

The complaint

Mrs D has complained about the service provided by UK Insurance Limited ('UKI') and that it failed to reimburse legal costs under her home insurance policy following an incident.

What happened

Work was being carried out by the landlord's insurers in November 2020 at the rented home in which Mrs D and her children lived. Mrs D moved with her family to another property on a temporary basis whilst her possessions remained at her rented home. Mrs D visited her rented home and found water pouring out of the front door. The mains water supply hadn't been closed off completely by the workmen and the toilet hose had not been capped.

The escape of water caused substantial damage to the property and to Mrs D's furniture and personal belongings. She reported the matter to UKI and asked about alternative accommodation as the flat was no longer habitable. UKI told Mrs D that she couldn't make a claim on her policy and that the matter should be handled by her landlord's insurers.

Mrs D stated that she was eventually referred to UKI's legal expenses department who advised her to appoint her own solicitor. She did so, and this cost £540. UKI said it hadn't authorised instruction of a solicitor and declined to cover these legal fees. It said that Mrs D had confirmed that she'd decided not to pursue a claim against UKI at that stage. It said it offered to help towards the costs of alternative accommodation and to look to claim this back from Mrs D's landlord at a later date. It acknowledged certain service failures however and paid £300 in compensation for the distress and inconvenience caused to Mrs D.

Mrs D complained to this service. Our investigator provided varying views about the complaint, however after considering further evidence she ultimately upheld it. She considered that, on the balance of probabilities, Mrs D had been referred by UKI to its legal team. She recommended that UKI pay the legal costs of £540 and increase the level of compensation paid to £550 as she didn't think that UKI had done enough to assist Mrs D. Our investigator said that on a number of occasions Mrs D had asked for help with her situation, however UKI had been unsympathetic. She said it didn't explain to Mrs D that if she made a claim under contents insurance for her damaged furniture, then she also had alternative accommodation cover as her home was uninhabitable.

UKI didn't agree with our investigator's view and the matter was referred to me to make a final decision in my role as Ombudsman.

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.

This case involved a complicated and traumatic train of events for Mrs D and her family. The key issues for me to determine are firstly, whether UKI acted in a fair and reasonable manner by refusing to reimburse Mrs D for the £540 cost of instructing her solicitor. The second question for me to determine is whether the compensation which UKI paid to Mrs D

was adequate to cover its acknowledged service failings. I don't consider that UKI acted fairly and reasonably in all respects and I'll explain why.

The starting point for me in coming to my decision is the policy itself. I note that the relevant terms and conditions of the policy state the following under the heading; - *'Family Legal Protection'*, that it will provide legal cover as long as a claim *'has reasonable prospects of success ...'* It includes cover in relation to contract and property disputes but doesn't include cover for claims relating to; *'leases, tenancies or licences to occupy land or buildings.'* Under the heading *'Other Losses not covered'*; it also refers to *'any dispute with us about this insurance policy....'* and *'loss or damage that is insured under... any other insurance policy'.*

Mrs D explained that she was already in temporary accommodation when the incident occurred due to a previous leak at her home. It was during the repair of this leak, arranged by the landlord's insurers that the extensive damage occurred, and Mrs D's furniture and certain personal possessions were ruined. She also experienced traumatic events around finding extended emergency accommodation for herself and her family over the Christmas period and during the pandemic. She said she had to arrange moves, storage, drying and replacement of damaged items without assistance from her insurers. In addition, she said that she experienced the distress and inconvenience of being pushed *'from pillar to post.'*

Mrs D stated that although pleasant in their dealings with her, UKI had refused to process her claim, and that despite several phone calls it said that her losses should be covered by her landlord's buildings insurance policy. She said that the landlord's insurers initially gave an indication that they would be covering her losses but then abruptly changed its stance and referred her back to UKI and the contractors who had caused the escape of water.

Mrs D said that UKI's claims agents eventually referred her to its legal advice line. She said the lawyer she spoke to said that her only recourse was to appoint her own lawyer to start proceedings against her landlady, with whom she'd previously had a good relationship. She said that she was advised that she had £100,000 of legal cover and that the lawyer she appointed would be able to obtain an indemnity against her policy. She said she therefore appointed a lawyer in December 2020 as advised. When she then looked to UKI to cover the cost of this appointment, she said that it immediately repudiated the claim stating that landlord and tenant disputes were specifically excluded from cover.

In summary, Mrs D said that; *'despite quite desperate pleading, the emotional and financial stress was overwhelming.'* She also stated that: - *'This litany of stress, costs, inconvenience, disruption, illness and shambles could have been avoided had [UKI] attended to [her] claim immediately and properly advised me from the outset.'*

Turning to what UKI have to say about the matter, in its final response letter in July 2021, it said that it didn't agree that the advice she was given was wrong. It denied that there'd been a discussion about appointing and paying for a solicitor to prepare a claim. It said that her legal expenses policy wouldn't cover costs before UKI had agreed to meet them and any advisor on the legal advice line would have known this.

As to the service Mrs D had received, UKI said that the claim was originally being handled by the landlord's insurer and this was the correct process. It acknowledged that it initially advised Mrs D in December 2020 that no part of the claim would be covered by UKI, however it said that the following day, it corrected this and said that there was cover. In view of this, it stated that there would have been no need for Mrs D to seek legal advice.

UKI's file notes showed that at the end of December 2020, UKI agreed that it could pay a contribution and set up a recovery if Mrs D wished to claim with UKI for her contents. It also recorded that Mrs D didn't want to claim *'just now'* for her contents as she felt the landlord's

insurers should be covering the damage due to their contractors' negligence. It stated that it wouldn't cover a claim for alternative accommodation as it had no control over the time scales for the building work. It also said that it was unable to intervene in a dispute Mrs D was having with the landlord's insurer. UKI considered that the legal fees related to the issue of accommodation and not contents for which it was responsible as insurer. It was unfortunately unable to produce relevant telephone records from its legal advice line.

In summary, UKI said that Mrs D was told in early December 2020 that there was cover for her lost and damaged contents. It considered that Mrs S's on-going dispute with her landlord was unrelated to the cover she had with UKI. It remained of the view that it wasn't responsible for the legal costs incurred by Mrs D.

Having carefully considered what both UKI and Mrs D have to say, I broadly concur with our investigator's final conclusions. I sympathise with Mrs D and can see that through no fault of her own, she has suffered a distressing and traumatic train of events at an extremely difficult time. Difficulties and misunderstandings can sometimes occur in relation to insurance claims which involve rented accommodation. However, we would expect the tenant's insurers to provide clear guidance and assistance to their policyholders in such circumstances. I can see that UKI did attempt to provide such assistance, however the guidance was not always clear and consistent. In this case a difficult and inconvenient situation became traumatic and distressing, partly due to the way it was handled by UKI.

UKI doesn't dispute that it referred Mrs D to its legal assistance line. I also have no reason to disbelieve Mrs D's account that the advice line representative did indeed take a sympathetic approach having heard Mrs D's account. I'm satisfied on the balance of probabilities that the representative advised that the only remaining recourse for Mrs D was to instruct a solicitor to resolve her remaining issues and that this action would be covered by her insurance policy, with cover of up to £100,000. It does appear that, having taken this action as advised, the deadlock was resolved, and the various remaining elements of the claim were settled.

In the circumstances, I note that the policy's legal expenses terms and conditions do not cover landlord and tenant disputes or disputes about the policyholder's insurance policy. The terms don't specifically exclude disputes with the landlord's insurers. It may be that it was intended that such disputes were excluded under the broad heading of '*landlord and tenant disputes*.' Regardless of the correct interpretation of the definition however and the elements of claim which Mrs D was still pursuing, I'm satisfied that Mrs D reasonably believed she was acting upon UKI's advice. On the balance of probabilities, I consider that Mrs D was led to believe by UKI's legal advice helpline representative, that her instruction of a solicitor to try to resolve the outstanding issues was covered by her policy. It would be fair and reasonable for UKI to cover this sum of £540 in all the circumstances.

On top of the distress and trauma caused by the escape of water, I agree that Mrs D was '*pushed from pillar to post*' by the insurers involved in this case. It's unfortunately inevitable that some additional correspondence, dispute and negotiation takes place in complex landlord and tenant insurance scenarios of this nature where contractor negligence is also alleged. I can see from the file notes that UKI were applying the terms and conditions of its policy, whilst also generally showing a sympathetic stance towards Mrs D. Having said this, it also made some errors such as initially repudiating Mrs D's contents claim and then realising that it had made an error in this respect. I'm satisfied that UKI's customer service was not clear and consistent and that this will have added to the stress and inconvenience caused to Mrs D.

In conclusion, I uphold Mrs D's complaint. I'm satisfied from all the available evidence that UKI didn't handle Mrs D's claim in a fair and reasonable manner in all respects. I note that Mrs D asked UKI for help on many occasions about her stressful set of circumstances,

however the advice she received from UKI wasn't always adequate, accurate or sympathetic. I can see UKI have paid £300 compensation in recognition of some of the service issues. I consider that this amount is too low however, and I'm satisfied that £550 would represent reasonable recognition of UKI's service failings here. I appreciate that UKI did engage with Mrs D on a number of occasions and was generally sympathetic towards her. Nevertheless, I'm satisfied that UKI didn't handle Mrs D's claim fairly and reasonably in the respects noted above, and this added to the considerable stress and inconvenience she'd already experienced

My final decision

For the reasons given above, I uphold Mrs D's complaint and require UK Insurance Limited to; -

- Reimburse Mrs D the £540 she paid to her solicitor within 28 days of her acceptance of this Final Decision.
- To pay 8% a year simple interest* from the date she paid the sum of £540 to her solicitor (following production of a receipt by Mrs D), to the date of settlement.
- Pay further compensation of £250 in addition to the £300 already paid to Mrs D to ensure an overall compensation payment of £550 within 28 days of her acceptance of this Final Decision. If UKI pays later than this, it must also pay interest on the compensation from the date of this Final Decision to the date of payment at 8% a year simple interest*.

*If UKI considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs D how much it's taken off. It should also give Mrs D a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 26 July 2022.

Claire Jones
Ombudsman