

The complaint

Miss H complains about the way U K Insurance Limited trading as Churchill Insurance handled and settled a claim under a Landlord insurance policy.

What happened

Miss H owns a property she rents to tenants. In 2022, the property was rented to a tenant after a tenancy agreement was put in place by Miss H and a person purporting to be an estate agent. Miss H hadn't received rent and visited the property where police had gained entry. The property was being used by tenants to cultivate cannabis. Miss H changed the locks and raised a claim with UKI for the resultant damage.

UKI offered to settle the claim under the malicious damage by tenants section of the policy. They offered to pay Miss H £25,162 following a lengthy validation process UKI say was due to the nature of the circumstances which gave rise to the loss. This final settlement offer followed a previous settlement of roughly £17,000. The increase included the cost of replacement locks, debris removal, and a further months' loss of rent while the property was being repaired.

UKI say their liability was limited to £10,000 under the buildings and contents section of the policy for malicious damage by tenants.

Miss H told UKI she wasn't happy with this and had been unfairly left out of pocket. Her outlay for the claim was roughly £37,000. She also says UKI made an unfair settlement offer given the loss adjuster had placed a £52,000 reserve on the claim.

UKI didn't agree to increase the settlement, but paid Miss H £200 compensation for service issues they were responsible for. Miss H remained unhappy and approached our Service for an impartial review.

I sent my provisional decision to both parties on 20 October 2023. That decision set out the following:

'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.

Malicious damage to the buildings by tenants

The policy terms set out a list of contingencies otherwise known as insured events. And, if a policyholder can demonstrate they've suffered loss or damage as the result of a listed insured event, I'd expect a claim to succeed – subject to the policy conditions.

In this case, Miss H made a malicious damage claim after tenants used her property to cultivate a cannabis farm. Tenants were in situ under a tenancy agreement arranged by a person purporting to be an estate agent. Miss H was the unfortunate victim of a scam here, and I don't doubt this has been a very upsetting and difficult time for her. Her property

suffered damage as a result, and she never received rent from the tenants.

A theft and malicious damage by tenants cover extension responded to the claim which I'm satisfied was reasonable. This extension responds to malicious damage by tenants which cannot be recovered from any security deposit lodged by a tenant, up to a maximum of £10,000 per claim. Therefore, UKI's liability for a claim for malicious damage by tenants is limited to £10,000 for buildings, and contents.

I acknowledge UKI's December 2022 settlement offer leaves Miss H out of pocket. She's evidenced her outlay for the claim was approximately £37,000 to put her property back into its pre-loss position – having carried out refurbishment works prior to the bogus tenancy agreement being put in place.

I feel it's important I say I really do empathise with Miss H's situation – a sophisticated scam has resulted in damage to her property and her out of pocket. Much of what happened isn't what insurance is in place for. My role here is to consider UKI's role in this. And while I acknowledge Miss H's difficult circumstances, I find UKI took reasonable steps to settle the claim fairly and in line with the policy terms.

Interest on the claim settlement

UKI finalised their settlement decision on the claim and communicated this to Miss H in December 2022 – after it was increased to include other elements such as replacement locks, removal of debris, and a further months' rent, amongst other things. I find this settlement amount was reasonable considering UKI's liability for a claim for malicious damage by tenants. I acknowledge Miss H didn't accept the settlement due to the difference between the amount, and her outlay.

I'd expect UKI to include interest on the claim settlement if they, for example, failed to offer Miss H an interim payment, or a cash settlement amount that was too low and unfair based on their liability. But the claim notes do not support that was the case here.

UKI responded to our investigators view to say Miss H was offered an interim payment in October 2022 which was refused. Miss H then contacted UKI in November 2022 to say she was in financial hardship having to borrow money to fund repairs. A further interim payment was offered but this was rejected. Then, following UKI's final settlement offer, payment details were requested from Miss H, but Miss H responded to say she would be taking legal action.

Therefore, I'm not persuaded UKI failed to take reasonable steps to offer Miss H interim payments while claim discussions were ongoing, or investigations into her complaint. So, I currently don't intend to require UKI to include interest on the claim settlement.

Loss of rent

As mentioned above, the tenancy agreement was arranged by a person purporting to be an estate agent. This was a scam, the agreement was bogus, and Miss H didn't receive rent as the result.

The policy covers a policyholder's loss of rent as a result of an insured event. It says UKI will indemnify a policyholder for the amount by which the loss of rent falls short of the amount that would have otherwise been received had no damage occurred.

To my earlier point, the tenants had no intention of paying rent. Therefore, I cannot fairly conclude the resultant damage was the sole reason Miss H received no rent. There wasn't a

shortfall in rent as the result of the damage because no rent was being paid as the result of the scam.

The damage caused by the insured event (malicious damage by tenants) needed to be put right which prevented Miss H from renting the property out over that three-month period of repairs. This was between May – July 2022, and the property was rented out to a new tenant in September 2022. The property was unoccupied while repairs were undertaken, and the policy in respect of these circumstances sets out the following:

'5. Unoccupied Buildings

Where the Buildings or any part of them are unoccupied and sustain damage during the Period of Insurance Our maximum liability will be the loss of Loss of Rent during the period of reinstatement or repair and will be calculated based solely on any tenancy agreement in respect of such Building in existence at the time of Damage occurring'.

I think UKI applied the policy terms cited above fairly here. They covered the three-month period of repairs while the property was unoccupied. That was their liability here for the loss of rent under the policy.

I also think UKI were fair and pragmatic when accepting Miss H's loss of rent amounted to £3,100 per month. I say this because the tenancy agreement this amount was based on was a bogus agreement – likely created to entice Miss H into accepting it with tenants who had no intention of paying the rent. Miss H had already engaged in discussion with a reputable estate agent at this point, and initially declined the bogus tenancy agreement. The legitimate tenancy agreement was said to have been agreed at £2,800 per month, with a 10% management fee reduction.

Therefore, I'm satisfied UKI applied the policy terms fairly here, and took pragmatic steps to settle this aspect of the claim.

Council tax and utility bills

Miss H requested UKI reimbursed the council tax and utility costs she paid while the property was unoccupied and being repaired. I understand why. But I cannot see the policy has a provision for these costs in the event of malicious damage by tenants. So, I currently don't intend to require UKI to reimburse these costs to Miss H.

Summary

I acknowledge this has been a very difficult and upsetting time for Miss H. First and foremost, she was the unfortunate victim of a sophisticated scam which resulted in property damage and her being out of pocket. I really do empathise with her situation. It's equally important, however, I considered UKI's role in this. And I'm unable to direct them to compensate Miss H for her losses she's suffered as the result of a scam.

For the reasons I've set out above, I currently find UKI took reasonable steps and a pragmatic approach when settling Miss H's claim for malicious damage under the policy.

Therefore, I don't intend to require UKI to take further action in respect of the claim.

The investigator set out the service failings such as avoidable delays UKI were responsible for towards the end of 2022. She recommended UKI pays Miss H a further £150 compensation. UKI accept this. Based on what I've seen, I see no reason to deviate from our investigator's recommendation that UKI should compensate Miss H further for the distress

and inconvenience these failings caused. So, I intend on directing UKI to pay this.

My provisional decision

My provisional decision is I uphold the complaint. I intend to direct U K Insurance Limited trading as Churchill Insurance to pay Miss H £350 compensation in total for the distress and inconvenience caused.'

Responses to my provisional decision

Miss H didn't agree. She responded with, broadly, the following points:

- UKI considered the claim as malicious damage by tenants – Miss H didn't categorise the claim.
- Loss of rent covered the period between May and July 2022. But, in April 2022, Miss H was arranging repair quotes, preparing evidence, and dealing with the property damage. Therefore, the loss of rent in April 2022 should be covered by the policy.
- The tenancy agreement was a legal document, agreed and signed in good faith, and should be treated as such. And Miss H wasn't expecting rental payments in the first three months of the tenancy agreement, and this was to be paid to the estate agent.
- UKI should include interest on the claim settlement as she hasn't received it, and UKI didn't offer her payments while discussions were ongoing. Therefore, this part of my provisional decision should be reconsidered.
- Miss H disagrees UKI were fair and pragmatic in their approach to settling the claim given it's been running for over a year since reporting it to UKI.

I've broadly summarised Miss H's response to my provisional decision. But I've carefully considered the response including reviewing the attachments. Having done so, I'll now go on to set out my final decision on the matter.

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.

For ease of reading, I've used sub-headings to set out what I consider to be the pertinent points here.

UKI categorised the claim as malicious damage by tenants

The policy sets out a list of contingencies otherwise known as insured events. A theft and malicious damage by tenants cover extension responded to the damage Miss H claimed for. That's because the other listed contingencies set out in the policy didn't apply here. So, I find it was fair and reasonable for UKI to categorise the claim in the way they did.

The cover extension sets out UKI's liability under this section is £10,000. Therefore, this was UKI's liability for the claim under the buildings and contents section of the policy.

Loss of rent

Loss of rent is paid if the buildings is damaged by a listed contingency within the policy. And

UKI's liability is the amount the rent falls short of the rent that would have been received had no damage occurred.

Miss H wasn't receiving rent. I acknowledge she says she had no reason to suspect a problem in the first three months of the tenancy agreement. That's because the rent was due to be paid directly to the estate agent to cover their fees. But no rent was paid to Miss H during the period the bogus tenancy agreement was in place. It's more likely than not the tenants had no intention to pay Miss H rent – or for Miss H to receive any rent – given the tenancy agreement was part of a sophisticated, and very unfortunate, scam.

Therefore, it's my view the loss of rent here was the result of the scam and not the direct result of the damage which gave rise to the claim.

The policy says it will pay for loss of rent in the event the property is unoccupied. And UKI's maximum liability is the loss of rent during the period of reinstatement or repair works and will be calculated based on any tenancy agreement in existence at the time damage occurred.

In my provisional decision, I said I thought UKI were fair and pragmatic in paying Miss H £9,300 for the three-month period while works were underway. I said that because the amount they paid Miss H was based on a tenancy agreement that was put in place by a person purporting to be an estate agent, as part of a scam. I remain of that same view.

The property became unoccupied following the discovery of tenants cultivating cannabis. This ended the tenancy agreement. I think it's therefore fair to say the tenancy agreement ended because of the scam, rather than because of the damage. This meant there was always going to be a period of unoccupancy as even if the property hadn't been damaged, it would have taken some time – say a month, in the absence of any compelling evidence to the contrary – while a new tenant was arranged.

So, by UKI paying Miss H loss of rent from one month after the property became unoccupied, to the point the reinstatement works were complete, I'm satisfied they've fairly and reasonably indemnified Miss H for her reasonable loss.

Interest on the claim settlement

Miss H says UKI never offered payments to her. But in her response to my provisional decision, she provided two attachments of correspondence from UKI.

The first is an email dated 15 September 2022. It says, *'Your claim has been quantified in the amount of £17,200'*, and, *'Please advise the payment details in order that I may arrange settlement.'* It goes on to say, *'If there are any costs which you consider have been omitted within the above which would be covered by the policy then please advise and I will review accordingly'.*

I'm satisfied this demonstrates a payment was offered to Miss H while discussions regarding the claim were ongoing at that point.

The second attachment is an email from UKI to Miss H from December 2022. UKI provided their final settlement offer to Miss H in this email. And I've said previously I consider this offer to be fair and reasonable based on their liability for the claim. This email also invited Miss H to provide payment details for the settlement to be arranged.

Further, the claim notes show an email was sent to Miss H in January 2023 requesting her payment details for the settlement to be paid. Miss H responded to it to say she wasn't

prepared to accept the offer and would seek legal action.

As such, I'm not satisfied the evidence supports UKI failed to offer payments to Miss H. Therefore, it follows, I don't think UKI should include interest when completing the claim settlement.

Compensation

UKI sent Miss H a cheque for £200 in April 2023 following their final response letter. This compensation payment was in relation to service issues they considered they were responsible for, such as delays to reaching a settlement caused by a lack of proactive communication with the loss adjuster. They also apologised to Miss H in this respect.

Our investigator thought UKI should pay Miss H a further £150 compensation for what she considered to be avoidable delays caused by UKI when progressing the claim to settlement between August and October 2022.

I've considered the level of service provided to Miss H by UKI, and the overall impact on her.

I acknowledge the claim has and will continue to impact Miss H. She was the victim of a sophisticated scam, her property was damaged as the result, and she's out of pocket. And while I do think UKI could have handled matters better at times, and with a higher level of customer service, it's my view the claim remains outstanding largely because Miss H is unhappy with UKI's claim settlement offer.

Because I'm satisfied UKI offered Miss H a fair and reasonable claim settlement amount in December 2022, I don't find I could fairly apportion the responsibility solely to UKI for the claim remaining outstanding for over a year. But I accept the avoidable delays they were responsible for when failing to proactively contact the loss adjuster, and the lack of claim progress between August to October 2022, would have caused Miss H distress and inconvenience – over and above what's naturally expected following a claim of this nature and circumstance. So, I think Miss H is due compensation, and overall, I find £350 compensation in total to be fair, reasonable, and proportionate here.

Therefore, I'll be directing UKI to pay Miss H £350 compensation in total for the distress and inconvenience caused.

I accept my decision will come as a disappointment to Miss H. I hope she understands I genuinely do empathise with her situation, and the very unfortunate circumstances she experienced as the result of a scam. My decision ends, however, what we – in attempting to informally resolve her dispute with UKI – can do for her.

Putting things right

UKI must pay Miss H £350 compensation in total for the distress and inconvenience caused.

Miss H received a cheque from UKI for £200 in April 2023. It's not entirely clear if she cashed this cheque. So, UKI will need to arrange for Miss H to receive £350 compensation in total to resolve the complaint if the £200 April 2023 cheque wasn't cashed.

My final decision

For the reasons given above, my final decision is I uphold the complaint. I now require U K Insurance Limited trading as Churchill Insurance to put matters right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 30 November 2023.

Liam Hickey
Ombudsman