

## The complaint

Ms Complains about Tesco Underwriting Limited's (TUL) handling of a subsidence claim under a home insurance policy.

## What happened

I issued two provisional decisions in December 2023. The parties are aware of the background to the complaint. It became apparent during my consideration of the complaint that much had changed in terms of how the claim was progressing. This necessitated further information requests, which hasn't always been met with the clarity in response, particularly from TUL.

While it makes this a lengthy decision, it's appropriate to copy the contents of my provisional decisions below. For ease of reading by the parties my additional reasoning can be found on page 6 onwards.

### *First Provisional Decision (7 December 2023)*

*Ms C reported a claim for potential subsidence in late 2019. At the start of November TUL's agent handling the claim arranged a site inspection which took place shortly after. Ms C became frustrated at the length of time it was taking to progress the claim and repair work to start. She brought her complaint to us in October 2022 and TUL issued a final response letter in February 2023.*

*While the parties are aware of the full background and details, Ms C has summarised her complaint as follows:*

- *The length of time the claim is taking with poor communication from TUL.*
- *TUL insisting on a cash settlement of £2,203.12 for decorating and tiling costs, which is insufficient given the quotes she's been able to obtain are nearly four times that amount.*
- *As a result of the ongoing claim her insurance premiums are rising significantly, and she can't get cover elsewhere until the claim is finalised.*
- *The damage is deteriorating further given repairs haven't been done.*

*TUL's position is that the claim has been impacted majorly by a couple of factors they have no control over. One was the Covid-19 pandemic which resulted in one of its agents being unable to work for a duration and the consequential backlogs that accrued. And the other was due to a third-party neighbour who didn't communicate with them and then refused to consent to some issues. This involved a tree potentially impacting subsidence and consent to a third-party wall issue. Because of the delay, the optimum time of year to remedy the subsidence had passed and so TUL had to reassess the repair schedule to include anti-heave measures. This required further assessment and costs approval as well as changes to the Party Wall Agreement.*

Finally, TUL said the cash settlement offer of £2,203.12 covered 100% of the required insured decoration costs to include relaying of screed floors, removing and replacing floor tiles, internal and external decoration costs. TUL said it wouldn't agree to carry out work because of existing rising damp issues (noted in a pre-purchase survey from 2007) and a deteriorated upstairs windowsill, which was allowing moisture ingress. In an email to Ms C TUL said it couldn't guarantee works and in order to complete this plaster would need to be replaced and dried out and this wouldn't be covered under the claim.

Our investigator initially explained to Ms C that the concerns she had about her insurance premium needed to be raised as a complaint with TUL first before we could get involved, which Ms C accepted.

After her investigation, the investigator didn't think TUL should pay more than the cost it would be liable for if its contractors carried out the insured decoration works. She noted that there were pre-existing damp issues and TUL didn't need to contribute to remedying this as it wasn't subsidence related. And she noted that the structural repairs had been agreed. However, the investigator did think TUL had made errors which impacted the claim duration causing a great deal of stress and frustration to Ms C. The investigator recommended that TUL pay £750 compensation.

Ms C didn't accept the investigator's opinion. She said the amount offered for decoration was far short of a realistic amount to carry out the works given the quotes she had obtained. The insurer refused to breakdown costs and only recently shared the name of the contractor that would have carried out the work. Ms C says she contacted this contractor privately and offered £2,200 but they refused to carry out the work for that amount. Ms C stated that she doesn't expect TUL to cover the damp issue.

TUL didn't accept the investigator's opinion either. TUL says originally works were to start in Spring 2022 but getting the Party Wall Agreement in place took six months as one of the neighbours withdrew consent, and so the Agreement wasn't in place until July 2022. Ms C didn't want to wait until the following Spring (the optimum time for repairs) so TUL included anti-heave measures in the works, which restarted the Party Wall measures and so delayed things.

Recently, TUL has informed us that it had paid Ms C a settlement of £6,563.72 (exc VAT) and offered a disturbance allowance of £300.

*What I 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.*

*When considering what's fair and reasonable in the circumstances I need to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the time.*

*Under the provisions set out in the regulator's handbook, insurers should, among other things:*

- *handle claims promptly and fairly.*
- *provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress.*

- *not unreasonably reject a claim (including by terminating or avoiding a policy); and*
- *settle claims promptly once settlement terms are agreed.*

*There are effectively two main issues for me to determine:*

1. *Whether TUL is responsible for delays in progressing the claim and / or general poor claim handling.*
2. *Whether TUL has made a fair offer for the decoration costs.*

#### *Claim delay / claim handling*

*TUL has provided a detailed timeline of events from claim notification in late 2019 to February 2023. I think it's appropriate to say from the outset that subsidence claims are generally time-consuming and involve various specialisms and trades in inspecting, assessing and putting things right. Movement monitoring was set-up within three months and after initial results analysed, an Arborist was instructed to investigate the impact of a large tree in a neighbouring property. At that point the pandemic had gripped and for reasons beyond TUL's control this inevitably had an impact. But there was also the issue of a neighbour who didn't really engage with TUL and presented a barrier to investigating properly whether their tree was a causal factor of the subsidence at Ms C's home. This significantly impacted meaningful progress and TUL did consider a stability scheme as well as writing robustly to the neighbour.*

*Further neighbour issues arose with the Party Wall Agreement with one neighbour not replying and another withdrawing consent after initially giving it. It wasn't until September 2022 that the neighbours intimated consent through Ms C and an amended Agreement was created, but this wasn't sent until December 2022. Within this period there is clear evidence of Ms C having to chase TUL for replies and updates.*

*All things considered carefully I'm not persuaded TUL handled the claim promptly. Too many times Ms C had to chase updates and there were periods where progress should have been quicker. I've factored in the pandemic and the neighbour issues and that these are outside of TUL's control. But I think there were avoidable delays in sending the Agreement paperwork and general poor communication during the claim. I'm satisfied £750 is a fair reflection of the distress and inconvenience caused.*

#### *Decoration costs*

*The issue Ms C brought to us about whether TUL's offer of £2,203.12 is fair has been superseded by the settlement it paid Ms C around 29 August 2023. Under the policy 'How we settle your claim' TUL states it will pay for the cost of reinstatement, repair or replacement including required re-decoration that forms part of a valid claim. And it continues to say where repair has been offered but the policyholder requests a cash value, TUL will not pay more than the amount it would cost TUL to carry out that work. And where it's TUL that decides not to repair it may send a payment representing the estimated cost of repair. Given TUL decided not to carry out the re-decoration then the starting point is that payment must enable Ms C to have the repairs carried out.*

*I've considered the fact there's no dispute Ms C's home has a pre-existing rising damp issue as well as water ingress through an upstairs windowsill. I agree these are not repairs I'd expect TUL to cover as they're not part of an insured event and, the rising damp at least, was an issue known at the pre-purchase survey. It's understandable that TUL doesn't want to carry out re-decoration as it won't be able to guarantee that work because of the damp problem and how that will impede the lasting and effective nature of that work. Because Ms C hasn't, as far as I'm aware, addressed either of those problems I don't think it would be fair to require TUL to carry out re-decoration at this point. And as such, it doesn't seem fair to*

*expect TUL to pay the market rate where it is deprived of an opportunity to carry out the repairs under the insurance contract.*

*I've reflected carefully on the estimate Ms C provided (11 April 2023) and in terms of the work itemised, it broadly covers the schedule of work (SOW) TUL provided. The estimated works are £7,369.00 (ex VAT) and while this may reflect the market it lacks specificity, such as costs of hire, labour and materials.*

*Having reviewed the SOW, the apparent gap between TUL's original offer and Ms C's estimate is irreconcilable. I've dealt with many cases like this, and I'm not satisfied TUL demonstrated its initial offer was fair. I'm pleased to see that TUL revised that offer and reached a settlement much closer to Ms C's estimate. That to me reflects a more realistic amount that it would have cost TUL had it been able to carry out the repairs. For the avoidance of doubt, the offer doesn't include VAT, but TUL stated in its letter of 29 August 2023 that if Ms C produces an invoice demonstrating work done and VAT paid a further settlement for that VAT will be paid. I'm also satisfied TUL's disturbance allowance offer is fair for the estimated two days interior works to the kitchen floor and decoration.*

I received replies to this provisional decision and issued a **second provisional decision on 21 December 2023** in which I said the following:

*Ms C disagreed with my provisional decision saying TUL hadn't shared complete information about the settlement of £6,563.72 (exc VAT) and that this was increased, in summary, because TUL had passed further insured works on to her for completion, not because it had increased the original offer of £2,203.12 (exc VAT). Within Ms C's response she also raised further issues about TUL's poor handling, poor communication, and delays.*

*It's apparent there remains unresolved matters between Ms C and TUL. And since Ms C originally brought her case to us, the nature of the complaint has developed because of a continuing situation that Ms C highlights as unsatisfactory and unfair. For example, she's raised drainage issues, works carried out in 2023, debris left in the garden and the consequential inconvenience this has caused.*

*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 scope of this decision is limited to the initial offer TUL made to Ms C of £2,203.12 (exc VAT) and the handling of the claim up to TUL's final response of 1 February 2023. For the avoidance of doubt, Ms C's concerns about issues after this date will unfortunately need to be complained about to TUL first and allow its complaint process to complete with a final response letter or eight weeks pass after Ms C raises her complaint with TUL. I would urge the parties to be specific about the issues of complaint such that they could attempt a meaningful resolution as soon as is practicable given the length of time the claim has been ongoing.*

*When TUL latterly advised me that it had reached an apparent settlement with Ms C of £6,563.72 (exc VAT) it didn't clarify that this was not in relation to the initial complaint about the offer of £2,203.12 (exc VAT). I've made several requests to TUL to try and get specificity and clarity over how the £2,203.12 figure was reached and costed such that I can determine whether that amount for the insured work required was a fair amount. And, for the avoidance of doubt, I remain of the view that TUL should only have to pay the amount it would have paid its contractors. That's because there were damp issues in the affected area of Ms C's*

property that was not a result of an insured event, and it would inhibit TUL's ability to carry out a lasting and effective repair. Therefore, I wasn't minded to require TUL to pay Ms C the market rate for the repairs.

On more than one occasion I have asked TUL to provide me with full itemisation and a detailed cost breakdown so it can demonstrate the offer of £2,203.12 was a fair offer based on its contractor rates. As a reminder, this was in the face of an estimate from Ms C for the same work at £7,369 (exc VAT). As things stand, I have not received a fully costed breakdown for the insured works from TUL supporting its offer to Ms C of £2,203.12. It's apparent that TUL is reliant on its agent that's handling Ms C's claim for information, and this is seemingly the barrier to clarity.

The real challenge with the information TUL has provided is that it has no consistency or clarity. The original Schedule of Work sent to us that the £2,203.12 offer was based on is inconsistent with a costed Schedule TUL sent to me. And as TUL has seemingly developed the scope of its cash settlement, it doesn't help me extrapolate what the detailed costing is for the initial offer it made to Ms C of £2,203.12.

Based on everything I have and the absolute absence of anything clear and helpful from TUL (and I appreciate the difficulty appears to sit with TUL's agent) I intend to require TUL to pay Ms C £5,895.20 (exc VAT) for the work required (in the initial offer of £2,203.12).

In reaching this figure I have based it on Ms C's estimate dated 11 April 2023 and deducting 20% as an attempt to reflect the principle, that in the circumstances of this complaint, TUL shouldn't have to pay the market rate and can benefit from the rates it would have ordinarily paid. The difficulty for TUL, as I have explained, is that it simply has not demonstrated that its initial offer is supported by the information it has provided.

Alongside this decision I have provided two documents to the parties so that it's clear what work is included in the amount I'm awarding of £5,895.20 (exc VAT) - one is the estimate of 11 April 2023 and the other is the Schedule of Work that TUL's initial offer was based. The importance of this is that Ms C has concerns beyond the complaint she brought to us about the ongoing situation with the claim and other work she's been required to arrange given TUL's handling. For completeness, a summary of the works included within the amount I'm awarding is:

- Exterior
  - o Wall repairs and two coats of paint to the exterior part of the affected area of the property.
  - o Scaffolding (or similar) to enable the repairs above to be carried out.
- Interior
  - o Removal, supply and refit of floor tiles
  - o Preparing and laying a latex screed floor
  - o Removal and refitting white goods, plinths and radiator
  - o Supply and fit new skirting
  - o Two coats of paint to walls and ceiling, woodwork, skirting and windows.

For absolute clarity, I have limited this decision to events up to TUL's final response letter of 1 February 2023. Any concerns Ms C has for events after this date will need to be formally raised with TUL in the first instance and follow its complaint process through. This means that I have not looked at delays, handling, and costs of additional work beyond that mentioned in this decision and its accompanying documents. Those are all issues Ms C and TUL should make all endeavours to resolve pragmatically and as a priority so that Ms C can move on from a claim that has been ongoing since late 2019.

To put things right, I said that I intended to uphold Ms C's complaint and require Tesco Underwriting Limited to do the following:

- Pay Ms C £750 compensation for the distress and inconvenience because of avoidable delays in sending the Agreement paperwork and general poor communication during the claim.
- £5,895.20 (exc VAT) is a fair reflection for the works detailed in the initial Schedule of Work that TUL costed at £2,203.12.
  - o The difference here is £3,692.20 and this is what TUL needs to send Ms C.
  - o TUL must add interest at 8% per year simple from the date of its offer of 25 May 2022 to the date it sends Ms C payment.
  - o Where Ms C can demonstrate to TUL with invoices that she's paid to have the repairs carried out, and she's paid VAT then TUL will need to refund the VAT element adding interest at 8% from that date Ms C paid the VAT to the date TUL sends the refund payment.

### **Replies to my second provisional decision**

I gave the parties until 14 January 2024 to provide any further information they wanted me to consider.

Ms C said she was satisfied with the outcome and that issues raised by her from 1 February 2023 need to be addressed in a separate way and she would be in touch with TUL. She confirmed having already received the initial sum of £2,203.12.

### **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 thought carefully about the circumstances again, and in the absence of any new information, I remain satisfied that TUL hasn't handled Ms C's claim promptly or fairly for the reasons previously explained, particularly in my second provisional decision.

Given the history of this complaint, I make clear again to the parties that this decision only concerns itself with the initial offer TUL made to Ms C of £2,203.12 (exc VAT) and the handling of the claim up to TUL's final response of 1 February 2023.

For the avoidance of doubt, Ms C's concerns about issues after 1 February 2023 will unfortunately need to be complained about to TUL first and allow its complaint process to complete with a final response letter or eight weeks passing after Ms C raises her complaint with TUL.

I would urge the parties to be specific about the issues of complaint such that they could attempt a meaningful resolution as soon as is practicable given the length of time the claim has been ongoing.

### **Putting things right**

I require Tesco Underwriting Limited to do the following:

- Pay Ms C £750 compensation for the distress and inconvenience because of

avoidable delays in sending the Agreement paperwork and general poor communication during the claim.

- £5,895.20 (exc VAT) is a fair reflection for the works detailed in the initial Schedule of Work that TUL costed at £2,203.12.
  - o The difference here is £3,692.20 and this is what TUL needs to send Ms C.
  - o TUL must add interest at 8% per year simple from the date of its offer of 25 May 2022 to the date it sends Ms C payment.
  - o Where Ms C can demonstrate to TUL with invoices that she's paid to have the repairs carried out, and paid VAT then TUL will need to refund the VAT element adding interest at 8% from the date Ms C paid the VAT to the date TUL sends the refund payment.
    - For the avoidance of doubt, any VAT due applies to a maximum amount based on the figure £5,895.20.

### **My final decision**

I uphold this complaint and require Tesco Underwriting Limited to put things right in the way I have directed under the section immediately above **'Putting things right'**.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 14 February 2024.

Sean Hamilton  
**Ombudsman**