

## The complaint

Mr T complains about U K Insurance Limited T/a Churchill Insurance's (U K Insurance) inaccurate diagnosis of subsidence and overall handling of a claim under his building insurance policy.

## What happened

In 2011 Mr T noticed cracking adjacent to joints where an extension, built in 2003, abutted his property. He told U K Insurance. It arranged for the problem to be investigated, which included the drains being inspected. It concluded that subsidence was the cause of the cracking. Support bars were installed, and the cracking was repaired.

In February 2017 Mr T changed insurance companies. He says he needed to use a specialist insurer because of the subsidence issue. And this took significant work to arrange on his part. In August 2018 he identified cracking in the same areas as in 2011. His insurer arranged for a surveying company to assess the damage. It identified movement in the same area affected in 2011. It was critical of the previous investigations and conclusion of subsidence. And suggested the cause hadn't been correctly identified.

Mr T wasn't satisfied with the handling of the matter by U K Insurance and referred his complaint to our service in October 2018. The outcome was that the company had to reinvestigate the cause of the problem. An engineer's report was obtained, which concluded cracking was the result of "*differential foundations*" between the main building and the extension. A schedule of works was proposed to install "*flexible joints*" and to repair the cracking.

Mr T says he sought quotes for the required work. He also asked that his property was removed from the subsidence database based on the report U K Insurance had obtained. The company asked Mr T to provide an independent surveyor's report to support his request. He did this at his own cost. The report concluded the cracking was caused by differential settlement and not subsidence.

U K Insurance agreed to remove the property from the subsidence database. It returned the excess payment Mr T paid in 2012 for £1,000, plus interest at 8%. It also refunded the cost of his surveyor's report. And paid £500 in compensation plus a further £100 for a subsequent shortfall in its service Mr T had highlighted.

Mr T was unhappy with this outcome and again referred his complaint to our service. He points out the significant distress and inconvenience associated with his home being incorrectly included on the subsidence database. He considers the compensation offered by the company to be inadequate. And says he has paid higher premiums because of its mistake.

Our investigator decided to uphold Mr T's complaint. She didn't think the company had treated him fairly and asked that it pay him £900 compensation and to refund the premium increase associated with the subsidence claim.

Mr T didn't agree. He again points to the increase in premiums following the subsidence claim. He says the compensation is still too low considering the impact of the company's mistake. He says plans to sell the property in 2015 were abandoned because of the impact on its market value linked to the listing on the subsidence data base. U K Insurance, agreed to pay the increased compensation, but disagreed premiums had increased due to the subsidence claim.

The parties were unable to agree, and so the complaint has been passed to me to decide.

I issued a provisional decision in March 2022 explaining that I was intending to uphold Mr T's complaint. Here's what I said:

*provisional findings*

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Having done so I have decided to uphold Mr T's complaint. I don't think U K Insurance treated him fairly when it incorrectly diagnosed the problem at his property or when compensating him for the impact this had. Let me explain.*

*Mr T obtained a surveyor's report in August 2020. This comments on the report obtained by U K Insurance in 2011, where subsidence was identified as the cause of the cracking, and the structural engineer's report produced in 2020, where differential movement between the main house and the extension were highlighted as the cause of the cracking. I have highlighted pertinent points from the report Mr T obtained below:*

*"...an Engineers report by [U K Insurance] dated [December 2011] concluded the cause of the cracking was 'indicative of a minor episode of subsidence...leakage from the underground drain could be responsible'. Two drainage surveys dated [January 2012] and [April 2012] reported no leakage to the underground drainage lines. However, the Claim continued to be managed on the basis of subsidence. No monitoring was undertaken to confirm this."*

*"A certificate of Structural Adequacy was issued [September 2012]. Even though two drain surveys proved there was no drain leakage that might cause subsidence the Certificate confirmed the damage 'in our professional opinion caused by escape of water from defective drainage'."*

*"Cracking reopened in the Summer of 2018 in the same location...A Chartered Structural and Civil Engineer inspected [February 2020] trial pits\drains [March 2020]. Their report issued [May 2020] confirmed both the drains and water main were water tight with no leakage or escape of water. The report found that 'recurrence of damage (and most likely the cause of the original damage) is concluded as being due to differential settlement between the two structures'. 'This does appear to be exacerbated when there is dry weather and therefore it should be expected that such differential settlement will continue. The problem lies with the detailing of the repairs and also the original construction to some degree in failing to accommodate this movement'."*

*"..As a result it was recommended 'that new movement joints are installed at the junctions between the original bungalow and the extension'. The proposed work is detailed in the Schedule of Works dated [February 2020]. The specification is logical and appropriate. This work includes the removal of all cracked \ loose blocks and bricks prior to insertion of new ties and flexible joint at the point of junction between the original bungalow and the extension. Care skill and attention to detail is required in execution of the work. It is*

*reasonable to expect over time the cracking will show again.”*

*“The conclusion by the Engineer in the 2020 report in my view is a logical reasoned assessment of the evidence. This finding of differential settlement rather than subsidence is a more accurate objective insightful conclusion. In my professional opinion the pattern and location of the fractures is consistent with differential settlement not subsidence.”*

*The engineer report commissioned by U K Insurance in 2020 pointed to a problem with “differential movement between the two structures”. This refers to the juncture between the main bungalow and the later built extension where the cracking occurred. The report says the earlier conclusion of foundation movement due to water leaking from a blocked drain, “is unlikely to be accurate”.*

*Mr T’s surveyor supports the findings from the engineer’s 2020 report. He concludes in a similar fashion to say the original diagnosis of subsidence was not the cause and the cracking resulted from differential settlement.*

*Based on all the evidence, I think the view that the cracking is caused by differential movement at the juncture of the bungalow and extension is persuasive. The 2020 structural engineer’s report and Mr T’s report are both critical of the original diagnosis of subsidence due to leaking drains. Their view being this was shown to be unlikely in 2012 when no leaking drains were found during the investigations. However, the surveyor notes that despite this information, the approach to dealing with the issue didn’t change.*

*Mr T’s property was recorded as impacted by subsidence. Based on the reports provided - this diagnosis was inaccurate. U K Insurance put ineffective measures in place to tie parts of the building together, based on this. This also meant further cracking occurred, due to differential movement being the unaddressed underlying cause.*

*Based on the reports obtained in 2020, I think it was fair for U K Insurance to remove the subsidence claim from Mr T’s insurance history. In addition to refunding the cost of the report he commissioned as well as the £1,000 excess charge he had paid for the subsidence claim with 8% interest.*

*In its final complaint response dated September 2020, the business says, “As we are now agreeing there wasn’t subsidence we are therefore not liable for any repair costs. The damage isn’t due to an insured peril and the necessary movement joints should’ve been installed at the time of construction”. Mr T says he accepts U K insurance’s view that it isn’t responsible for the repairs to his property.*

*U K Insurance offered £600 compensation to apologise for the inconvenience caused by, “wrong diagnosis and poor repairs”.*

*I have thought about the businesses offer and whether this constitutes fair compensation, given the issues Mr T has described resulting from the inaccurate diagnosis of subsidence.*

*Mr T says this matter has taken up a significant amount of time on his part, involving phone calls, emails and letters. He says when seeking alternative insurance, additional work was required on his part to provide information given the previous subsidence claim. Mr T says when the cracking reappeared in 2018, he spent more time and effort dealing with his new insurer as well as U K insurance. He describes how U K Insurance wasn’t helpful and rejected his claim. He found this extremely frustrating. Particularly as it’s been shown that its diagnosis wasn’t supported by the evidence available in 2012.*

*Mr T says he had to abandon plans to sell his property in 2015/2016 in order to downsize.*

*He says that as the property had been subject to a subsidence claim, selling it was an unreasonable prospect because of the impact on the market value. He didn't want to have to sell his property at a discounted price.*

*Mr T says he has experienced ongoing worry for over ten years, caused by his property being unnecessarily registered as being impacted by subsidence.*

*I can sympathise with the position Mr T found himself in. Discovering his property was affected by subsidence must have been distressing. This impacts on the availability and cost of insurance, as well as having a negative impact on potential buyers should the property be put up for sale. We now know this diagnosis was inaccurate meaning this needn't have happened.*

*Mr T spent a lot of time dealing with this matter at the time of the original claim in 2011 and later in 2018. It was left to him to demonstrate the cause of the cracking, in liaison with his new insurer and by commissioning an independent report himself. I accept this caused him substantial inconvenience and frustration and required the involvement of the ombudsman to get the business to investigate further.*

*In light of the above, acknowledging the subsidence claim was incorrectly in place for approximately ten years, the time spent corresponding, arranging and paying upfront for a surveyors report, unnecessary remedial work and recurrence of cracking due to the incorrect diagnosis, the impact on plans to sell the property, hassle and worry when obtaining alternative cover and the overall distress caused to Mr T and his family over this protracted period, I don't think U K Insurance's offer of compensation fairly recognises the impact it caused. To fairly acknowledge this impact, I think a payment of £1,000 is more appropriate.*

#### *Increased premiums*

*Mr T says his insurance premiums increased as a result of the subsidence claim. He doesn't think this is fair or that he could avoid this. U K insurance says the subsidence claim didn't impact on his premiums. It says premiums increased because a new business discount ended. Also because of claims Mr T made under his home contents insurance, which affected his no claims discount (NCD). It says the buildings insurance NCD was never reduced, which shows the subsidence claim didn't impact on his premium.*

*U K insurance confirms the following premiums were paid by Mr T:*

*2010 to 2011 - £119.70  
2011 to 2012 - £225.78  
2012 to 2013 - £257.58  
2013 to 2014 - £398.56  
2014 to 2015 - £373.12  
2015 to 2016 - £311.64  
2016 to 2017 - £273.75*

*It says the premium in 2012 was £225.79 and in 2017 it was £273.75, which is about a £10 a year increase. It suggests this is proof that there were no excessive premium increases.*

*UK Insurance also says three claims had been registered at the time the subsidence claim occurred. This included an accidental loss claim under contents cover in July 2010, accidental damage under personal possessions in March 2011 and an accidental damage claim under contents insurance in July 2011.*

*We asked for more detailed underwriting information to show the premiums weren't*

*impacted by the subsidence claim. In response U K Insurance's underwriters say the main reason for the difference in premiums is that differing retention discounts were given in some years and not in others. It also refers to a substantial new business discount that was applied at inception. U K Insurance says the subsidence claim has not affected Mr T's premium. His other claims have, as have the discounts he received, but it maintains no loadings have been added at any time during the life of the policy in relation to the subsidence claim.*

*It isn't unusual for new customers to benefit from introductory discounts. General practice is for this to be recouped through premium increases in later policy years. We don't think this is unreasonable. Mr T had other claims around 2011 that would also impact on his premium. It's also been explained that other retention discounts were applied over the years, which varied.*

*Mr T describes how he paid £135 for home and contents insurance with a different provider in February 2021. He has compared this against what he paid to U K Insurance over the years. He calculates the difference at just over £1,385. I acknowledge his comments, but I don't think this shows U K Insurance added a subsidence loading to his premiums.*

*I can understand why Mr T thinks his premiums were impacted by the subsidence claim. But I think the response the underwriters provided is persuasive that having reviewed Mr T's premiums in detail, they are clear the subsidence claim didn't impact on the premiums he paid. Because of this I won't be asking it to provide a refund.*

*In considering all of this I don't think U K Insurance treated Mr T fairly when handling his claim. I think it acted reasonably in refunding his insurance excess and the cost of the surveyor's report, but I think it should pay a total of £1,000 compensation to acknowledge the distress and inconvenience caused by its inaccurate subsidence diagnosis.*

I said I was intending to uphold this complaint and U K Insurance Limited t/a Churchill Insurance should:

- pay Mr T £1,000 compensation, in total, for the distress and inconvenience he and his family have experienced.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

U K Insurance responded to say it had no further comments to make and accepted the findings in my provisional decision.

Mr T responded to say he didn't accept the provisional decision. He refers to the facts of his complaint and says it was U K Insurance that decided his house was subject to subsidence. He says it relied on flawed reports, carried out flawed construction work to remedy the problem, failed to identify the true cause, added his property to a subsidence database without clear supporting evidence, prevented him moving home, and that all this has taken a considerable time to resolve.

Mr T highlights the line in my provisional decision that says, "*he says he needed to use a specialist insurer because of the subsidence issue*". He asks, "*where have I ever said that*". Mr T says he did not need to use a specialist insurer. Rather, because of increasing premiums with U K Insurance he saw little option but to look around for cheaper insurance.

Mr T says U K Insurance has not paid him any compensation. He received a cheque for £500, that he returned to the business. But he has no knowledge of receiving any further compensation that is alluded to in my provisional decision.

Mr T says because U K Insurance stated his property was subject to subsidence, he had no option other than to remain under its cover or seek specialist insurance with subsidence specialists. He says his choice of insurer was limited because of U K Insurance's incorrect diagnosis. Mr T disagrees with the businesses stance that the subsidence diagnosis had no impact on his premiums. He thinks the increase in premium over the years are related to this and doesn't accept U K Insurance's explanation as to why his premium changed over time.

Mr T says £1,000 compensation is inadequate and not representative of the issues he faced over the years. He says U K Insurance is responsible for providing recompense for the excess insurance premiums he has been charged.

### **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.

Having done so, I'm not persuaded that my findings need to change from that set out in my provisional decision. I'm sorry to disappoint Mr T but I will respond to his further comments below.

With reference to the specialist insurer point Mr T has highlighted under the "*What happened*" section in the provisional decision – this was drawn from his comments in his initial submissions to our service. Specifically, where he says he changed insurance companies via a specialist insurer. He says he did this because his home had suffered subsidence and he had no alternative but to search the market for specialist insurance.

I acknowledge Mr T's comments. But I don't think it was inaccurate to include reference to this in the "*What happened*" section of my provisional decision. So, this doesn't impact on my findings.

Mr T maintains that he returned U K Insurance's compensation cheque made out for £500. He says he has received no other compensation payment.

In my provisional decision I talked about the compensation payments the business had offered Mr T. This amounted to £600 based on the information provided by U K Insurance. I acknowledge Mr T's comments that he only received a cheque payment for £500 and that he returned this without cashing it. I don't dispute his account of the compensation he was offered. But I don't think that this impacts on my findings. In my provisional decision I said the compensation offered by the business wasn't fair. I thought £1,000 (in total) was more appropriate. If U K Insurance hasn't made any payments to date, and if Mr T accepts my final decision, it will be required to provide a total compensation payment of £1,000.

I accept that U K Insurance is responsible for incorrectly determining Mr T's home was subject to subsidence. I agree with his comments that this determination has been shown to be unfounded, based on the investigations carried out and the expert opinion that was obtained. By no means is my intention to diminish the impact this has had on Mr T over the years.

I am aware of the time he has spent corresponding and dealing with this matter. The inconvenience this caused, and the need to arrange a surveyor's report and pay for this upfront. The ineffective remedial work that was carried out, and the disruption this also

caused. The disruption to Mr T's plans to sell his property and the overall distress and inconvenience resulting from his home being considered subject to subsidence over a lengthy period. But I think £1,000 in compensation is fair in relation to these issues.

As discussed in my provisional decision I asked U K Insurance for information from its underwriters to show that there were no loadings relating to subsidence. It responded to say this can be confirmed as the no-claims discount on Mr T's policy was never reduced for his buildings insurance. Its response is clear that the subsidence claim didn't impact on his premiums.

I understand why Mr T thought the subsidence claim had an impact on his premiums over the years. But I'm satisfied from the underwriting information provided by U K Insurance that this wasn't the case. It has explained that the price differed over the years as Mr T's premium benefitted from retention discounts in some years and not others. It says a new business discount was applied at inception and several claims were made after the policy was set up – relating to the contents aspect of his insurance.

I have thought about Mr T's view that he paid more in premiums than he should've given the subsidence diagnosis. And his view that he could've received cheaper premiums from a different insurer. But from what I have seen I'm satisfied Mr T's premium wasn't impacted by a subsidence loading. I acknowledge his calculations using the 2010 premium as a baseline. But it's been shown that a number of factors impacted on the premium pricing in the years following. So, I can't reasonably say he did pay more because of the subsidence claim. And I don't think Mr T's shown that he would have paid a lower premium elsewhere. As discussed above, a number of claims had been recorded and retention discounts were applied in some years. Although the claim in 2011 wasn't due to the cause of subsidence – there was still a claim/incident that would need to be declared when taking insurance. So, whilst I acknowledge Mr T has strong views about the premiums he paid, I'm not persuaded to change my decision.

In summary I don't think U K Insurance treated Mr T fairly when considering the inaccurate subsidence diagnosis. But I think £1,000 compensation is fair to acknowledge the distress and inconvenience caused.

### **My final decision**

For the reasons I've explained above, and in my provisional decision, I uphold Mr T's complaint. U K Insurance Limited T/a Churchill Insurance should:

- pay Mr T £1,000 compensation, in total, for the distress and inconvenience he and his family have experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 12 July 2022.

Mike Waldron  
**Ombudsman**