

The complaint

Ms W has complained that UK Insurance Limited ('UKI') declined part of her claim under her home insurance policy following damage to items in her home.

What happened

A paint spillage incident occurred at Miss W's home in October 2021. She was insured with UKI at the time and made a claim on her insurance policy however UKI declined a part of the claim.

Miss W thought that UKI had confirmed approval of the claim in October 2021. It had said that its representative would visit Miss W's home to assess whether the sofa and carpets could be cleaned or would need replacing. Miss W said she'd received payment for several items without further question and UKI paid out approximately £2,000 in total. She'd understood that the excess would be taken from the settlement for the sofa and carpets.

UKI said that following its representative's visit, it became apparent that the sofa and carpets had suffered wear and tear and were beyond economical repair prior to the incident, and it would therefore settle only part of her claim.

Miss W was unhappy with the outcome of her complaint and referred it to this service. Our investigator didn't uphold the complaint and agreed with UKI that the items in question were already worn due to general usage over time. She thought that the sofa showed wear to the quality and colour of the fabric and that the carpet also appeared worn. As the policy didn't cover wear and tear, and as it expected items to be in a reasonable existing condition regardless of age, she thought that UKI had been fair in declining this part of the claim.

Miss W remains unhappy about the outcome of her complaint and the matter has been referred to me to make a decision in my role as Ombudsman. In June 2022, I issued a provisional decision for this complaint and explained why I was minded to uphold Miss W's complaint as follows; -

'My role is to consider whether UKI has treated Miss W in a fair and reasonable manner in its handling of her claim and whether it's declined the claim in line with the policy terms and conditions. I've concluded on a provisional basis that it hasn't done so in all respects, and I'll explain why.'

'The terms and conditions of the policy are the starting point for my decision. Miss W's policy covers her in principle for accidental damage to the contents of her home, subject to the detailed provisions of her policy. The policy defines accidental damage as; 'sudden and unintentional physical damage that happens unexpectedly.'

'The policy also excludes cover for damage in certain circumstances. Under the heading 'This policy doesn't cover,' it states: - 'Just like most insurers we don't cover: Wear and tear...And damage caused gradually'. Also, under the heading: - 'Maintaining your buildings and contents...' it states: - 'You must keep the buildings, contents and personal possessions covered under this policy in good condition.'

Miss W said that initially she was told not to worry by UKI as; 'I had valid cover for items and a case would be raised'. Miss W said she'd provided photographs of the damage and evidence for costs to replace the items, together with; 'links to items online for cost purposes.' During an initial telephone call with UKI she said it confirmed that her claim had been approved, however she would need to send quotes for some work elements. She said that she was also informed that a representative would attend her home to assess whether items could be cleaned or whether they would be replaced and would bring carpet samples as an option for replacement. When the UKI's assessor attended her home, he questioned her about the accident and took video and photographic evidence. Miss W said that he didn't inspect the living room carpet yet took numerous photographs of a chair which wasn't part of the claim. She said she was also questioned at length by a claim validation specialist about the incident and her home life.

Miss W didn't agree that her sofa and carpets were beyond economical repair before the event took place and says that the policy doesn't specify that items need to be less than a certain age or in nearly new condition. The carpet was bought around 12 years ago, and Miss W was adamant that there was no previous wear and tear or damage to the carpet. She said that it was a quality wool carpet and had many more years of service ahead and was designed for areas of high usage and to last for 25 years or more. In any event she said that the age and condition of the smaller damaged items weren't assessed prior to accident.

Miss W was also unhappy about the excess being deducted and having to continue to pay the premiums despite UKI declining part of her claim. She said that; 'Payment was made for smaller items without further question and it was indicated on the invoice that my excess would be taken from the settlement for sofa and carpets.' As to the premium, she said that;- 'When ringing to cancel my policy today I was told that I must continue to pay the £101 premium I pay for contents insurance until June 2021 - even though they deem my contents uninsurable.' She considered the handling of her claim to be contradictory and insulting.

UKI said that the sofa and carpet were inspected by its independent assessor, who confirmed that both the sofa and carpets were beyond economical repair prior to the incident. It said that the policy didn't provide cover for such items and it had correctly declined the claim given that the damage was caused by wear and tear or was caused gradually. It said that the terms and conditions of the policy and the assessor's report and photographs confirmed this view.

UKI said that it paid Miss W's decorating costs and paid for replacement curtains as well as a number of other items. It said that it was only when the inspector attended Miss W's home that he saw the carpets and furniture properly and noted widespread damage. He was then able to say that the extent of the wear and tear didn't justify any restoration attempts. He referred to an unknown spillage stain which it said had caused permanent damage to the pile and said that the carpets were not in a repairable condition prior to the paint spillage. UKI's inspector noted that Miss W had said that the paint container was resting on top of an open door, she'd lost her balance and the paint container fell onto the floor on the left side of an open door. It queried how the sofa on the right-hand side of the open door would also have sustained paint damage. UKI also noted that no dust sheets had been used at the time of decorating.

UKI concluded that the carpets were in poor state of repair and that previous wear and damage made them non-repairable but that they needed to be replaced in any event. It also referred to concerns about the claim which it had referred to its claims validation team to investigate. In summary, UKI said that it didn't consider that it had an obligation to settle the claim in full, just because it had previously accepted part of it.

Having carefully considered what both Miss W and UKI have to say in the light of the available evidence, I note that UKI initially accepted the claim. I note also that it paid out for several items as well as curtains and decoration and deducted the excess. Miss W considers that UKI should therefore honour the whole claim. This is not necessarily the case however, and I have based my provisional decision on the basis of the facts and evidence which have emerged and the application of the policy terms and conditions to the facts and evidence.

It's important to note that as a part of consideration of a claim, necessary checks are usually carried out to validate the full facts and circumstances. This may well include inspection and reasonable questioning about the incident. I'm satisfied that prior to inspection, UKI could provide a preliminary response only, and could not be expected to know the condition of specific items or if the damage claimed had been caused by wear and tear. In summary, any expectation of claim cover for specific items will clearly be subject to the necessary checks, although I agree that UKI could have managed expectations better by making this crystal clear to Miss W in advance.

Having viewed the independent assessor's report and photographic evidence, I conclude on a provisional basis that UKI didn't act fairly in all respects in handling this claim. I note that UKI considered the sofa and stair carpets were showing signs of existing wear and tear or gradual damage over several years, as well as the recent paint damage. The available photographs of the sitting room carpet are less clear as to the extent of wear and tear. Nevertheless, the damage claimed is for paint damage to these items. I'm satisfied that the paint damage is damage which occurred suddenly and unexpectedly.

I've also noted that UKI have questioned how such extensive damage could have occurred in the circumstances described by Miss W. I've noted that UKI have stated that the damage was extremely widespread and included damage to numerous items and curtains. I agree that the extent of the damage appears unusually extensive in the light of the circumstances described. Nevertheless, UKI has settled Miss W's claim for damage to curtains and numerous items damaged during the same incident.

UKI has also noted that no dust sheets were used by Miss W when balancing the paint container on top of an open door. Nevertheless, the incident still meets the definition of 'accidental damage' under the policy as it was sudden. There is no evidence of it being intentional or expected damage. On the balance of probabilities, I therefore conclude on a preliminary basis that the sofa and carpets were damaged due to an insured risk. I also conclude on a preliminary basis that the damage wasn't caused deliberately. Indeed, UKI hasn't pursued this approach.

In the circumstances, it's fair to place Miss W back into the position she was before the incident. I agree with Miss W that the policy provisions don't require items to be under a specified age or in a nearly new condition. We'd expect an insurer to cover damage caused by an insured event. I've noted that Miss W's policy includes the usual wording which allows the insurer to decide the method of settlement of a claim. In other words, it can decide whether to replace an item, to repair or clean an item, or to make a cash payment. Payment of a fair and reasonable proportion of the cost of a replacement sofa and carpets may be appropriate in all the circumstances in this case, however this is a matter for the insurer to decide in the first instance.

As to the 'excess' which was deducted from the sum paid out, and as to Miss W continuing to pay her premiums; on a provisional basis, I don't consider that UKI has acted in an unfair or unreasonable manner. As part of the claim was paid, the excess of £50 would be due in any event. Premiums remain due while a policy is in place and a claim is progressing unless the policyholder decides to cancel the policy. I can't say that UKI has acted unfairly or unreasonably in declining to refund any premiums here.

I appreciate that both Miss W and UKI will be disappointed to read my provisional conclusions, however, unless I receive evidence to the contrary, I consider this to be the fairest and most reasonable outcome in the circumstances of this case.'

In my provisional decision, I asked both Miss W and UKI if they had any further comments or evidence which they would like me to consider before I made a final decision.

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.

The parties have both provided concise responses to the preliminary decision. Miss W has accepted the provisional decision. She felt that UKI shouldn't refuse her claim due to the age of her claimed items as this wasn't specified in her policy cover. She also stated that a request for the transcripts of a relevant phone call had been rejected and finally, she said that UKI had used '*varying invalid reasons*' to reject her claim.

UKI said the claim was declined as the customer had not taken reasonable care, for example by using dust sheets and that had she done so, this would have prevented such extensive loss. It referred to the policy terms and conditions: '*You must follow all of the terms and conditions of this policy and take all reasonable precautions to prevent a claim from happening. Where a claim is unavoidable, you must take all reasonable precautions to minimise the amount of the claim.*'

I note these final points made by both parties however they do not change my provisional conclusions. I appreciate that the policy holder should take all reasonable measures to avoid an accident and that would include use of dust sheets. It would also clearly be inadvisable to balance a paint container on the top of an open door when painting. I note however that the spread of paint damage was widespread, to include curtains and a number of personal items as well as the sofa and carpet. In the circumstances, it's likely that paint would have damaged the carpet in any event. In addition, UKI had already accepted the claim regarding other items which likewise hadn't been covered by a dust sheet and despite the balancing of the paint tin.

As stated in my provisional decision, it's understandable that an insurer would wish to carry out necessary checks to validate the full facts and circumstances of a claim. It's also the case that an insurer should take care not to pay out on invalid or excessive claims. The provisional decision therefore acknowledges that the cost of cleaning, or a proportion only of replacement costs would be the appropriate compensation to be paid in this case. This recognises the fact that there was no doubt existing wear and tear to these items.

In all the circumstances, I've concluded that the provisional decision provides a fair and reasonable outcome to the matter and I uphold Miss W's complaint as follows.

My final decision

For the reasons given above, I uphold Miss W's claim and require UK Insurance Limited to provide a cash settlement to either: -

- Cover the cost of cleaning of the sofa and carpets, or
- Pay an appropriate proportion in accordance with the policy terms and conditions, of the cost of replacement sofa and carpets, following provision by Miss W of a

receipt or invoice.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 23 August 2022.

Claire Jones
Ombudsman