

## **The complaint**

Mr and Mrs M complain that U K Insurance Limited (“UKI”) unfairly declined a claim they made under their home insurance policy.

UKI is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of its agents. As UKI has accepted it is accountable for the actions of the agents, in my decision, any reference to UKI includes the actions of the agents.

## **What happened**

In February 2022, Mr and Mrs M took out a home insurance policy with UKI to cover the property they were purchasing. Around a month after the policy started, they discovered water underneath the flooring of a room at the rear of the house. So, they made a claim under the policy.

UKI arranged for one of their agents to carry out leak detection. However, they didn’t find any leaks in the pipework. They believed the water was either coming from the neighbours’ property or the drains. UKI arranged for another company to check the drains, but no issues were found with these either. UKI advised Mr and Mrs M to contact it again if they found out what the cause was.

In August 2022, Mr and Mrs M complained to UKI about the handling of their claim. They said they’d noticed an occasional pool of water in the corner of the room after heavy rain in the last few months. That day they’d found a significant amount of water in the room which had come from their next door neighbour’s garden, after their neighbour washed his patio the day before.

Mr and Mrs M were unhappy that UKI had refused to deal with their claim in March. They also felt UKI was responsible for the recent incident which had also caused damage to contents. They said they wanted UKI to carry out work that would prevent water from entering in the future and protect their home. They wanted the room to be watertight.

UKI said its investigations in March 2022 had ruled out problems with any internal waste pipework or external drainage. It had also sent out one of its representatives who had reported that there was no insured peril, so it wouldn’t be proceeding with Mr and Mrs M’s claim.

Mr and Mrs M remained unhappy and asked our service to consider the matter. Our investigator was satisfied that there was an insured peril because the policy covered flood damage, and “flood” wasn’t defined in the policy. But he didn’t think UKI had provided strong enough evidence to show that an exclusion applied, which might allow it to reject the claim. He recommended UKI deal with the claim and pay Mr and Mrs M £300 for distress and inconvenience.

UKI arranged for a survey to be carried out and this took place in June 2023. Following the surveyor’s visit and report, UKI said it still disagreed that it was liable for damage to Mr and Mrs M’s property. It said the cause was rainwater or water from the neighbour’s jet wash via

either a lack of properly installed DPM or a breach in the structure of the building. It said the property clearly didn't comply with building regulations in force at the time it was built because it was allowing water to enter.

Our investigator considered the additional information and further points from UKI. He reached the conclusion that it was fair for UKI to decline Mr and Mrs M's complaint based on a policy exclusion. He didn't think UKI needed to take any further action unless Mr and Mrs M were able to provide further information to show that the exclusion didn't apply.

Mr and Mrs M disagreed with our investigator's outcome. They commented that the most recent surveyors had made some findings that others hadn't. They found there was an internal wall at the back of the room with a void between the external room. The surveyors had commented that a simple solution would be to remove plasterboard and a block from the wall to insert a camera to see the point at which the flood was taking place.

Mr and Mrs M also made comments about the reports from the contractors they'd instructed to quote for flood prevention and the report from the agent that had carried out the leak detection.

Mr and Mrs M said their property was built earlier than the year UKI had said, and that UKI had stated their home wasn't built to relevant building regulations in place at the time without any evidence of this being the case.

Mr and Mrs M disputed that the flooding was due to an issue with the design, installation of drainage and/or tanking materials. They commented that it had taken almost 20 years for this issue to have become apparent. They said they hadn't seen an issue when viewing the property and neither had the surveyor. The property was sold via legal documents which state from the previous owner that there was no issue with flooding or leaks prior to them selling the property. They also provided a link to a case study on our website that they felt supported their position.

I issued a provisional decision on 21 September 2023, where I explained why I intended to uphold Mr and Mrs M's complaint. In that decision I said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."*

*Based on what I've seen so far, I intend to uphold Mr and Mrs M's complaint. I'll explain why.*

#### Internal damage to room and contents

*When a policyholder makes a claim, the onus is on them to show that an insured event caused the damage. One of the events listed as being covered in the policy's terms and conditions is "water or oil escaping from fixed water or heating systems" and includes water escaping from "underground drains and pipes".*

*After Mr and Mrs M made their claim in March 2022, UKI arranged for investigations to be carried out to find out if there was a leak in the pipes or an issue with the drains. As it didn't find any issues, it declined Mr and Mrs M's claim on the basis that the damage wasn't caused by an insured peril. It indicated that it would be willing to consider their claim further if Mr and Mrs M were able to show what was causing it. But it said it looked like a gradual ingress of water, which wasn't covered.*

*I haven't seen any evidence to show that the water was coming from a fixed water or heating system or underground drains or pipes. So, I think it was fair for UKI to conclude that the claim wasn't covered under that event.*

*The policy's terms and conditions say that buildings and contents are covered for "storm or flood". So, I've thought about whether or not UKI acted fairly, in not dealing with the claim under this peril instead.*

*"Flood" isn't defined in the policy. Where it isn't defined, our service would usually consider that a flood has occurred if water had entered the property from any external source and built up, regardless of the source of the water. A flood doesn't necessarily have to be sudden or violent. It can occur when water enters (or builds up) in a property slowly and steadily, and this doesn't necessarily have to be caused by a natural event.*

*The report from UKI's agents visit in March 2022 includes a picture of "standing water" in the relevant room. Mr and Mrs M have also provided pictures from August 2022 and March 2023 to show water had entered the room again. So, I'm satisfied Mr and Mrs M have shown that insured events have occurred.*

*If it can be shown that an insured event caused damage, the onus is on the insurer to either accept the claim or show, on the balance of probabilities, that an exclusion applies, or a condition has been breached.*

*UKI says Mr and Mrs M's property doesn't meet the building standards that were in place at the time it was built. It says the property doesn't meet the requirement of having "proper damp proof courses, cavity trays and closures to ensure the water drains outwards".*

*UKI has referred to the report from the surveyor who visited Mr and Mrs M's property in June 2023 which says:*

*"... having not seen any physical water ingress or signs of flowing water in the storage room, when water tests were performed that the damage identified by the PH is highly likely to have been caused by water ingress via an as yet unknown breach of the building envelope".*

*The surveyor noted that a section of DPM wasn't sealed and air bricks at the property weren't at the regulatory height from ground level, which might contribute to an ingress of water. However, water didn't come through when the surveyor introduced it to these areas.*

*Although the surveyor concluded that there was likely to be a breach of the building envelope, he wasn't able to tell specifically what this breach was and recommended further tests.*

*I've asked UKI if it could explain specifically how the building requirements in place when the property was built weren't met. However, UKI said it had only mentioned building regulations to point out that the property should be watertight, after being advised it had to prove what the regulations were when the property was built.*

*It said it felt it had made the correct decision based on the information it had. Especially when Mr and Mrs M's own contractor had stated the cause of the water damage was due to penetrating damp, efflorescent salts due to rising damp, and condensation. None of which would be considered a flood, would happen gradually and could only happen if there was an issue with the building prior to the date the policy was taken out and was not caused by any related peril.*

*I appreciate UKI doesn't think that the damage was caused by a flood. But it hasn't defined "flood" in the policy's terms and conditions. And I've explained why our service would consider flood events to have occurred.*

*Mr and Mrs M noticed the first pool of water almost a month after they took out the insurance policy. The agent who carried out the leak detection survey in March 2022 suggested the water ingress "could be the result of 3 storms in succession in previous weeks". Subsequent ingresses of water appear to have happened quickly. For example, Mr and Mrs M say there was a significant amount of water the day after their neighbour washed their patio. So, I think it's likely that the flood events Mr and Mrs M are claiming for happened after they took out their insurance policy with UKI. And I think UKI should have recognised this to be the case.*

*As I've said, the onus is on UKI to show that an exclusion applies or a condition has been breached, if it wants to decline the claim. The policy's terms and conditions contain an exclusion which says UKI doesn't cover "faulty workmanship, faulty design or the use of faulty materials".*

*UKI has suggested that the water entered due to either a lack of properly installed DPM or a breach in the structure of the building. However, it hasn't determined what specific issue was causing the water to enter. The surveyor's tests didn't show what was allowing the water to enter the building and he said the breach of the building envelope was "unknown". This means there is no firm evidence to show there was faulty workmanship or a faulty design or that faulty materials were used. So, I'm not persuaded that UKI has shown that this, or any other exclusion, applies to the flood event of March 2022 or the subsequent flood events Mr and Mrs M are claiming for.*

*As UKI hasn't demonstrated that an exclusion applies, it should accept Mr and Mrs M's claim for internal damage to the room and for damage to contents caused by these flood events.*

#### *External damage, allowing the water to enter*

*Mr and Mrs M also feel that UKI should pay for repairs to their property to make it watertight. They've referred to a case study on our website where we told a business to pay the cost of installing a new system to replace damaged tanking in order to ensure an effective and lasting repair to a basement.*

*However, for me to direct UKI to cover the cost of these repairs, I'd need to be persuaded that external damage to their property (which stopped it being watertight) was caused by a one-off event covered by the policy.*

*The company who carried out leak detection in March 2022 has noted:*

*"Water ingress from subterranean retainer wall. Water has travelled under DPC to the rear of the garage and covered the concrete pad with grey water...No tanking present on exterior wall".*

*Mr and Mrs M have provided a copy of a report from a contractor who visited their property in April 2022. This says:*

*"A visual internal inspection of the basement revealed evidence of lateral moisture penetration and salt contamination, from natural ground waters and rain water, which is creating very damp conditions within the basement, resulting in a breakdown of the masonry which is unsightly due to no internal waterproofing products..."*

*The report refers to the presence of penetrating damp, efflorescent salts and condensation in their basement. UKI says the salts can take several months to be visible, suggesting that this issue was evident before Mr and Mrs M took out the policy.*

*UKI's representative who visited the property in August 2022 has noted that "neighbours have similar issues with their properties and have agreed that a sump and tanking is the way to resolve".*

*Mr and Mrs M's contractors recommended installing cavity drainage channels and applying cavity membranes and have quoted for these works. I've thought about whether it would be fair to tell UKI to pay for this, and I don't think it would.*

*Although I'm satisfied there were some one-off flood events, where water entered Mr and Mrs M's home, there is persuasive evidence that, aside from those events, there were also other water-related issues, such as rising damp.*

*There is nothing to show that the external works Mr and Mrs M have been quoted for are linked to an insured event. And the evidence supplied by both parties appears to support UKI's opinion that these issues were present before the policy started.*

*Whilst I'm satisfied a flood event occurred in March 2022, I don't think UKI has acted unfairly in saying a one-off event isn't likely to have caused the described external damage to the property, which stopped it from being watertight. So, I don't think it's done anything wrong in declining to settle this element of Mr and Mrs M's claim.*

*Aside from the one-off events of flood, the expert evidence provided suggests there is an issue with Mr and Mrs M's building which allows water to enter when there's heavy rain or when their neighbour uses their pressure washer. However, I don't think it would be fair to tell UKI to cover the cost of works to prevent this from continuing to happen, as I'm not persuaded that external damage was caused by a one-off event covered by the terms of the policy.*

*Based on what I've seen so far, I do think it would be fair for UKI to settle Mr and Mrs M's claim for internal damage and contents damaged by the specific flood events mentioned above. This is because they have shown that flood events occurred and UKI hasn't shown that an exclusion applies which allows it to fairly decline their claim."*

I set out what I intended to direct UKI to do to put things right. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

## **Responses**

UKI said it had nothing further to add and would await my final decision.

Mr and Mrs M said they were thankful that I'd agreed there was a flood event at their property that UKI needed to cover under their insurance policy but there were a number of issues they wanted to raise.

Mr and Mrs M said they didn't believe there was a defect with the property, as it would have been going on for over 20 years and they would have noticed it during their viewings prior to purchasing it.

When they found the standing water, they had no idea what had caused it or where it had come from. UKI told them it would remove damaged material from the room and dry it out,

but this didn't happen. Mr and Mrs M had to hire a skip and remove the waste themselves at their own cost and high levels of ammonia in the water made them sick.

Mr and Mrs M commented that I'd referred to it being a one-off flood event in March 2022. However, since the massive flood event in August 2022 there have been ongoing flood events that occur with heavy rainfall leading to build-up of water in the room in question. They provided a photograph of the room after recent heavy rain. They said if UKI had upheld the claim in March 2022, this would not be happening.

Mr and Mrs M said they didn't believe there was rising damp or a continuous flooding issue prior to them taking out the policy. They disputed the findings of their own contractor who visited in April 2022 who suggested rising damp on a visual inspection. Mr and Mrs M said there were no signs of this during their visits or the survey that was carried out prior to them taking out the policy. They said the findings of the surveyor who visited in June 2023 suggested marks on the walls were due to a continuous evaporation of flood waters in the room and there was no evidence of rising damp.

Mr and Mrs M commented that the surveyor who visited in June 2023 had discovered that the back wall of the room in question isn't an external wall. The surveyor had suggested further investigations, but UKI had refused, so they still didn't know exactly where the water was getting in. They suggested that there was something wrong with the waterproofing on the back wall of the property, which Mr and Mrs M believe was damaged in the initial flood of March 2022.

Mr and Mrs M said my findings suggested that a flood event could have damaged the envelope of the building providing protection from further flooding. They queried why the insurer wouldn't be responsible for repairs to ensure that further flood events do not occur if it's required to cover internal damage from flooding. They referred to the same case study they'd commented on previously.

Mr and Mrs M said the decision to replace the flooring and cover other damage to the room at this stage, with flooding still occurring, would not be appropriate. They also commented about the length of time that had passed since their initial claim and how this had affected the room. They said this would be costly for them to repair and they couldn't afford to do so. They were concerned that further damage to the property's structure wouldn't be covered.

### **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.

I understand Mr and Mrs M are disappointed that I didn't reach the conclusion that UKI are responsible for covering the cost of repairing external damage to their property.

I've considered everything they've told our service, but I've kept my findings to what I believe to be the crux of their complaint. I'd like to reassure Mr and Mrs M that I've read and considered everything they've sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

As I explained in my provisional decision, when a policyholder makes a claim, the onus is on them to show that an insured event caused the damage. If they can show this, then the onus moves to the insurer to show that an exclusion applies or a condition has been breached, if it wants to decline the claim.

Mr and Mrs M have shown that there were flood events in their property that caused internal damage. As UKI hasn't been able to say how the water is entering their property, it hasn't shown that an exclusion applies which would allow it to fairly decline the claim. This is why I concluded that it should settle Mr and Mrs M's claim for internal damage and damage to contents.

Mr and Mrs M have also said that they don't know how the water is entering their property. It's clear that the property isn't watertight, as water seems to enter whenever there is heavy rain, or their neighbour uses their pressure washer. Mr and Mrs M have suggested that there might be something wrong with the waterproofing on the back wall of the property and this might have been damaged in the flood event of March 2022. However, I haven't seen any evidence to show this.

I appreciate that Mr and Mrs M don't accept that there was likely to have been water-related issues with their property prior to them purchasing it and taking out the policy. However, I've kept in mind that the onus is on the policyholder to show damage was caused by an event covered by the policy. And I haven't seen evidence to persuade me that the external damage was caused by a one-off flood event or any other event that's covered. So, I can't say it's unreasonable for UKI to decline this part of their claim.

I appreciate that Mr and Mrs M are concerned about further damage to their property if the external damage isn't repaired. I agree it wouldn't be appropriate to go ahead with internal repairs while the building is still allowing water to enter. However, as I'm not persuaded that UKI is responsible for the external damage, it will be up to Mr and Mrs M to ensure that effective repairs are carried out to prevent further damage occurring.

It will be up to UKI to decide how to settle Mr and Mrs M's claim for internal damage and contents, in line with the terms and conditions of the policy. This might be in the form of a cash settlement. If it decides to carry out the repairs itself, then it would make sense for these to be carried out after the external work has been completed.

I know my answer will be disappointing for Mr and Mrs M. However, I can't tell UKI to cover the cost of repairs to external damage when there isn't evidence to show that this was caused by an event covered by the policy. So, whilst I empathise with them, I'm not persuaded to change the conclusions I've reached.

### **Putting things right**

UKI should:

- Accept and settle Mr and Mrs M's claim for internal damage and contents damaged by the flood events, in line with the policy's terms and conditions.

### **My final decision**

For the reasons I've explained, I uphold Mr and Mrs M's complaint and direct U K Insurance Limited to put things right by doing as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 3 November 2023.

Anne Muscroft

**Ombudsman**