

The complaint

Mr A has complained about U K Insurance Limited's (UKI) handling and settlement of a claim he made for an escape of water at his home.

What happened

I issued a provisional decision on this complaint in April 2022, explaining that I was intending to partially uphold it. Here's what I said in my provisional decision:

"What happened

There has been extensive background to this complaint as the claim has been ongoing since 2020. I don't intend to repeat the full history of the claim here. Instead, I'll focus on what I believe to be the key issues, based on the evidence and arguments I have seen, which still remain in dispute. This isn't meant as a discourtesy to either side, rather it reflects the informal nature of our service and my role within it.

Mr A's property suffered an escape of water in September 2020. The escape of water caused extensive damage, and repairs required the removal of flooring in various parts of the property and full removal of the bathroom. Due to this, Mr A and his family were put into alternative accommodation whilst repair works were being completed by UKI's contractor.

There have been several disagreements during the claim over the works completed or items of contents included in the claim. Most of these issues are now resolved. But Mr A remains unhappy that:

- UKI paid a cash settlement for his kitchen worktop based on its contractors' rates, despite its contractor refusing to do the works. This cash settlement also didn't account for the fact that the worktop couldn't be removed without causing damage to his kitchen. Mr A has now replaced his kitchen in its entirety and wants UKI to reimburse his costs.*
- UKI ended his alternative accommodation at short notice on several occasions, forcing him to take time off work and move his family from one place to another, which was stressful – particularly given one of his children's health issues. Mr A would like UKI to compensate him for the impact of UKI's poor organisation, including reimbursing two days lost earnings.*
- During repairs, UKI were supposed to remove and replace a floorboard which ran beneath the wall adjoining the bedroom and bathroom. This floorboard had suffered cracking and mould damage as a result of the escape of water. Mr A says this is causing health issues for himself and his family.*

- *Mr A says a further floorboard was cut into during repairs and subsequently wedged back in place rather than being properly replaced. He says this floorboard has now slipped from its wedge and is resting on a water pipe. Mr A says this is both a hazard, in terms of a risk of a further escape of water from the pipes, and an inconvenience as he can hear the floorboard rattle the pipes when it is stepped on.*

One of our investigators considered Mr A's complaint. She addressed most of the above complaint points, alongside others which Mr A has since confirmed have now been resolved, such as reimbursement of unpaid hotel costs or missing items of contents. In terms of the above issues, which remain in dispute, she concluded that:

- *It was fair for UKI to restrict its settlement, for damage to the kitchen, to just the cost of replacing the worktop. But she said UKI needed to ensure the cash settlement paid was equal to the amount it would cost Mr A to replace the worktop, rather than the discounted rates available to UKI. She also said that UKI should be prepared to consider any evidence supplied by Mr A that his kitchen suffered unavoidable damage due to the removal or replacement of the worktop. But UKI says no evidence of this nature has been supplied.*
- *For one of the damaged floorboards, she said UKI's position was that it had been lifted by Mr A's own contractor, rather than being damaged by its contractor. But she said UKI had agreed to replace the floorboards in the schedule of works, which she felt was fair.*
- *Alternative accommodation wasn't arranged for long enough for Mr A's home to become habitable. As a result of this Mr A and his family were moved multiple times, and at short notice. There were also communication issues between Mr A, UKI and the contractors which meant Mr A was doing a lot of unnecessary chasing. UKI had already paid £750 compensation for mistakes, delays and service issues, but she thought it would be fair for a further £500 compensation to be paid.*

Neither side accepted our investigators recommendations. So, because no agreement has been reached, the complaint has been passed to me to decide.

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.

Having done so, I'm minded to reach a similar outcome to that reached by our investigator, but for slightly different reasons. For ease of reference, I'll address the separate complaint points in turn.

Kitchen damage

It's not in dispute that the escape of water caused damage to Mr A's kitchen worktop. UKI has paid Mr A a cash settlement for this aspect of his claim. But Mr A says that in removing the worktop, further damage would be caused to various areas of the kitchen. He also says that his kitchen suite has been discontinued, which meant he has been forced to replace the kitchen in its entirety. He wants UKI to cover these costs.

UKI says Mr A's kitchen was in a poor state of repair before the claim. It says none of the units were damaged by the escape of water either. Based on this, it considered it fair to pay a cash settlement for removal and replacement of the worktop only.

The terms and conditions of Mr A's policy set out how UKI can settle a claim:

"How we settle claims

If the buildings are damaged by any of the causes listed in [Section 1], we will either:

- repair or rebuild the damaged part using our suppliers*
- pay to repair or rebuild the damaged part using your suppliers*
- make a cash payment*

If we can repair or rebuild the damaged part, but we agree to use your suppliers or make a cash payment, we will only pay you what it would have cost us using our suppliers and therefore the amount you receive may be lower than the cost charged by your suppliers.

If we cannot repair or rebuild the damaged part, we will pay the full cost of rebuild or repair.

If the damage to the buildings isn't repaired or rebuilt, we may pay the difference between the market value of your property immediately before the damage and its value after the damage.

We may take off an amount for wear and tear if the buildings were not in a good state of repair at the time of the damage."

I've considered the policy terms and conditions alongside the reports and photos of the condition of the kitchen. Based on what I've seen, I'm satisfied that the kitchen units weren't damaged by the escape of water. I'm also satisfied that they were in a generally poor condition as UKI has said. So, I don't consider it unfair for UKI to decide to settle this element of the claim by a cash settlement for the worktop only.

That said, I can see that the cash settlement it paid was based on the discounted rates provided by its contractor. UKI says this is in line with the terms of the policy. But as an ombudsman I'm not bound by the terms and conditions of the policy. Rather, I'm required to decide what is fair and reasonable, taking everything into account.

In situations like this, where it is the insurer who insists on settling a claim (or element of a claim) by cash, our service has a longstanding approach that it is unfair for the insurer to settle at the discounted rates it can obtain. This is because those discounted rates are not available to the policyholder. Had UKI been prepared to do the works, and Mr A insisted on a cash settlement, then I would consider it fair for UKI to restrict the value of the cash settlement. But that isn't what happened here. So, I'm minded to decide that UKI needs to recalculate the value of the cash settlement for the kitchen worktop, based on the rates available to Mr A, and to pay Mr A the difference plus interest.

In terms of Mr A's wish for UKI to reimburse him for a full replacement kitchen, I don't think this would be fair or reasonable in the circumstances. I say this because I haven't seen any evidence which persuades me the kitchen was damaged by the escape of water, or that the worktop couldn't be removed and refitted to the existing carcasses. I note that UKI's contractor said they wouldn't replace the worktop themselves as they wouldn't be prepared to provide a guarantee owing to the pre-existing condition of the kitchen carcasses. But this isn't the same as it not being possible to replace the worktop upon the existing carcasses.

I have also seen that UKI has offered to pay to replace the splashback as it accepts this would likely have been damaged during removal of the worktop. I consider this to be a fair offer, subject to the amount being reviewed in line with what I've said about the cash settlement above.

Should Mr A be able to evidence further, unavoidable, damage being caused to the kitchen during removal of the worktop, I would expect UKI to consider this.

Floorboards

There are two floorboards which Mr A has concerns with. I'll address them separately.

Mr A is unhappy that a water damaged floorboard running beneath the bathroom and a bedroom hasn't been replaced. He says the floorboard was mouldy and cracked and that his family are suffering from health issues due to it remaining in place. He has provided several photos and a video which he took before the flooring and carpet was replaced, which he says shows that the floorboard was still mouldy and was cracked.

I've considered all the evidence and arguments provided about this issue. From the photos and video provided I can see that the floorboard in question did suffer significant water damage as it's stained. But I can't see that the floorboard is cracked or in any way structurally unsound. And whilst I can see the water stains, I don't think this is the same as mould still being present.

I don't doubt Mr A's assertion that he and his family are suffering from allergies. But allergies can have many causes, so this alone doesn't persuade me that the floorboard left in situ was still mouldy. That said, I fully appreciate Mr A's concerns and accept that it's possible the floorboard is still mouldy and is the cause of the allergies reported. So, if Mr A were to lift the carpet and flooring and demonstrate, through the opinion of an expert, that there is active mould on and around the floorboard, I would expect UKI to remedy this (or cover the cost of doing so) including covering Mr A's costs in lifting the existing flooring and obtaining the expert opinion. However, I would not expect UKI to cover Mr A's costs if this investigation doesn't evidence that there is active mould.

Mr A has raised concerns about a second floorboard, which he says needed to be partially cut in order to repair the leak. Mr A says UKI were to replace this floorboard, but instead wedged it in place. He says the wedge has failed and the floorboard now rests directly onto water pipes, which is both a hazard and annoying, as he can hear the floorboard rattle the pipes when walking on it.

UKI has provided comments from its contractor on this point:

“The full floor board (sic) was lifted and replaced and additional dwangs and fixing fitted and then inspected by myself see image and annotation on file highlighting no squeaks to floorboard, in my considered opinion this has been lifted and put back down by someone most probably to check the condition of the mould and the affects (sic) on the treatments applied to the timbers...”

I've thought carefully about everything both sides have said on this issue. Based on the comments and photos from the contractor I'm persuaded that the floorboard was replaced in its entirety, as opposed to being wedged in place as suggested by Mr A. But while I think the contractor's opinion that it has subsequently been lifted again by Mr A's contractor is plausible, I'm mindful that there is no real evidence to suggest that this happened. And it doesn't seem to be in dispute that the floorboard is now squeaking. So, it's clear something has gone wrong, it's just unclear why that is.

UKI's contractor has offered to inspect the floorboard and, if necessary, refix it. But the offer is conditional upon Mr A having the carpet lifted and subsequently refixed at his own cost. Taking into account the particular circumstances here, I think this is a fair compromise. However if, once Mr A has had the floorboard exposed, it becomes clear that it wasn't replaced by UKI's contractor as stated, UKI should cover the costs incurred by Mr A in lifting and relaying the carpet, in addition to refixing and/or replacing the floorboard.

Service issues

UKI has accepted that the level of service it provided to Mr A fell short on a number of occasions. This included missing various items of contents when listing items to be replaced and failing to notify Mr A that the contractor wouldn't be attending on a particular day, which led to the alternative accommodation needing to be extended. In addition, when refitting the bathroom suite, items weren't appropriately sealed, in the first instance, which resulted in a further escape of water. And the bathroom door wasn't secured appropriately and became dislodged while his young child was using the toilet. UKI has offered £150 and £600 as compensation for these issues during the course of the claim. As I understand it, Mr A never accepted or received the £150, but he has received the £600.

Our investigator felt that UKI's communication and organisation around Mr A's alternative accommodation arrangements ought to have been better. She highlighted that Mr A, and his family (including his child who this severely impacted) were moved multiple times, including occasions at relatively short notice. She didn't think the compensation already paid went far enough to compensate Mr A for the impact of UKI's errors here. So, she recommended UKI should pay an additional £500.

UKI has accepted that its communication and organisation could have been better. But it feels the compensation already paid is sufficient. It has highlighted that there was never an occasion where it left Mr A or his family without alternative accommodation. But it accepts he was asked to move on several occasions.

Mr A has said that due to being given short notice to vacate alternative accommodation he lost out on two days earnings at c.£400 per day. He wants UKI to increase the compensation paid to cover these losses.

I've thought carefully about everything which has been said regarding these issues. Having done so, I'm minded to agree with Mr A, and our investigator, that the compensation already offered/paid by UKI doesn't go far enough in the circumstances. However, I'm also not intending to direct UKI to reimburse Mr A specifically for his lost earnings. I'll explain why.

From what I've seen, the £150 compensation offer related specifically to the missed contents issue and the £600 related to one particular instance of a contractor not turning up, which meant the alternative accommodation needed to be extended, as well as the bathroom issues. However, in my view, these weren't the only instances of poor customer service.

Mr A had made UKI aware of his family's needs, yet he was required to move accommodation on several occasions, due to works overrunning. While works overrunning isn't necessarily avoidable, or within UKI's control, I would have expected it to maintain better oversight of the progress of the works, in order to minimise any disruption to Mr A and his family. This didn't happen, and I think the impact to Mr A and his family was likely more significant than it might have been to others in different circumstances. I've kept this in mind when thinking about how UKI should put things right.

I'm aware that Mr A wants UKI to reimburse him for lost earnings because of the short notice he was given. He says he could have booked the day off work if communication from UKI had been better, which would have prevented him from losing out on this money. I've thought about this, and I agree that the communication and organisation from UKI fell short. But while I can see there were occasions where he was given short deadlines to vacate accommodations, I haven't seen any persuasive evidence that these short deadlines were the sole cause of Mr A losing out on earnings. So, I'm not currently intending to direct UKI to cover these alleged losses. However, should Mr A be able to evidence these losses, and show that he only suffered these losses because of UKI's errors, then I would expect UKI to consider this further.

Taking everything into account, I'm currently minded to direct UKI to pay Mr A an additional £500 compensation for the impact of its errors. This is in addition to the £150 and £600 already offered/paid. So, if the £150 hasn't been paid, as Mr A suggests, UKI should also pay this amount."

I said I was intending to direct UKI to pay Mr A an additional £500 compensation and to pay the £150 compensation already offered, if it hadn't yet done so. I also said I was intending to direct UKI to recalculate the settlement it paid for the kitchen worktop and splashback, based on rates which would have been available to Mr A, and to pay him the difference plus interest. And finally, I said UKI should be prepared to reconsider its position on the kitchen, floorboard and loss of earnings issues, subject to any further evidence being supplied by Mr A.

I asked both sides to send me any further comments or evidence they wanted me to consider before I reached a final decision.

UKI responded to say it accepted my provisional conclusions.

Mr A responded with some additional points for me to consider. In summary he said:

- He has provided evidence that his kitchen was in a good state of repair other than the unit which he says was damaged by the escape of water.

- His kitchen units were damaged during removal, but he has disposed of them, so he doesn't know what he can provide to evidence this.
- He needed to vacate temporary accommodation at short notice, while his wife was mourning the death of a relative and his children were at school. This required two days off work, which could have been avoided if UKI had managed things better.
- He provided a photo showing the split in the floorboard running beneath the bathroom and bedroom.
- He provided email chains to show he has been mentioning the creaking floorboard in the bedroom since it was installed. He says there was an agreement for the contractor to correct the issues before the carpet was laid, but that didn't happen.

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.

I've also carefully considered the additional comments and evidence supplied in response to my provisional decision. I'll respond to each in turn.

Kitchen

Mr A says he's provided photos to show the kitchen was in good condition, other than the unit he says was damaged by the escape of water.

The unit in question does show signs of water damage, so I asked UKI to provide further comments from its loss adjuster explaining why their view was that this damage wasn't considered to relate to the insured event. To summarise, they said in their opinion, based on extensive experience, the damage was not consistent with a one-off escape of water event. They said the worktop and units have a laminate finish which repels water and the amount of swelling noted at the time was way beyond what would be expected from the event in question. They said some of the units had doors hanging off, the drawer blank worn away and the worktop rotted, which supports the view that the damage wasn't caused by a one-off event.

I haven't seen any photos to support the comments regarding unit doors hanging off. But I have seen photos which do show significant swelling of units and rotting of the worktop. I've also seen photos of swollen units in a different part of the kitchen, away from the escape of water. Taking these into account, alongside the comments and conclusions of the loss adjuster, I'm persuaded, on balance, that the damage reported was not caused by the escape of water. So, my provisional finding on this point, that UKI doesn't need to pay for a replacement kitchen, remains unchanged.

Mr A has also explained that parts of his kitchen were damaged, unavoidably, during removal. He says the damaged units have been disposed of, so he's asked what evidence he can provide to UKI to demonstrate this.

It isn't for me to set out what evidence will, or won't, be adequate for UKI to amend its position. Although, I would highlight that the fact Mr A has disposed of the damaged parts of the kitchen is likely not going to be helpful to his case. Some examples of other information which could help him prove his case include photos or videos taken during removal of the kitchen which evidence the damage which Mr A says was caused when the units were removed.

In any event, as I said in my provisional decision, I would expect UKI to consider any evidence Mr A is able to provide in support of his position. Should Mr A provide some evidence and remain unhappy with UKI's conclusions, following receipt of that evidence, he may be able to raise those concerns as a new complaint.

Loss of earnings

As stated in my provisional decision, I agree that the organisation and communication from UKI fell short, so I accept Mr A likely needed to be available at very short notice to move from one place to another. But I haven't seen any evidence of the losses Mr A says he incurred nor anything to show that any alleged losses were incurred solely as a result of UKI's actions.

Again, I would expect UKI to consider any evidence Mr A can supply to demonstrate that he actually lost out on the amounts he suggests, on the dates he suggests, solely because of UKI. But based on everything I've seen; I make no award for Mr A's alleged loss of earnings as part of this decision.

As with the kitchen issue, should Mr A provide UKI with evidence to support his position here, and remain unhappy with its conclusions following receipt of that evidence, he may be able to raise a new complaint.

Floorboards

Mr A has provided a photo which shows a crack in the chipboard floorboard which runs beneath the wall separating the bathroom and bedroom. This is the same floorboard which UKI says was treated for mould – which Mr A disputes.

UKI has provided further comments, from its loss adjuster, on the crack. It says that an escape of water would not cause a chipboard floorboard to crack. So, they say the crack must be pre-existing, or cut out (by Mr A or his contractor) to access something below.

Based on the evidence I've seen, I'm not persuaded that the crack was most likely caused by the escape of water. I say this because, like the loss adjuster, I don't think a crack is consistent with the way water would generally damage chipboard.

However, in my provisional decision I said I wasn't persuaded that this floorboard was still suffering from active mould. I said that if Mr A felt it was, he should instruct an expert to access the floorboard and produce a report supporting his position. Should he do this, I said I would expect UKI to cover the costs of repairing the damage and Mr A's costs in obtaining an expert report. As the cause of the crack is disputed, I think this could also be a fair way of determining how it happened.

So, if Mr A decides to follow through with my suggestion, and the evidence he obtains confirms that either there is active mould or that the crack is as a result of the escape of water, then UKI should cover the costs of repairing the damage and reimburse Mr A's costs in exposing the floorboard and obtaining the expert report.

But as things currently stand, I haven't seen sufficient evidence to support that the escape of water, or UKI, are responsible for carrying out further work to this floorboard. So, I'm not directing it to take any further action, until such time as Mr A presents it with further evidence in support of his position.

In terms of the second floorboard, Mr A has provided further comments supporting that he has been complaining about it squeaking since it was installed. I've considered this carefully. But I've also seen annotated photos from the point the floorboard was allegedly replaced, which state that it wasn't squeaking at that point.

Taking everything into account, I maintain my provisional finding on this point. That is that it's reasonable for Mr A to bear the cost of lifting the carpet and exposing the floorboard to allow UKI's contractor access to inspect and potentially repair it (which it has offered to do as a gesture of goodwill.)

However if, once Mr A has had the floorboard exposed, it can be evidenced that it wasn't replaced by UKI's contractor at the time, as he has stated, UKI should cover the costs incurred by Mr A in lifting and relaying the carpet, in addition to refixing and/or replacing the floorboard.

Remainder of complaint

No further comments were raised regarding the awards I provisionally concluded were fair in the circumstances. So, in the absence of further comments or evidence, I maintain those provisional conclusions, for the reasons already stated.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mr A's complaint in part.

U K Insurance Limited must:

- Recalculate the cash settlement for the kitchen worktop and splashback based on rates available to Mr A, and pay him the difference plus 8% simple interest* on that difference in amount. This should be paid from the date UKI paid the incorrect cash settlement, to the date it makes the increased settlement payment.
- Pay Mr A the £150 compensation offered in the March 2021 final response letter – if it hasn't done so already.
- Pay Mr A an additional £500 compensation.

In addition, U K Insurance Limited should be prepared to review its position on the kitchen, floorboard and loss of earnings issues should Mr A provide further evidence in support of his position.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 28 June 2022.

**If U K Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Adam Golding
Ombudsman