

The complaint

Mr S and Mrs P complain about the decision by U K Insurance Limited ('UKI') to repudiate their claim made under a commercial insurance policy.

UKI are the underwriters (insurers) of this policy. Some of this complaint concerns the actions of their appointed agents. As UKI accept they are accountable for the actions of their agents, in my decision, any reference to UKI should be interpreted as also covering the actions of their appointed agents.

What happened

The background to this complaint is well known to Mr S, Mrs P and UKI. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

Mr S and Mrs P had a landlord (commercial) insurance policy with UKI. This was to insure their interest in commercial premises. They'd let the premises out to tenants from 2005 until 2021. The tenants left the premises. Mr S and Mrs P made a claim for damage under their landlord policy. They alleged the damage being claimed for had been caused maliciously.

Following a review, UKI ultimately repudiated the claim. Mr S and Mrs P raised a complaint and as they remained dissatisfied with UKI's response, they referred it to our Service for an independent review. Our Investigator recommended that this complaint not be upheld and sent both parties a copy of his assessment. As the dispute remains unresolved, the complaint has been referred to me for 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

It's not my role or remit to determine how the damage has occurred, although I will need to reference the likely proximate cause(s) when making my findings. My main consideration is whether UKI fairly and reasonably considered this claim before declining it, in line with the policy terms.

I'm satisfied that UKI fairly arranged for an agent of theirs to review the insured premises when the claim was raised. This site visit occurred around one week after claim notification.

The starting point with any insurance claim is the loss being claimed for and/or the circumstances of the loss need to be as described by the policy holder. Once this test is met, the insurer will generally consider the claim in line with the policy terms and limits and either settle the claim or decline it.

UKI (in summary) provided the following reasons for the claim decline:

- The damage had not been caused maliciously or by another insured event, but the proximate cause was a long standing failure to carry out maintenance - which had caused the premises to (over time) fall into a state of disrepair.
- Some of the damage may have been caused during the removal of fixtures and fittings by the previous tenants.
- Some of the damage may have been caused by general wear and tear.

Based on the evidence provided by both parties here, I find that UKI have fairly considered this claim before reaching their position. Mr S and Mrs P have referred to sporadic (at best) visits to the premises during the course of the tenancy agreement between 2005 and 2021. They've provided a copy of the tenancy agreement and their own report into the damage. It's clear that the tenants were responsible for much of the maintenance and upkeep of the premises. This wouldn't be unusual in this type of commercial letting arrangement.

However, that was a contract between Mr S/Mrs P and their tenants. The separate contract of insurance here with Mr S and Mrs P required that the premises be kept in a good state of repair:

"B Reasonable Precautions

It is a condition precedent to Our liability that You must:

a take all reasonable precautions to prevent or minimise loss, destruction, damage, accident or injury;

b maintain the Premises, machinery, equipment and furnishings in a good state of repair;..."

So, even if the tenancy agreement/contract put this burden on their tenants (for the purposes of that contract), responsibility still remained with Mr S and Mrs P for the purposes of this contract of insurance - to ensure their tenants were properly maintaining the property. This policy is not intended as a substitute or safety net for failure to maintain the premises.

I do acknowledge that with commercial insurance policies generally, the policy holder may not have the same level of visibility of the insured interest (the premises) as a private policy holder would over their home. For example, it seems Mr S and Mrs P had little to no interaction with or visibility of the insured premises for the best part of a decade prior to the loss event being claimed for.

Had they - for example, carried out yearly inspections and had proof/records of this, they could more easily demonstrate then that the damage being claimed for occurred between that date and the date they became aware of the damage. This isn't intended as a criticism of Mr S and Mrs P and it's my understanding that there may have been a dispute between the landlord and tenants here that meant visiting the premises wasn't a straightforward matter.

I've also kept in mind that it's not known when most of the damage being claimed for occurred and therefore it's a possibility that some of the damage being claimed for occurred prior to the policy beginning. In such circumstances, a policy wouldn't be expected to respond. This point isn't material to the outcome I've reached as it's not the reason the claim was repudiated.

I've carefully considered Mr S and Mrs P's view that some of the damage may have been

caused maliciously and weighed this up against the position taken by UKI. Having considered the evidence in the round, I don't find that UKI have acted unreasonably when considering this claim. In my opinion, the various areas of damage have likely occurred at unknown dates over a long period of time. I don't find UKI's position that there's insufficient evidence to fairly say that the tenants maliciously damaged the premises on or around their departure to be unreasonable.

As referenced above, a major weakness in Mr S and Mrs P's position is they hadn't visited the premises for the best part of a decade, prior to the damage they are claiming for - so it's very difficult for them to show when the damage likely occurred. Although not material to my outcome, this also then raises the question about what steps Mr S and Mrs P took to mitigate their losses and the risk to UKI in the event of a claim - a condition of the policy is that UKI are notified of any damage in a timely manner. To give a hypothetical example - damage that occurred in 2015 (assuming it was covered under this policy) would generally be expected to worsen over time and the repair costs increase as it worsens. This is not the intention of an insurance policy.

I note Mr S has referred to various areas of damage that he says can't have been caused by maintenance issues and/or general wear and tear. For example, the iron gates at the front of the premises. But I've reviewed Google street views of the risk address that show the outside of the premises at various points between 2008 and 2021 and none show gates at any date.

UKI have suggested that Mr S and Mrs P may be able to take recourse against their former tenants and whilst I can't advise them, this option may remain open for them. They'd need to consider legal advice in relation to this.

My decision will disappoint Mr S and Mrs P, but it brings to an end our Service's involvement in trying to informally resolve their dispute with UKI.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs P to accept or reject my decision before 5 March 2024.

Daniel O'Shea
Ombudsman