

The complaint

Mr and Mrs H complain about the quality of the remedial work undertaken by U K Insurance Limited ["UKI"] under a claim on their buildings insurance policy following damage caused by an escape of water.

What happened

I previously issued a provisional decision detailing my likely outcome on this matter on 27 October 2023, an extract of which is detailed below:

"Mrs H has led the complaint with this Service so I'll refer to her mainly throughout. References I make to her actions include those of her husband.

UKI is the underwriter of this policy i.e. it's the insurer. Part of this complaint concerns the actions of UKI's agents, for which it has accepted responsibility. Any reference to UKI includes the actions of its agent.

The background to this complaint is well known to the parties so I've provided a summary here.

- *Mrs H's property was flooded in July 2021 and she made a claim on the policy to cover the cost of the damage. UKI accepted the claim and it appointed contractors to undertake the remedial work.*
- *Mrs H says the contractors provided poor service and caused unnecessary delays. She also said the quality of the works they undertook were unsatisfactory. She complained to UKI about this and a number of other issues.*
- *UKI issued a final response in December 2022 responding to her concerns. Following this, Mrs H remained unhappy with UKI's stance in relation to the level of the bathroom floor and the installation of a waterproof membrane.*
- *She raised a complaint with this Service. Our Investigator concluded the flooring and the skirting boards had been laid to an acceptable standard. But she thought UKI should appoint an expert to investigate the patch repairs to the water proof membrane in the hall and kitchen and make any necessary repairs rather than wait to see if there were problems in the future. And she said UKI should pay Mrs H £300 compensation.*
- *Mrs H accepted the findings but UKI disagreed and asked an Ombudsman to make a 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.

The nature of my role requires me to say how complaints should be resolved quickly and with minimal formality. To do this, I'll focus on what I consider to be the crux of the complaint and may not comment on everything the parties have said but I can confirm I have read and taken account of everything.

I've considered the key issues in turn.

The installation of the waterproof surface membrane (WSM)

- UKI's loss adjuster produced a schedule of works required under the claim. Included in this was the application of a WSM to some concrete floors. The description of the work includes the following instruction to the contractors "To be installed in strict approval with the manufacturer's installation guidelines"*
- From the photographic evidence and UKI's own final response letter, the installation guidelines weren't adhered to. The contractor only covered the width of the cable channel, which had been cut into the floor, rather than the required 500mm overlap.*
- UKI argues that there's no evidence of groundwater ingress as a consequence of this failure. And it says the installation of the membrane was betterment anyway as there was nothing similar in place before the claim. So, it says it doesn't need to undertake any further work to correct the failure unless there's problems in the future.*
- But I don't agree with UKI's position here. If UKI's own loss adjuster said the installation of the WSM was required as part of the remedial works, and the manufacturer's guidelines must be strictly adhered to, it follows that that is what should have happened. And I'm not satisfied it would be fair or reasonable for UKI to change its position on this on this just because the work wasn't done correctly the first time.*
- This Service expects insurers to carry out repairs which are effective and lasting and for the reasons I've explained above, I'm not persuaded UKI has done that here. I will therefore be directing UKI to undertake the correct installation of the WSM in line with the manufacturer's instructions.*

The presence of a damp proof membrane

- There has been some disagreement about whether Mrs H's property originally had the benefit of a damp-proof membrane. UKI said it didn't; Mrs H has always insisted it did. Subsequent to UKI's response to this complaint, Mrs H supplied some paperwork which suggests the property did have a DPM installed some years before. Mrs H's surveyor believes the original DPM may have recently been breached while the work was undertaken by UKI's agents.*
- But whether the property did originally have a DPM or not, my view on the correct installation of the WSM remains unchanged. And potentially more important if the original DPM was breached as suggested by Mrs H's surveyor, although I should be clear I've made no finding on this. And seemingly, any DPM issue should fall away once the WSM is installed correctly.*

The flooring level in the bathroom

- *Having considered all the evidence including a report from a floor specialist, our Investigator concluded the flooring had been laid to an acceptable standard and the skirting levels were within industry accepted tolerances. Mrs H accepted this so there's no need for me to comment further as this issue is no longer in contention.*

Compensation

- *Both Mrs H and UKI accepted the Investigator's recommendation of £300 compensation. Having considered everything, this seems to me to be an appropriate way for UKI to recognise the impact of its poor claim handling and unnecessary delays.*

Further issues

- *Mrs H has said she's continued to experience problems with UKI since the issues at the heart of this complaint. This includes poor communication and claim management and she's made a further complaint to UKI about this. If she remains unhappy with how UKI responds, she may of course raise a further complaint with this Service.*

My provisional decision

Subject to any further comments from the parties, I plan to uphold this complaint and direct U K Insurance Limited to:

- *Undertake correct installation of the WPM in accordance with the manufacturer's instructions.*
- *Pay Mr and Mrs H £300 for the distress and inconvenience it caused if it hasn't done so already".*

Mrs H responded and said, in summary:

- She'd want a detailed specification of remedial work from UKI and alternative accommodation while the work is carried out.
- Mrs H said rather than fully accepting the Investigator's findings on the level of the bathroom floor, she had reserved the right to appoint an independent flooring specialist once an Ombudsman had considered the aspect of the installation of the WSM. She thought, following my provisional decision, the bathroom floor ought to be corrected.
- She thought UKI ought to pay £1,200 for the surveyor's report she had commissioned.

UKI also responded and said:

- It thought any rectification works relating to the correct application of the WSM should be limited to where it had undertaken patch repairs in the living room.
- I hadn't been prescriptive about the extent of the repairs required and suggested it

might be able to complete patch repairs to reapply the WSM. It said once it was clearer on the extent of the work required, it thought a cash settlement would be the best way for the claim to be settled.

- It said it thought the photo showing the damaged damp proof membrane in the hallway had been taken before the flood and therefore shouldn't form part of the rectification works.

Following these comments, I let the parties know I was intending to direct UKI to pay Mrs H a 50% contribution (£600) towards the cost of the expert report she had undertaken. This report led to UKI's position on the correct installation of the WSM changing and ultimately my decision to uphold that part of the complaint.

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.

- As mentioned previously, under this complaint I'm focusing on the issues addressed in UKI's December 2022 final response letter. Mrs H has complained about a number of other issues after this but these issues fall outside the scope of this complaint.
- I have purposefully not been prescriptive about the way UKI should undertake the remedial work to the WSM. As I've explained above, irrespective of whether there was already a moisture barrier in place at the property, UKI must install the WSM in line with the manufacturer's instructions and achieve an effective and lasting repair. I agree with Mrs H that UKI should provide her with a clear and detailed explanation of the nature and extent of the remedial works required to achieve this. It should also consider the requirement for alternative accommodation if the works render the property temporarily uninhabitable.
- Following our Investigator's view on the issue of the bathroom floor, Mrs H confirmed she accepted the findings but reserved the right to arrange for further expert reports. Our Investigator maintained her view. I've not been given any additional flooring expert reports to consider and I'm not persuaded my findings on the issue of the WSM impact the issue of the level of the bathroom floor. Mrs H is of course free to instruct a further flooring expert inspection if she wishes but the results from this sit outside the scope of this complaint and would need to be considered by UKI in the first instance.
- As I've explained, Mrs H's expert report led to a partial change in UKI's stance on the complaint issues - it accepted the WSM hadn't been installed correctly and led me to uphold that part of the complaint. Because of this, I think it would be fair and reasonable for UKI to pay a 50% contribution (£600) towards the cost of this report which ultimately demonstrated UKI's original stance on this issue was wrong. It should also pay 8% simple interest per annum* on this amount from when Mrs H paid the invoice to when UKI reimburses her the cost, on provision of substantiating evidence to show how much she paid and when.
- UKI says it thinks a cash settlement of the claim would be best once the extent of the remedial work is known. While I'm not making a finding on this, I would remind UKI if it insists on making a cash settlement, this Service's established approach is that we would expect it to take into account the cost to the consumer of having this work undertaken as the discounts UKI would have available through its network of

contractors are unlikely to be available to Mrs H.

My final decision

My final decision is that I uphold this complaint and direct U K Insurance Limited to:

- Undertake correct installation of the WSM in accordance with the manufacturer's instructions and to ensure an effective and lasting repair.
- Pay Mr and Mrs H £300 for the distress and inconvenience it has caused them if it hasn't done this already.
- Pay Mr and Mrs H £600 as a contribution to the cost of the expert report plus 8% interest* simple per annum from the date she paid for the report to the day UKI reimburses her, on provision of supporting evidence showing how much was paid and the date she paid it.

U K Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mr and Mrs H accept my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

* If U K Insurance Limited considers that it's required by HM Revenue and customs to deduct income tax from that interest, it should tell Mr and Mrs H how much it's taken off. It should also give Mr and Mrs H a tax deduction certificate if they ask for one so they can reclaim the tax from HM Revenue and customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 25 March 2024.

Paul Phillips
Ombudsman