

## **The complaint**

Mr and Mrs F complain U K Insurance Limited (trading as Churchill) unfairly declined their home insurance claim.

## **What happened**

In July 2020 Mr and Mrs F took out a UKI home insurance policy. It started that day. Nearly two years later, in March 2022, they made a claim for flood damage to the property. I'll refer to the property as Property A. Mr and Mrs F said the damage had been caused by flooding that happened in mid-August 2020. UKI declined the claim. It said as Mr and Mrs F's policy had, in September 2020, been retrospectively cancelled from the date it had been taken out (July 2020). So it said there wasn't any insurance in place for the property at the time Mr and Mrs F say the flood happened.

Mr and Mrs F complained about that decision. In response UKI maintained its position that there was no cover to consider a claim against. It indicated Mr and Mrs F had, when taking out the policy in July 2020, incorrectly said the property was their permanent residence. It said in fact they weren't living there due to ongoing issues of damp that pre-dated the policy's inception. Mr and Mrs F weren't satisfied, so came to this service.

In January 2023 our investigator considered the complaint. He said it was reasonable for UKI to decline the claim as there was no cover in place. He recommended it reimburse Mr and Mrs F premiums for the policy. He also felt UKI should pay £100 compensation to recognise a loss of expectation. UKI accepted the assessment. But as Mr and Mrs F didn't, the complaint was passed to me.

In June 2023 I issued a provisional decision. As its reasoning forms part of this final decision I've copied it in below. In it I explained why I intended to require UKI to consider Mr and Mrs F's claim against the terms of their policy – and to pay them £500 compensation. I also invited both parties to provide anything further they would like me to consider before issuing a final decision. I've addressed UKI and Mr and Mrs F's responses below.

### ***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 intend to find there was cover in place at the reported time of loss – mid August 2020.*

*As this is an informal service I'm not going to respond here to every point or piece of evidence Mr and Mrs F and UKI provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything provided.*

*UKI's claim repudiation letter, of 7 June 2022, explains there was no cover in place for the claim – as the policy had been cancelled 'back to the date it had been taken*

out'. Its final response letter implies the policy was avoided due to Mr and Mrs F misrepresenting the occupancy and condition of the property when taking it out.

So the key issue for me, when considering if UKI fairly declined the claim is – is it fair and reasonable for UKI to say there was no cover in place for the relevant property at the time of the reported loss?

I'll outline what I consider the key facts and timeline. On 29 July 2020 Mr and Mrs F took out a new UKI home insurance policy over the phone. It was for their home at the time – Property A. This is the property the claim is for. At that point it was, and was intended to be for the foreseeable future, their main and permanent residence. The cover started on the same day.

Mr and Mrs F report heavy rainfall on 16 and 17 August 2020 at Property A. They have reported a resulting flood as the cause of damage. They say it began to smell mouldy. They say over the next few days it worsened. They report it being difficult to breath. They were concerned for the health of their already unwell son. So on 21 August 2020 they moved to a property they already owned – Property B. They say this was without a tenant due to the Covid pandemic.

On the same day Mr and Mrs F called UKI. In the call they explain they are moving out of Property A. They said it requires work. They arranged cover for Property B as their main home. Property A's insurance needs were discussed as it being a kind of second home. Mrs F says they can be at the property on occasional days so it isn't unoccupied. UKI seem happy with this and says cover for Property A will continue.

On 9 September 2020 Mr and Mrs F receive documentation from UKI. This was the amendment to cover for Property A along with policy details for the new cover for Property B. Mrs F calls UKI to say the details given on the policy documents for Property A's policy are incorrect. She says its down as permanently occupied by family. She explains she had said they will be there now and again – not permanently occupying it. She asks if UKI offer unoccupied cover. She explains the reason for it being uninhabitable due to damp and mould.

In response UKI says it can't insure the property if its unoccupied. The adviser then says she has cancelled the policy back to 21 August 2020 (the date of the policy amendments – not the date of inception of 29 July 2020).

There then follows some administrative errors and resulting confusion – with UKI cancelling the cover for Property B instead. However I don't feel its necessary to go into that here – other than to say it added to the distress and inconvenience experienced by Mr and Mrs F.

Considering the above timeline it seems there was cover in place for in place for Property A at the reported date of loss - mid-August 2020. I can see two possible ways for UKI to have removed the cover – but neither is satisfactory.

The first possibility is that UKI cancelled the policy due to a mid-term change in circumstances – for example because Mr and Mrs F moved out of Property A on 21 August 2020. The change here would be occupation status and/or condition of the property as reported by Mr and Mrs F in the 21 August 2020 call. In this possibility any amendment to the policy (including cancellation) would have happened from 21 August as UKI's operator declared in the call. This would mean the policy would have been in place at the time of the reported date of loss – mid-August 2020.

*The second possibility is that UKI backdated the cancellation to the date of inception – so from 29 July 2020. This would be an avoidance of the policy – so treating it as though it never existed. UKI's case notes say the issue isn't 'misrepresentation'. But if it wishes to avoid a policy (because it wouldn't have offered cover had it known the property was unoccupied or suffering mould etc) then it is citing 'misrepresentation' at the policy inception. So the relevant legislation comes into play – The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).*

*For UKI to have any recourse under CIDRA, including avoiding the policy, several conditions need to be met. First there needs to have been a failure, by Mr and Mrs F to have taken reasonable care not to make a misrepresentation.*

*I haven't explored the questions and answers involved when the policy was taken out in July 2020. It seems unnecessary - but I can consider them if either party feels it might make a difference.*

*UKI's avoidance (or backdated cancellation) would be on the premise Mr and Mrs F misrepresented the occupancy status of Property A when taking out the policy on 29 July 2020. As far as I'm aware they said it was their main or permanent residence. I haven't seen anything to make me think, on 29 July 2020, they intended the property to be anything other than that. For example there's nothing to indicate that at that point they had plans to move to Property B in August 2020. So I can't see there was a misrepresentation here.*

*Alternatively UKI would need to show Mr and Mrs F failed to take reasonable care not to misrepresent the condition of the property – for example they said it was in a good condition when they were aware, or had reason to suspect, it wasn't. But so far UKI hasn't provided anything to show this. That means based on what I've seen so far UKI can't fairly rely on CIDRA to say there was no cover in place at the reported date of loss – mid-August 2020.*

*So there was cover in place for Property A around the time of reported loss – mid-August 2020. So UKI's cited reason for rejecting the claim, as there was no cover at that point, is unfair and unreasonable. As a result I intend to require it consider the claim in line with the terms of the policy.*

*I'd like to be clear that I'm not requiring UKI to settle the claim – instead it will need to accept there was cover in place and consider against the terms of the policy. UKI's case notes discuss other reasons for declining the claim. I haven't considered the fairness of those. It wouldn't be appropriate for me to do so in this complaint. UKI hasn't fully considered or presented those reasons – and Mr and Mrs F haven't had an opportunity to respond.*

*I do however intend to require UKI to pay Mr and Mrs F £500 compensation to recognise the unnecessary distress and inconvenience it's caused them. I'm not awarding this because UKI refused the claim. At this point the final outcome of that isn't known.*

*Instead it's because UKI, with a little consideration, could and should have worked out there was cover in place. By failing to do so it's caused Mr and Mrs F a great deal of unnecessary distress and frustration over several months. This is clear from their correspondence. They appear to have reached the point where they feel UKI's conspired against them (including by withholding and editing evidence). I'm not persuaded of that. Its errors seem more likely to be genuine and honest – mixed with*

*a failure to make the effort to properly consider the circumstances. But I can understand why Mr and Mrs F are so frustrated.*

### **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.

Mr and Mrs F accepted my provisional decision – but provided a few comments. First they pointed out a couple of errors I had made with dates. When first referring to the dates 21 August 2020 and 9 September 2020 I incorrectly stated '2022' rather than '2020'. I've corrected these in the provisional decision text included above.

Mr and Mrs F also asked for some clarification on a couple of points in my provisional decision – including the difference between settling the claim' and 'considering it in line with the terms of the policy. I've responded to these enquiries already. I don't feel it will necessary or helpful to repeat the explanations here.

UKI didn't accept my provisional decision. It said Mr and Mrs F were told the policy would be cancelled from inception and there would be no cover – and they accepted that. It didn't give a date for this. But I assume it's referring to the telephone call on 9 September 2020.

Unfortunately UKI's again failed to engage with this complaint properly. I set out in my provisional decision that Mr and Mrs F weren't told, in the call, the policy would be cancelled back to inception. The date given was 21 August. That was the date UKI had been notified of the relevant mid-term change in their circumstances. The inception date of 29 July 2020 wasn't mentioned in the call. So even if they did agree to a cancellation, it would only have been to 21 August 2020.

In any event, as I've explained, if UKI did wish to backdate a cancellation to the inception it would be 'avoiding' the policy. So it would be required to rely on CIDRA. As I set out in my provisional decision UKI had so far failed to show it could fairly do so. Unfortunately UKI didn't engage with this point. So it still hasn't provided anything to show it could fairly avoid the cover (in other words - backdate the cancellation to its date of inception).

Finally UKI said I'm penalising it for the administrative error of cancelling the wrong policy. That really isn't the situation. In my provisional decision I place very little weight on that mistake. That mistake is irrelevant to the main consideration - whether there was cover in place at the time of the reported loss (mid-August 2020).

I considered the two possibilities for that. Firstly that there was a mid-term change in Mr and Mrs F's circumstances. That might allow UKI to cancel the cover from the date of that change. That date was 21 August 2020. That's after the reported date of loss – so cover would still have been in place. The fact that UKI went on to cancel the wrong policy doesn't make a difference.

Secondly that UKI had avoided the policy from its inception. It hasn't shown it could rely on the relevant legislation, CIDRA, to do that. So it can't fairly claim the policy was avoided. That means cover would still be in place at the reported date of loss.

As a result I still feel there was cover in place for Property A around the time of the reported loss – mid-August 2020. So UKI's cited reason for rejecting the claim, as there was no cover at that point, is unfair and unreasonable. That means it will need to consider the claim in line with the terms of the policy. I also require, for the reasons set out above, UKI to pay Mr and Mrs F £500 compensation.

**My final decision**

For the reasons given above, I require UK Insurance Limited to consider Mr and Mrs F's claim against the terms of their policy – and to pay them £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 1 August 2023.

Daniel Martin  
**Ombudsman**