

The complaint

Mr and Mrs C have complained about their property insurer UIA (Insurance) Limited regarding a subsidence claim.

What happened

Mr and Mrs C's home was subject to subsidence movement in 2008, their insurer at the time repaired the property, with some underpinning work, to achieve stability, being undertaken.

In 2019 Mr and Mrs C found further cracks at their property. They were understandably concerned and, in August 2019, contacted UIA. UIA sent loss adjusters to the property in September 2019 and at the end of the year decided further investigations, such as level monitoring and drain surveys, were needed. But it was considered, with the soil in the area known to be shrinkable clay, that a tree, owned by the local authority, on the pavement outside Mr and Mrs C's home, was likely causing subsidence. The tree had been reduced in size in 2019. The local authority was contacted with a view to putting it on notice that UIA expected it to remove the tree.

However, by the end of 2019 Mr and Mrs C had become frustrated with the on-going process, they were concerned about having to pay the excess, for what they thought was a continuation of the 2008 movement and they were worried about living with the cracks.

In January 2020 UIA wrote to Mr and Mrs C. It said there was a process that had to be followed in order to be able to get the local authority to remove the tree, and it wouldn't do any repair at the property until the tree was removed or reduced. It thought the cracks were not a concern in terms of health and safety. UIA said the cracks were in a different area to that caused in 2008, so it was a different instance of movement, meaning a new claim had to be recorded with a new excess payment being required.

Also in January 2020 the local authority denied any liability. Ash tree roots had been found under the property, and the tree on the pavement was referenced in correspondence to the local authority as an ash. The local authority said it had no ash trees in the area. The species of the tree was subsequently corrected by the arborist to "lime" and the local authority was advised lime roots had been found. The local authority's objection then moved on to what the monitoring results were showing. In May 2021 the local authority said it thought there was an overall trend of rehydration rather than downwards movement. It would not be persuaded to remove the tree.

Monitoring at the property continued until December 2021. UIA was then satisfied it was stable and thought repairs could start in March 2022. Contractors were subsequently instructed and visited the property in May 2022 to compile a schedule for repair. The schedule was being discussed during the summer when Mr and Mrs C became concerned that further movement was occurring. In August 2022 it was agreed to hold works for a while "so the property stabilises" and the front door was repaired as it had become unopenable. But by October 2022 the adjuster was advising repairs could safely go ahead, with Mr and Mrs C unhappy because they couldn't understand how that could possibly be the case when the tree had not been removed.

In November 2022 UIA issued a final response to Mr and Mrs C. It said that as they were concerned about stability it would do some further monitoring (which resumed in January 2023). But it said, based on the previous monitoring results there was no pattern of on-going downwards movement. It said that meant it had no cause to make the local authority remove the lime tree. In March 2023 Mr and Mrs C complained to the Financial Ombudsman Service.

Our Investigator felt UIA had made a reasonable decision to go ahead with works without the tree being removed. Although she thought it should have managed their expectations better about how that enquiry might progress and what the outcome might be. So, for that failure, she thought UIA should pay Mr and Mrs C £150 compensation.

Mr and Mrs C were dissatisfied. They said they believed the tree had to be removed, given the evidence which had been gathered when the local authority were told to remove it. They said tree roots were found under their house in the area of damage – so there's no doubt that's the cause. They submitted further evidence. Our Investigator confirmed that most of that had already been presented by UIA. She said she wasn't minded to change her view. The complaint was referred to me for an Ombudsman's decision.

I felt UIA had caused some delays and that it had failed Mr and Mrs C by looking to move to repairs. So I issued a provisional decision to explain my views in those respects, along with what I think is required to put things right. My provisional findings were:

"It was August 2019 when Mr and Mrs C contacted UIA with concerns about cracks. I understand the drive and the front left corner of the house have been most affected during this instance of subsidence. I am satisfied it is different to that which occurred in 2008. It seems a different part of the house was affected this time (even if by the same tree with evidence of roots in the same area as before). Mr and Mrs C said that before part of the house was underpinned due to the "middle of it sinking". Here the worst of the damage, as I've said, is located at the front left corner of the home, including the front door. I think it was reasonable for UIA to treat the damage which occurred in 2019 as a second event, fairly requiring a second claim and excess.

But it was only in late November 2019 that UIA agreed to undertake investigations at the property. I've seen no good reason for things taking that long. An arboriculture expert issued a report in late November, and that was flawed because it wrongly recorded the local authority tree as an ash. And drain repairs, along with monitoring did not start until 2020. I think that could all have been managed better and moved along sooner.

I note that UIA first contacted the local authority in November 2019. I don't think it had gathered any evidence at that time to be certain the local authority tree was causing the problem. But I think, given everything it did know about the property – it had suffered clay shrinkage movement before and there was a large tree in close proximity to the damage – it acted pragmatically to expedite the process of trying to get the authority to remove the tree. I think its contact was necessarily assertive and I can see why that caused Mr and Mrs C to believe UIA was certain the tree was causing on-going damage. That the tree had to be removed for their home to be repairable. But UIA should have managed their expectations better in this respect. Explained to them the nature of the contact, that it did not mean the tree would be removed or even that it was known the tree was still causing on-going movement. And "still" is really important in the context of the tree removal. Even if UIA could convince the local authority the tree had caused the damage so far, it would only be if the tree was still causing the property to move and/or causing damage that the authority might be persuaded to remove it.

I don't think the error with the species of tree caused much of an issue for the claim itself. Although I accept it was highly frustrating for Mr and Mrs C, I can see how it would impact their faith in the experts UIA was utilising, including the loss adjuster. But the discussion about the species took place during the first few months of monitoring. In reality the local authority was never likely to have accepted liability on the basis of the presence of tree roots alone – I think it would always have wanted to see evidence from monitoring to show that movement was continuing. I can see that the arborist corrected the species and the adjuster confirmed lime roots had been found, with the local authority and the adjuster then moving on to discussing what the monitoring showed. The local authority had its view on monitoring, I can see that UIA tried to persuade it otherwise. But its efforts were to no avail.

Something I think UIA has missed in all of this though is that what it can persuade the local authority to do and what it should do to treat Mr and Mrs C fairly, are, potentially, two different things. And just because the local authority thinks the monitoring results don't show continued downwards movement of the property, doesn't necessarily mean the property is stable. And it is stability that is needed for UIA to complete long-lasting effective repairs.

UIA is satisfied that the local authority's lime tree has caused damage to Mr and Mrs C's home. And it hasn't been successful in getting that tree removed. The nature of tree related subsidence is that downward movement might be abated for a time if the tree is pollarded. But once pollarded (or removed) the ground needs time to recover and reach a state of stability. That's because the clay soil around the tree and under the home will suddenly have less water drawn from it. For a time, and how long will vary depending on a multitude of factors, the property may continue to move until a new equilibrium in the soil is reached. However, if the tree in question is not pollarded regularly and begins to grow again, it will start to take more water from the soil again. So the property may continue to move. Not necessarily always downwards. But moving up and down is no more stable than just continued downward movement. Fluctuations like this can still cause damage.

The monitoring results into summer 2021 showed just that type of fluctuation. I bear in mind the tree was significantly reduced in 2019. I've seen streetmap views that show its large at the beginning of the year and when the arborist attended in November 2019 the bare crown was quite small. So it doesn't surprise me that during the spring of 2020, the monitoring showed a generally upwards movement of the front corner of the property. But even with the reduced crown, there was some downwards movement in the summer. There was some significant recovery in the winter of 2020-2021. But even during the winter months of early 2021, not all movement was upwards. And by summer 2021 further downward movement occurred. I think that tallies with streetmap images from June 2021 which show significant re-growth of the tree. That downward movement had shown little sign of recovery during the first part of that winter up until monitoring ceased in December 2021. I think UIA, to be fair and reasonable to Mr and Mrs C, should have decided in summer 2021 to move to an engineering option for stabilising the property.

At that time UIA knew the local authority would not be removing the tree. It also knew, or should have known, the tree had re-grown significantly since its arborist's report in 2019. And the monitoring results, whilst showing a generally upwards trend, demonstrated overall that stability had not been achieved. In saying that I'm also mindful that UIA had told the local authority exactly that in its correspondence – that the ground at the front left corner of the property was still moving. I think UIA knew that movement was significant enough to be capable of causing damage. I also think it should have had the foresight to think the local authority might continue to not maintain the tree, which would likely lead to more movement in the fairly short-term. Both of which would mean it had no reasonable likelihood of being able to complete long-lasting effective repairs at the property. In that instance the fair option, two years into this claim and it being the second instance of subsidence which had occurred,

would have been to accept something needed to be done to achieve stability in order to allow the repairs to go ahead.

As it was UIA didn't do that. It spent some time in early 2022 – too long in my view – organising a repair schedule. By the time that was created and being discussed, summer 2022 was progressing and it was a dry summer. Mr and Mrs C have said further damage occurred. And UIA has said they haven't sent it evidence of cracks in the home worsening. But UIA's file shows it did have to attend in August 2022 to repair the front door. The condition of the door getting worse to the point it couldn't open is likely a sign of further movement occurring. And I can't understand why UIA didn't reattend to review the cracks. Mr and Mrs C said the contractor told them the tree had to be removed. UIA has said the contractor is not best placed to make that determination. Which is true. But it isn't unusual or unreasonable for contractors to voice concerns about whether or not they can complete long-lasting repairs – because ultimately, if repairs fail, the insurer will likely revert to the contractor for rectification. So I think the contractor likely did say something along those lines to Mr and Mrs C and this reasonably caused them further concern. And if UIA had acted as I think it should, moving to achieve stability in 2021, none of that delay and worry in 2022 would have occurred. Instead of receiving a final response to their further complaint in November 2022, they'd likely have been living in their stabilised and newly repaired home, starting to put the subsidence claim behind them.

So I've thought about what is needed now to resolve things. I know Mr and Mrs C would like a different loss adjusting company to be appointed and for the tree to be removed. But it's rare I'd make an insurer change a loss adjuster. That's because changing companies can actually make advanced claims more difficult to resolve and cause further delays. And I can't make UIA have the tree removed because it has no ability to do that. In theory I could require it to take legal action with a view to having the court order removal of the tree. But I have no control over that process, it could take a long time and it's not clear what the outcome might be. What is needed is for Mr and Mrs C's home to be stabilised so long-lasting effective repairs can be done. And the tree doesn't have to be removed for that. Instead I'm minded to require UIA to move to providing an engineered solution to stabilise the property. I can't say what that solution should be – that needs an engineer's input. But what is needed should take into account the previous episode of subsidence, and what was done to repair the property then. That's because that repair might impact what the best solution now is to ensure the property is stable such as to allow long-lasting, effective repairs to take place.

I'd add that UIA is not required to protect the home from all possible future instances of subsidence. It only has to ensure its repairs, for this instance of subsidence, are long-lasting and effective.

I'm also minded to require UIA to pay Mr and Mrs C compensation. As I said there were delays to the claim in 2019, and various actions of UIA caused upset. I've also said it prolonged the claim and the upset, which was caused to Mr and Mrs C in 2022, which included the on-going worry about the state of their home, could have been avoided.

I take into account that Mr and Mrs C were worried in 2019 that the cracks were a health and safety risks. I acknowledge that UIA answered that concern, and quite quickly. It felt the cracks were minor and nothing to cause real concern. I think that was a reasonable answer. And Mr and Mrs C living with those cracks for a year and a half of monitoring was just a natural consequence of the claim. But they also lived with them during the latter part of 2021 and through to the final response in November 2022 – which they wouldn't have had to do if UIA had acted in summer 2021 to move to an engineered solution. Once that was designed they'd likely have been moved out of their home for the duration of repairs.

In the circumstances here I think £1,500 compensation is fairly and reasonably due.”

Both parties acknowledged receipt of my provisional decision. Neither provided any objections in reply to it.

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.

I've not received any objections to my provisional decision which require my consideration or response. Having reviewed the complaint, I'm satisfied by my findings provisionally issued. As such my provisional findings are now those of this, my final decision.

Putting things right

I require UIA to:

- Have an engineered solution designed to stabilise Mr and Mrs C's property. This should take into account the previous episode of subsidence and stabilisation undertaken at that time, to determine what needs to be done now to achieve stability so long-lasting effective repairs can be done.
- Implement the design and repair the property.
- Provide, or pay for, reasonable alternative accommodation for Mr and Mrs C for the period of the stabilisation works and property repairs.
- Pay Mr and Mrs C £1,500 compensation.

My final decision

I uphold this complaint. I require UIA (Insurance) Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 17 January 2024.

Fiona Robinson
Ombudsman