

DRN-4138839



The complaint

Mr and Mrs K have complained about Hiscox Underwriting Limited's decision to decline a claim they made under an additional policy cover they added to their standard buildings insurance policy called Renovations and Extensions Cover.

As Mr K is the lead complainant on behalf of him and Mrs K, for ease I'll refer to him in my decision.

What happened

Mr and Mrs K held a home buildings insurance policy with Hiscox. In 2018 they bought additional cover as they were having buildings works done to their home. They paid for this additional cover from July 2018 until July 2019.

In 2022 Mr K contacted Hiscox to make a claim. Mr K provided a copy of a structural engineer report which identified that some of the building works had been done differently to the plans. Mr K wanted Hiscox to meet the costs of any remedial works required. He said the builder had acted negligently and this was something Hiscox had told him would be covered under the additional cover when he bought it.

Hiscox declined the claim. It said that the policy provided cover for physical loss or damage which had occurred during the policy period. So for this reason the claim was declined.

It said that - had Mr and Mrs K renewed their standard home buildings insurance policy with it - it wouldn't have met the claim because it excludes cover for damage caused by faulty design or poor workmanship.

Hiscox listened to the key sales call and accepted that its agent had incorrectly told Mr K that it would cover negligence if a contractor used the wrong materials. But it said this isn't the reason why it rejected the claim. It said this is why it would have rejected the claim if a standard policy was still in place. It said the loss or damage had occurred outside the additional cover policy period and this was the reason for declining the claim - so while it had made an error in the sales call, this didn't affect the outcome of the claim.

For providing incorrect information in the sales call, Hiscox offered Mr and Mrs K £150 compensation.

When discussing Mr and Mrs K's complaint in October 2022, an agent said that if it found Hiscox had confirmed in a previous call that it would provide cover in the specific circumstances being claimed for, then Hiscox would honour what was said, and would provide cover. Mr K says this was not honoured even though the call recording is evidence of such a statement.

Hiscox said that the agent also said they would need to ensure that relevant enquiries are made beforehand to make sure it had all the information and the evidence to make that decision. In this case, Hiscox agreed Mr K was incorrectly informed that they would be covered for the use of incorrect materials, which Hiscox offered compensation for. But it reiterated that the claim had not been declined on the basis of faulty materials. Instead it had been declined owing to the loss falling outside of the policy period. So Hiscox didn't change its decision.

Mr K remained unhappy and asked us to look at his complaint. Our Investigator thought Hiscox had done enough to resolve the complaint. She found that although incorrect information had been given, she wasn't persuaded that Mr and Mrs K would have acted differently if the example given hadn't been mentioned - as she thought it unlikely that Mr and Mrs K would have anticipated that the builder would have deviated from the plans. She explained that the additional policy provided cover for physical loss or damage during the policy period. As the claim was made outside of the policy period, the Investigator found that the incorrect information didn't have an impact on the outcome - as the decision to reject the claim was for a different reason.

Mr K didn't agree. In summary he says their claim is for the negligence by the builder: he had a verbal contract with Hiscox that this scenario would be covered because of what was said in the call in 2018. He doesn't agree that he wouldn't have acted differently if the agent hadn't said what he said. Mr K says he proceeded on the basis of what he was told and he would have bought an alternative policy such as a warranty policy if negligence by the builder wasn't covered under the additional policy. He says they couldn't have anticipated that the builder would have deviated from the plans - but that is the point of their wish to have appropriate cover in case something went wrong. He says the negligent act occurred during the policy period, so should be met by Hiscox.

Mr K says Hiscox has provided legal cover in relation to the claim for the same period - so he doesn't understand the logic that the claim isn't covered because it is outside the policy period.

So Mr K wants an ombudsman to decide.

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 K's policy with Hiscox for Renovations and Extensions cover provided cover for physical loss or damage during the period of cover.

The policy defined the term "Period of insurance" as; *"The time for which this policy is in force as shown in your schedule."*

Under the policy schedule titled as "How our cover meets your needs" it reads:

"Our Renovation and extension cover meets the demands and needs of those who are carrying out building works and who want to protect themselves against damage to buildings, contents and the works including all materials and any additional third party liability exposure which they face while the project is taking place."

The policy wording provides further detail of the level of cover Hiscox will provide. Under the section "Building Works" it reads:

"We will cover the building works, materials and supplies for use on any work to extend, renovate or build your home in the United Kingdom against physical loss or physical damage which happens during the period of insurance. We will only cover such works, materials and supplies which belong to you or for which you are legally responsible while located within the grounds of your home."

Hiscox's policy has a standard exclusion which I've seen in most - if not all home insurance policies. It says it will not provide cover for loss or damage caused by *"faulty workmanship or*

design, or the use of unsuitable or faulty materials.”

So I think the policy is clear that it provides cover for buildings works during the period of insurance. And I think it clearly explains that it will not provide cover in the event of loss or damage during the policy period if caused by using unsuitable materials.

I've listened to the key calls. In the call which took place in November 2018, at around 4 minutes 50 seconds, in response to Mr K's question about not covering non negligent liability, the agent said;

“we would cover negligence from a contractor, so if they were using wrong materials that sort of thing., they shouldn't be using.”

The agent went on to discuss examples of non-negligent liability in contrast to the statement above. Going back to examples of negligence, the agent went on to say;

“So we send a Loss Adjuster around, see what's been done and they can quickly see what's been done wrong....“It can take a while to discover if something's been done negligent or notbut if that were you in your position, you would have to take them to court to prove negligence, whereas we would do that for you and carry on with the building works.”

So while I agree that the information the agent provided was incorrect, I also think the fact that he referred to the buildings works as continuing shows that the examples given in these circumstances was for the duration of the policy - *“while the project is taking place”* - in line with the policy schedule wording I've quoted above. I say this because of the later comment in relation to negligence; *“and carry on with the building works.”* This is consistent with the cover being provided for the duration of the works and the policy.

Taking all of this into account, I think Hiscox acted fairly in declining the claim due to being made outside of the policy period. I therefore think Hiscox's apology for the incorrect information and compensation payment of £150 is a proportionate resolution to this complaint.

Mr K has separate Legal Expenses Insurance (LEI) cover. I understand from what Mr K has told us that the claim is being considered under the LEI policy. This is separate to the policy that forms part of his complaint which my decision relates to. So I can't comment on the workings of that policy.

Mr K has provided a screenshot from Hiscox's website which gives general information about 'claims occurring' policies. In other words, a claim may be covered where the loss or damage occurred during the policy period, but didn't come to light until much later. Mr K says nowhere does his policy say it isn't a claims occurring policy - and so he believes his claim should be considered even though the damage occurred outside of the policy period. The example on the website is employers liability insurance.

We don't expect an insurer to list all of the things that don't apply to a policy. We think it is a reasonable assumption to make that if a policy is absent in a type of cover, then it isn't included. As Mr K's policy doesn't say it is a claims occurring policy, then I don't think Hiscox has been unreasonable by stating it doesn't apply to his policy.

Mr K says he believes he has a valid claim under the Defective Premises cover for £1,000,000 in total for the period of insurance. The policy defines the cover as:

“Defective Premises Act - your liability under any defective premises legislation”

This is a new issue Mr K has raised and so he will need to raise this with Hiscox first. It doesn't form part of his complaint which Hiscox responded to in 2022, so I haven't commented on it in my decision.

My final decision

My final decision is that I think the compensation Hiscox Underwriting Limited offered of £150 to settle Mr and Mrs K's complaint is fair.

If it hasn't already been paid, Hiscox Underwriting Limited must pay the compensation within 28 days of the date on which we tell it Mr and Mrs K accept my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr K to accept or reject my decision before 15 June 2023.

Geraldine Newbold
Ombudsman