

## The complaint

Mr and Mrs M are complaining that U K Insurance Limited (UKI) has declined a claim they made on their commercial property insurance policy.

## What happened

On 21 December 2022 Mr and Mrs M contacted UKI to claim for significant damage arising from a leak in their tenanted property. Mr and Mrs M later advised UKI and its agent that they'd last had a tenant in the property on 14 November 2022. UKI said the policy didn't cover loss or damage arising from an escape of water where the property had been vacant for more than 30 days. And it said the property had been vacant for 37 days. So it said it wasn't required to cover the cost of repairing the damage under the terms of the insurance policy.

Mr and Mrs M didn't think this was fair. They said the policy didn't define what was meant by unoccupied and they said the property had been inspected three times during that period – the last inspection being 15 December 2022. So they don't think it was fair for UKI to decline the claim.

I issued a provisional decision upholding this complaint and I said the following:

*"Mr and Mrs M are claiming for damage to their property arising from an escape of water. Regarding this, the terms of the policy say the policy covers:*

*"Escape of Water from any tank, apparatus or pipe or escape of oil from any oil-fired heating installation, excluding Damage:*

- a. caused by water discharged or leaking, from any automatic sprinkler installations;*
- b. when the Premises are Vacant or Disused; or*
- c. from any portable oil-fired heating installation."*

*Vacant or Disused is defined as "Buildings or any part thereof that have become unoccupied, untenanted or which have not been actively used as a tenanted property under agreement for a period of more than 30 consecutive days."*

*I think there are two key things for me to think about here:*

- 1. Was the property vacant or disused under the terms of the insurance policy; and, if so*
- 2. Was this material to the loss?*

*I shall consider each point separately.*

*Was the property vacant or disused?*

*Mr and Mrs M's property was used for short-term holiday lets. UKI was aware of this and the policy was designed to cover this as it's described as a holiday home. UKI has included various endorsements on the policy attributable to this. So, UKI must be aware that there will*

*always be periods of time where there won't be people staying in the property. UKI accepts this, but doesn't provide cover for escape of water where no one has stayed in the property for more than 30 days. This is a standard term of similar insurance policies and it's not unfair insurers don't want to cover this risk as the damage may become more significant if it goes undetected for a period of time.*

*I note Mr and Mrs M think the term is ambiguous in its interpretation. But I don't agree. I think UKI has set out that it considers a property to be vacant or disused if someone hasn't actively stayed in the property at some point within 30 days of the escape of water being discovered. Mr and Mrs M have told us their managing agent inspected the property on 17 November 2023, 1 December 2023 and 15 December 2023. They've also provided screenshots of the inspection logs which the managing agent required them to retain.*

*However, while I'm satisfied that this was a detailed inspection, I don't think it can reasonably be said this meant that the property had been either, occupied or actively used as a tenanted property. I think this was only done to safeguard the property as opposed to an active carrying out a tenancy agreement.*

*So, while I have taken Mr and Mrs M's comments into consideration, I'm satisfied that the property was vacant and disused under the strict interpretation of the clause. But I've also thought about whether it was fair to decline the claim as a result of this.*

*Was the fact the property was vacant material to the loss?*

*Generally, in thinking about this I've thought about whether UKI's potential liability has increased because of the leak. I've also thought about whether it was fair and reasonable for UKI to act in the way it has.*

*I've reviewed the loss adjustor's report and Mr and Mrs M's comments to understand what caused the damage. I understand the escape of water arose due to a plastic push fit plumbing joint having come apart from the copper pipe. The plumber who inspected the damage said:*

*"Upon inspection, the leak was caused by the copper pipe coming away/pulling out from the Plasson stop tap fitting. It was noted that 15mm copper pipe was slipping freely between the metal teeth in the metal grip ring which is meant to grip the pipe."*

*So it seems to me that a major leak has suddenly occurred – i.e. it's not a situation where a leak has been occurring for a long period of time and gone undetected because the property was vacant. Nor is the damage as a result of the heating not being on for a prolonged period of time. And it needs to be noted that this property had only been inspected a few days beforehand.*

*I also think the nature of the property's usage has to be taken into account here in thinking about what's fair and reasonable. As I said above, UKI was aware that the property was a holiday let and that there are regularly going to be some periods of time where days will go by with the property being occupied. And it's accepted the risk on this basis. However, I think Mr and Mrs M have mitigated against this by arranging for someone to inspect the property on a regular basis.*

*It seems to me that, in actual fact only a maximum of six days went by where there wasn't anyone in the property. I don't think this is unusual with this type of property usage as a holiday let and, as I said, UKI would have been aware of this. I don't think the situation or UKI's liability would have been different had people occupied or tenanted the property before 15 December 2023 – the date of the last inspection. So I'm not persuaded that the fact the*

*property was unoccupied has had a material impact on UKI's liability.*

*So, taking everything into consideration, on the very specific circumstances of this complaint, I'm inclined to say that I think UKI's decision was unfair. And I think it should settle the claim in line with the terms of the insurance policy. I don't intend to award anything further."*

Mr and Mrs M responded to accept my provisional decision. UKI didn't agree however and raised the following points:

- Although the property was inspected six days prior to the discovery of the leak, by this point the property had been vacant or disused for 31 consecutive days and Mr and Mrs M had failed to advise UKI of this, which it said is a requirement of the policy.
- Although the property was inspected, it said this was a mitigation requirement under the terms of the policy and the property remained untenanted, so the terms of the policy would still apply. And it said, even if the property was inspected daily, the property would still be considered vacant or disused, so the term still applied.
- Had the property been occupied when the leak occurred, the loss inevitably would have been discovered far sooner and any damage would have been mitigated. On that simple basis, this has had a material impact on UKI's liability.
- It said it considered my stance to be extremely flawed and could set a dangerous precedent industrywide.
- The nature of the property's usage was taken into consideration and was reflected in the premium charged to Mr and Mrs M and thought it was unreasonable to suggest that the unambiguous terms of the policy should not apply.

### **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 have taken UKI's comments into consideration and I do understand what it's said. I do not dispute the property would be considered vacant or disused under the terms of the policy and under a strict interpretation of the policy, the loss isn't covered. But I also need to think about whether such a strict interpretation creates an unfair situation.

I also acknowledge UKI's concern that this could set a dangerous precedent. But I do need to think about what's fair and reasonable. And in the very specific circumstances of this complaint, I still think about the conclusion I reached in my provisional decision was fair.

As I said in my provisional decision, UKI is aware that there will be periods of time when the property will be vacant. So it has to be aware when taking on a risk, such an event may occur – i.e. there is always a risk a leak may go undetected for a few days and it's set the premium on the basis of this risk. I should say, had the leak itself been as a result of the property being vacant – such down to a frozen pipe, then my outcome may have been different. But I haven't seen anything to show that's the case.

Ultimately, as I said, I remain of the opinion that UKI was aware that the property would go days without anyone in it and the premium has been set accordingly.

So I remain of the opinion that the situation or UKI's liability wouldn't have been different had people occupied or tenanted the property before 15 December 2023 – the date of the last inspection. It follows, therefore, that I still think it's unfair for UKI to rely on policy exclusion in this case and I think it should settle the claim in line with the terms of the insurance policy.

**My final decision**

For the reasons I've set out above, I uphold this complaint and require U K Insurance Limited to settle the claim in line with the terms of the insurance policy. I don't award anything further.

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 20 February 2024.

Guy Mitchell

**Ombudsman**