

## **The complaint**

Ms H is unhappy that U K Insurance Limited won't pay her home insurance claim for damage to her property following the installation of a gas boiler.

## **What happened**

In March 2019 Ms H wanted a new boiler installed. She enquired via social media and received a response from a contractor who I'll refer to as Mr G. He advised her he was a registered Gas Safe fitter and she agreed for him to do the work. He insisted that Ms H go out and buy the parts for it and that he be paid in cash. In the course of carrying out the work he cut a water pipe and water started leaking through the ceiling. He managed to stop this but broke the stop cock in the process. In the course of doing the work Mr G also damaged a wall and broke kitchen units and a worktop. He left the house in a mess and refused to return.

It transpired that Mr G wasn't Gas Safe registered and was forbidden from carrying out gas work under a prohibition notice. Ms H had the system checked by a Gas Safe Inspector who advised that the system had been fitted incorrectly and was dangerous. In particular the flue wasn't safely attached resulting in Ms H's daughter suffering carbon monoxide poisoning. Ms H had to have the work completely redone, costing her over £4,000. Mr G was later convicted, on a number of counts, of carrying out work not approved by the Health and Safety Executive and of contravening a prohibition notice. He received a prison sentence.

Ms H referred a claim to UKI. She considered that as Mr G had knowingly committed a criminal offence while carrying out the work in her house the damage was malicious. UKI advised that it didn't consider the damage to be malicious as it thought that Mr G didn't intend to cause the damage. It said the damage was faulty workmanship which is specifically excluded under the policy, but it would cover any damage caused by the escape of water. Ms H said the main damage was to the heating system and to her kitchen units.

On referral to this service our investigator ultimately thought that UKI's position was reasonable, in that it couldn't be shown that Mr G's intention was to commit damage. She pointed out that the damage to the system also wasn't covered under the escape of water term in the policy.

Ms H was unhappy with this and the matter has been referred to me for further consideration.

## **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.

Firstly I appreciate Ms H's efforts to put before us detailed and helpful information. I understand that what Mr G did was a very serious criminal offence, for which, together with other similar offences, he received a prison sentence.

I have to consider what term in the policy the matter could come under. There's an exclusion for faulty workmanship in the policy but first of all it has to be decided whether the damage comes under any cover in the policy. As our investigator pointed out, under the escape of water cover, "*tanks, pipes, appliances or heating systems themselves.*" aren't covered. That normally refers to the fact that it's the policyholder's responsibility to repair a leak – the insurer will cover the damage caused by it. I understand that in the course of doing the work Mr G damaged kitchen units, a worktop and a wall as well.

Ms H believes the damage is covered under "*Vandalism or malicious acts.*" Ms H believes it is malicious. She has pointed out that Mr G entered her property with the clear intention of committing a criminal act. And that in the course of that act deliberately caused damage to her property knowing full well that acting in the way he did would cause the damage or he recklessly did so not caring that what he did would cause damage.

Damage caused by a malicious act is damage caused to a property intentionally by another person. And the arguments in this case have centred on what Mr G's intent was. I don't think it was helpful for UKI to surmise that Mr G had a "good intent". Even if he believed he was competent to do the work he clearly knew the risk he was putting Ms H and her family under by falsely claiming to be Gas Safe registered. But the question is did he *intend* to do the damage to the property or did he incompetently or negligently fit the boiler? And I would say the evidence is that he did not intend to do damage to the property. He had some past credentials as a gas fitter so presumably believed he was competent to fit the boiler and pipework. He may have been deluded or reckless in that belief. And I understand the difficulty of second guessing what another person's intent was, without being able to ask them. But I don't think that it's most likely that he intended to do damage to the property so it can't be classed as "malicious".

I think the same thing can be said for the kitchen units etc. I don't think it's been shown that Mr G set out to damage them, rather that he did so in the course of doing the work.

Ms H has made the point that Mr G caused the damage in the course of carrying out a criminal act. But there the damage would have to be caused deliberately in order to carry out the criminal act e.g. breaking and entering a property to burgle it. Here the criminal acts were essentially carrying out work not approved by the Health and Safety Executive (i.e. not being registered as a Gas Safe fitter) and doing that work in contravention of a prohibition notice. the carrying out of the work itself was the criminal act rather than the damage. Though I do note that he was heavily criticised for being reckless and dishonest by the judge.

Lastly I have considered whether the claim could come under accidental damage. This is defined in the policy as "*sudden and unintentional physical damage that happens unexpectedly*". However the damage was caused because Mr G was negligent and incompetent so I don't think it could be described as accidental, within that definition. In any event this is caught by the faulty workmanship exclusion.

I understand that UKI has said it will cover damage caused by the water leak, subject to the normal terms and conditions of the policy. Ms H's main concern is the cost of reinstalling the boiler and pipework. And I believe the damage caused by the leak was quite small. Nevertheless Ms H has referred to it so if she wants to pursue this she should contact UKI directly.

I can understand that it was very distressing for Ms H as her family and home were put at risk. And it's difficult for her to understand why her insurer won't pay out for the reinstallation of the boiler. I hope I have explained why. But unfortunately I don't think that Ms H's insurance covered the damage done by Mr G.

## **My final decision**

I don't uphold the complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 4 November 2020.

Ray Lawley  
**Ombudsman**