

## **The complaint**

Mrs F complains U K Insurance Limited (UKI) has unfairly declined a claim she made on her commercial landlord insurance policy for subsidence.

Any reference to UKI includes the actions of its agents.

## **What happened**

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

- Mrs F, a landlord, had a commercial landlord insurance policy which was underwritten by UKI. The policy started in September 2019.
- In July 2022, she had her house valued by an estate agent – having noticed cracks in the property, the agent highlighted a potential subsidence issue.
- Mrs F made a claim on her policy. UKI agreed the damage had been caused by subsidence, but said the claim wasn't covered as the damage pre-dated the start of the policy. It said the "significant distortion" of the property evidenced the damage being a long-standing problem.
- In declining the claim, UKI said the: "the damage has been caused by consolidation subsidence, given the underlying soil is storm gravel beach deposits overlying lower greensand, the property lies in flood zone 3, and the fact the general tendency of the whole property to tilt towards the front is a longstanding issue."
- It added that Mrs F's tenant had confirmed the cracking to the party wall and between the door and window opening separating the lounge and entrance porch were present when she moved in three years prior.
- Mrs F disagreed. She said the damage wasn't commented on during a mid-term tenancy review in February 2020 and so, it was reasonable to conclude it had occurred in the last three years. She added that subsidence hadn't been identified when she'd made a claim in November 2020 for cracks in the property's front porch – so questioned how UKI could say the damage commenced before the policy started.
- In respect of the 2020 claim, UKI said the type of damage was caused by "minor differential movement between the porch and main house [and] thermal and normal wear and tear" – which wasn't covered by the policy terms.
- It explained that claim had been dealt with by video call and so, the extent of the damage to the property hadn't been recorded. Because UKI didn't cover this claim, Mrs F arranged for her own contractor to carry out repairs to the porch.
- With regards to the current claim - in August 2022 Mrs F appointed her own engineer

to survey the damage. The engineer said: “there has been slight settlement of the porch causing some pulling on the masonry, via the rafters, above the tray, but this is very slight.” The engineer said: “it is concluded that [as there is no rainwater downpipe close to the affected part of the property] that a leaking main water pipe may be the cause of the clear foundation movement.”

- A month later, Mrs F appointed a structural engineer who dug boreholes and trial pits as part of their investigations. The engineer said the composition of the soil at the front and rear differed, and that the front subsoil was “vulnerable to seasonal shrinking and swelling due to the moisture content variations, which can result in foundation movement.”
- The engineer observed in respect of the guttering: “The existing failed condition and current low point will cause the gutters to leak on the party wall line [...] therefore causing moisture to be introduced to the subsoil under. This will lead to softening of the clay soils and therefore settlement of the front elevation and party wall.”
- Having considered both reports, UKI said:
  - Mrs F’s tenants had confirmed the cracks were present when they moved into the property in September 2019.
  - Due to the substantial distortions in the property and its tendency to tilt towards the front, the subsidence issues had commenced many years ago, and certainly not since 2019.
  - It agreed the recent cracking to the front porch likely occurred in the last three years but said the first engineer hadn’t looked at the evidence of movement to the entire property, and so, couldn’t reasonably say the subsidence damage wasn’t more than three years old.
- Unhappy with UKI’s position, Mrs F brought a complaint to this Service. An Investigator considered it and upheld it as he thought UKI hadn’t shown the damage to the property occurred before the start of the policy. UKI disagreed and so, the complaint has been passed to me for an Ombudsman’s decision.
- Following the view, Mrs F told this Service that she’s since sold the property.
- Having reviewing things, I issued a provisional decision not upholding the complaint - I’ve included an extract below.

*“What I’ve provisionally 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 policy covers damage caused by subsidence, subject to a number of terms and conditions.*
- *UKI has sought to rely on a policy term which says “damage which commenced prior to the From date (as stated in the Schedule)” is excluded.*
- *I understand UKI considers the damage to have been caused by consolidation subsidence – which happens over a long period of time. It says this is supported by the composition of the soil at the front of the property – which is formed of storm*

*gravel beach deposits overlying lower greensand – and the significant distortion to the property.*

- The parties don't dispute the composition of the soil, nor that it varies under the footprint of the house. UKI's expert engineer said the type of soil at the front of the property is commonly associated with consolidation subsidence. And given the expert's extensive experience in their field of work, I'm satisfied it was reasonable for UKI to rely on it to decline the claim. That's unless there's other persuasive expert evidence which challenges these findings.*
- So, I've considered Mrs F's engineers' findings. Both engineers point to a water leak being the potential cause of the subsidence. One engineer suggested the omission of a rainwater pipe meant there may have been a leak in the mains water supply pipe – with water affecting the subsoil's composition. The other has said the construction of the guttering may have caused water to access the subsoil, change its structure and make the property vulnerable to movement*
- So, I've considered whether the evidence provided by the engineers shows a water leak was the sole or primary cause of the damage, and if it were, whether the damage the leak is said to have caused commenced after the policy started. Having done so, I'm not persuaded it does and I'll explain why.*
- Neither engineer says with certainty that a leak caused Mrs F's property to move – both say it is a 'possibility'. If for example, there was evidence to show the water leak was an intervening act which destabilised a formerly stable property, I might be inclined to say UKI should accept the claim. But the engineers' evidence doesn't show this. There's also no commentary as to how long it would take a leak - of the nature suggested - to penetrate the subsoil, change its composition and ultimately, destabilise the property.*
- The engineers' focus also appears to be on the front porch – with both saying the downward movement of the porch caused settlement and for the porch to move away from the main property – adding this occurred in the last three years. But UKI doesn't dispute this, though has said that ultimately, the porch also moved because of long standing, consolidation subsidence which hadn't been addressed.*
- As it seems the entire property has been affected by movement, I'm not persuaded Mrs F's engineers' findings – namely that settlement affected the front porch area and that a potential water leak caused subsidence – persuasively challenges UKI's expert that the composition of the subsoil at the front of the property was the most likely cause – and that as consolidation subsidence happens over many years, it commenced before the policy was taken out.*
- So, whilst its possible there was a water leak, I'm not persuaded Mrs F has shown this was the primary cause of the damage and importantly, that it commenced after the policy was taken out. And I therefore, consider it was reasonable for UKI to rely on the exclusion that the damage commenced before the policy started to decline the claim.*

#### *2020 claim*

- UKI declined this claim on the basis the damage was caused by normal thermal movement. But even if I accepted UKI had declined this claim on the wrong basis –*

*because the property was in fact subsiding – it's shown the damage commenced before the policy started, and so the outcome of the claim – it being declined - would have remained the same. And so, it doesn't need to take any action in respect of this claim.*

- *Because the damage in respect of both claims commenced before the policy was taken out, Mrs F is entitled to contact her previous insurer about the matter.*

*My provisional decision*

*My provisional decision is I don't uphold this complaint."*

### **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.

Neither party provided further evidence or commentary for me to consider, and so, for the same reasons set out in my provisional decision, I don't uphold this complaint.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 11 December 2023.

Nicola Beakhust  
**Ombudsman**