

The complaint

Mrs M and Mr S complain about how UKI Bank General Insurance Limited (UKI) handled a claim under their home insurance policy for damage to their property from a leak.

UKI use agents to administer the policy and to assess claims. Reference to UKI includes these agents.

What happened

In March 2023 Mrs M and Mr S contacted UKI to tell them about a water leak in their property, from the kitchen. They'd noticed the walls were wet from the middle of February, but thought it was due to condensation. They contacted the home emergency team who sent an engineer to the property, but they couldn't identify the course of the leak (though they thought it might be an underground leak). Mrs M and Mr S were able to temporarily stop the leak by having the water supply re-routed (but this meant the loss of the supply to their shower room).

UKI appointed a surveyor (B) to inspect the damage, which they did a few days later. B concluded the damage was longstanding and couldn't have occurred in the timescale Mrs M and Mr S said. And they hadn't taken reasonable action to mitigate the damage (which would have been visible). Photographs showed blistered paintwork, which had also flaked off the walls. Other areas of the wall showed rust and skirting boards were rotten and blown. Because they thought the damage longstanding, UKI said it more than likely pre-dated Mrs M and Mr S taking out the policy (December 2022). UKI concluded the damage had occurred gradually, so wouldn't be covered under the policy. So, they declined the claim.

Mrs M and Mr S challenged UKI's decision, saying they initially thought (and were told by a local plumber) the issues were due to condensation. They said they'd engaged a local plumber (at UKI's suggestion) who started to excavate the kitchen floor to identify the source of the leak. He re-routed the water supply, which cut it to the shower room. So, they'd taken appropriate action to identify the source of the leak and thought UKI should accept the claim.

UKI treated the challenge as a complaint, but they didn't uphold it, confirming their decision to decline the claim on the grounds they'd set out.

Mrs M and Mr S then complained to this service. They said the leak occurred in the period covered by their policy with UKI and they hadn't been treated fairly. The leak had caused damage to the kitchen walls, some of the kitchen units and the floor between the kitchen and lounge. They said the surveyor who visited the property told them the damage also extended to the lounge. The incident had caused them a lot of stress and they'd had to take time off work to deal with the incident. They wanted UKI to accept their claim and repair the damage from the leak. They also wanted an assessment of how extensive the damage was to the property. They also wanted their shower room fixed.

Our investigator upheld the complaint, concluding UKI hadn't acted fairly in applying the exclusion to decline the claim. He thought the source and nature of the leak (out of sight and underground) meant it likely Mrs M and Mr S wouldn't have been aware of the extent of the

damage being caused by the leak. They'd also taken steps in engaging a local plumber to attend. And while there were sign of wear in the property, this didn't negate the fact there had been damage caused by an insured event (the leak) which the investigator thought UKI should be liable for (as well as the costs of trace and access). But as the policy didn't include cover for issues with pipes, tanks, appliances or heating systems, the investigator couldn't say UKI should consider any such costs (a permanent repair to the affected pipework at the property).

UKI disagreed with the investigator's view and requested an ombudsman review the complaint. They said the photographs of the damage to the walls and skirting board were taken as Mrs M and Mr S were claiming they were damaged by the leak – not wear and tear. And the affected areas were visible and so wouldn't have gone unnoticed by Mrs M and Mr S (in the period when they say they were first noticed). On the balance of probabilities, it was far more likely the damage would have been visible when the policy was taken out (not just from the middle of February). The onus was on Mrs M and Mr S to show their claim was valid (and take steps to prevent further damage).

UKI also questioned the pipework being re-routed by the plumber engaged by Mrs M and Mr S (rather than the leak detected) which brought into question whether there was a leak.

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.

My role here is to decide whether UKI have acted fairly towards Mrs M and Mr S.

The key issue in the complaint is whether UKI acted fairly in declining Mrs M and Mr M's claim. In declining the claim, UKI have cited three reasons (though they are linked). First, the nature and extent of the damage is such that it is likely to have been longstanding and as such, pre-dates the inception of the policy in December 2022. Second, linked to this, the damage would have occurred gradually (not in the timescale indicated by what Mrs M and Mr S have set out, from the middle of February). The policy includes an exclusion for damage that occurs gradually. Third, Mrs M and Mr S didn't take action to mitigate the damage caused, which would also be an exclusion under the policy.

Mrs M and Mr S say they took steps when they first noticed the damage, by engaging a local plumber when they noticed the issue with the kitchen walls. And subsequently when they engaged a plumber to identify the cause of the noise they heard coming from behind an appliance. The plumber effected a re-routing of the pipework to temporarily stop the leak.

On the first issue, UKI's initial decline of the claim was based on B's report (and their own review of the report and the circumstances of the incident). I've looked at the report. The overall conclusions in the report are:

"Escape of water under the floor, this has been ongoing for some time and insured has failed to mitigate the loss.

The beading to the plaster has begun to rust.

The wall next to the back door and the lounge wall that backs onto the kitchen comes long term leak which would be noticeable as the paint and plaster has begun to blister, and the skirting board is rotten and begun to break up, but insured said only aware of this two days ago.

Policyholder disputes the decline.

...advised damage would be noticeable and has got a lot worse, the insured would have known of a leak when walls began to stain but insured has left this, as policy is only three months old, the claim could be pre-inception."

Taking this with UKI's second point, the policy doesn't cover damage that happens gradually, the I've also considered the relevant policy terms and conditions. The policy booklet states (under a heading *This policy doesn't cover*):

X Just like most insurers we don't cover:

- *...Any damage caused gradually."*

The policy terms and conditions also make it clear damage that occurred before the policy started isn't covered. Under the section *Other policy conditions* there's a section *Losses not covered* which includes:

X We don't cover any pre-existing loss or damage that happened before your cover started."

I think the exclusion is clear, so the question becomes one of whether the damage from the leak was (as B concluded) longstanding, so pre-dating the policy being taken out in December 2022. I've considered this point carefully, together with the information and evidence available. B say the nature of the damage (such as blistering paintwork and rotten skirting boards) couldn't have happened in the timescale set out by Mrs M and Mr S (that they first noticed the wet walls in mid-February). I've noted B's conclusion above states the claim (the damage) *could* (my emphasis) be pre-inception. There's a similar comment in UKI's case notes that the damage 'suggest' a long-term issue and 'potentially' pre-inception.

The use of qualifying adjectives suggests there's uncertainty as to the exact start of the leak. The nature of a leak – particularly one that's underground, as is the indication in this case, including B's report – is that it can take time for the effects (damage) to become apparent. And even when it does, it can be ascribed to other causes – such as here where it was initially thought the issue was condensation, not a leak. It was only when Mrs M and Mr S heard a noise from behind a washing machine, did they suspect a leak (and engaged a plumber to try and identify the source of the leak).

UKI say the onus is on Mrs M and Mr S to show the claim was valid. However, because UKI applied exclusions to decline the claim (for damage that occurred gradually and occurred before the policy inception) the onus is on them to show the exclusions apply. The evidence available, including that from the plumber engaged by Mrs M and Mr S and in B's report, indicate there was a leak and it was underground. The photographs also support this. So it's reasonable to conclude there was an escape of water, an insured peril under the policy.

That being the case, the issue is whether UKI have fairly applied the exclusions. Taking them in turn, they say the damage is likely to have occurred pre-inception of the policy. However, as I've set out, the use of qualifying adjectives indicates this is only a possibility. As the onus is on UKI to show it was the case, I don't think relying on 'could' or 'potential' is sufficient to show the damage (or leak) occurred (or started) pre-inception.

It follows that UKI also haven't done enough to show the exclusion for damage caused gradually was fairly applied to decline the claim.

On the third point, that Mrs M and Mr S didn't take reasonable action to mitigate the damage (which would have been visible) the policy *General Conditions* include a heading *Preventing Loss* which states:

"You must take reasonable care to prevent loss, injury or liability, damage or accidents to the buildings and contents covered under this policy"

I've considered what Mrs M and Mr S have told us about the sequence of events. They engaged a plumber initially to inspect the issue with the kitchen walls and were advised the issue could be condensation. So they took steps to mitigate this [potential] cause. But it was only when they heard a noise from behind an appliance they contacted the home emergency service to follow up the issue. The indications are the engineer couldn't identify the source of the leak (but thought it might be underground). They recommended the trace and access team inspect the property to try and identify the leak (and UKI appointed a contractor to do so). Mrs M and Mr S engaged their own plumber (at UKI's suggestion) who started to excavate the kitchen but thought the leak likely to be further in the kitchen.

Taken together, I think Mrs M and Mr S acted reasonably in engaging appropriate support to identify the source of the issues (the cause of the leak and the damage). For example, contacting the home emergency service. And having pipework re-routed to temporarily stop the leak (and further damage) was reasonable in the circumstances where it wasn't clear what the source of the leak was, pending further investigation. It doesn't – as UKI said in their response to our investigator's view – bring into question whether there was a leak.

So, I've concluded Mrs M and Mr S acted reasonably to mitigate the damage being caused by the leak.

Taking all these points into account, I've concluded UKI haven't acted fairly in declining Mrs M and Mr M's claim.

Having reached this conclusion, I've considered what I think UKI need to do to put things right.

As I've concluded UKI haven't acted fairly in declining Mrs M and Mr S's claim, they should reassess the claim in line with the remaining terms and conditions of the policy. This should include, as appropriate, any trace and access to determine the source of the leak under the relevant terms and conditions of the policy.

I've also considered what Mrs M and Mr S have told us about the stress they've suffered from what has happened. As I've concluded UKI unfairly declined the claim, Mrs M and Mr S have suffered distress and inconvenience. Considering the circumstances of the case, I think £150 compensation for distress and inconvenience would be fair and reasonable.

My final decision

For the reasons set out above, it's my final decision to uphold Mrs M and Mr S's complaint. I require UK Insurance Limited to:

- Reassess the claim in line with the remaining terms and conditions of the policy. This should include, as appropriate, any trace and access to determine the source of the leak under the relevant terms and conditions of the policy.
- Pay Mrs M and Mr S £150 in compensation for distress and inconvenience.

UK Insurance Limited must pay the compensation within 28 days of the date on which we tell them Mrs M and Mr S accept my final decision. If they pay later than this they must also pay

interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr S to accept or reject my decision before 13 September 2023.

Paul King
Ombudsman