time by the same cause".*
- So I've considered the evidence to see whether I think UKI has declined the claim fairly and in line with these policy terms.
- Mrs S declined UKI's settlement offer and asked it to appoint contractors to undertake the remedial work. The contractors undertook a site inspection and concluded the wall had been damaged by subsidence, not by a one-off storm event. Having carefully considered the report and accompanying photographic evidence, I'm persuaded by these conclusions.
- Subsidence by its nature, happens gradually so I'm satisfied UKI has acted fairly when it said the exclusion detailed above applies.
- Additionally, I've not seen anything to indicate Mrs S's home was experiencing subsidence - and as the policy only covers damage to garden walls where the home experiences subsidence at the *same time* and by the *same cause* - I'm satisfied there's no cover for the damaged wall under the above policy terms.
- I acknowledge UKI initially made a settlement offer to Mrs S, based on the information it had available at the time. It's not unusual or unreasonable for an insurer to ask for additional information when validating a claim or to reassess its approach to settling the claim when an investigation reveals a different cause than the one that was first assumed.
- While I acknowledge this change in position would have been disappointing for Mrs S, it wouldn't be fair or reasonable to direct UKI to pay the claim because of this. It's clear – based on the evidence I've seen - the cause of the damage isn't an insured peril and is excluded under the policy terms. So, I'm satisfied UKI acted fairly and in line with the policy terms when it declined the claim.
- That said, I think UKI should have advised Mrs S of its change in position more quickly than the six or so weeks it took due to delays with its contractor. And it generally could have handled this claim much better than it did. It has accepted this, apologised and paid Mrs S £250. Taking everything into account, I think this amount fairly reflects the inconvenience its poor handling and delays caused Mrs S. I

acknowledge Mrs S doesn't agree, but I'm satisfied it's fair and reasonable in all the circumstances. So, I won't be asking UKI to do anymore.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 18 August 2023.

Paul Phillips
Ombudsman