

The complaint

Late Mrs O's son, Mr O, who held Lasting Power of Attorney ("LPA") over Mrs O's affairs, complains about U K Insurance Limited ("UKI") and the time it took for them to decline the home insurance claim he made following an escape of water at Mrs O's property.

I want to express my condolence for Mr O's loss, as I'm aware Mrs O has recently passed away while the complaint was with our service. I've seen a copy of Mrs O's will, which confirms Mr O and her daughter, Mrs O, are executors for the estate. As Mr O has acted as the main representative during the claim and complaint process, I will refer to Mr O throughout the decision where appropriate, on the understanding his actions and comments were taken and provided on Mrs O's behalf.

What happened

The claim and complaint circumstances are well known to both parties, so I don't intend to list them chronologically in detail. But to summarise, Mrs O held a home insurance policy underwritten by UKI. This policy was listed for automatic renewal, and it renewed in July 2022 in this way. At this time, Mr O held LPA for Mrs O's affairs.

Unfortunately, in December 2022, a leak was discovered at Mrs O's property. So, Mr O contacted UKI to make a claim. Early in the claim process, Mr O openly explained Mrs O had been hospitalised since March 2022 and so, hadn't been occupying the property. And after considering the above, UKI took the decision to void Mrs O's policy from the point of renewal, refunding the premiums she'd paid, as they explained they wouldn't have provided cover had they been made aware of the property unoccupancy. So, because of this, they didn't think there was a valid policy in place at the time of the leak and they explained they wouldn't look to cover the costs of the repairs to the damage that had been caused.

Mr O was unhappy with the length of time it took UKI to reach this decision, and the additional damage this had caused to the property during this time considering the property remained damp and without suitable repairs. So, he raised a complaint about this.

UKI responded to the complaint and upheld it in part. They thought their decision to void the policy was the correct decision, considering the claim circumstances and their own underwriting criteria. But they accepted there were delays in reaching this decision. So, to recognise any inconvenience this caused, they paid Mrs O a £500 compensatory payment. Mr O was unhappy about this, and he didn't think this £500 compensated Mrs O for the additional damage that was caused due to the delays. So, he referred the complaint to us.

Our investigator looked into the complaint and upheld it. They thought UKI's decision to decline the claim was a fair one, considering the property was unoccupied at the point of renewal and that, had this been declared, UKI wouldn't have offered cover. So, they didn't think the original damage caused by the leak was the responsibility of UKI to cover. But they thought additional damage was likely caused by UKI's delays in communicating this decision. So, their final recommendation was for UKI to pay the difference in repair quotes Mr O obtained in March, and then November, 2023.

UKI didn't agree with this recommendation. They didn't think it was fair for them to cover the difference in quotes, considering the most recent quote was obtained six months after they'd made Mr O aware the claim would be declined. And, that repairs were still to be completed after this time. So, they thought the £500 already paid was a fair offer and they didn't think they needed to do anything more. As UKI didn't agree, the complaint was passed to me for a decision.

On 25 March 2024, I issued a provisional decision explaining my intention not to uphold the 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.

Having done so, it's my intention to not uphold the complaint. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I explain why I intend to reach this decision, I think it would be useful for me to explain what I've been able to consider, and how. I recognise Mr O in particular has spent a lot of time and effort during the claim and complaint process. And I can recognise the frustration this would no doubt have caused him. But in this situation, the eligible complainant is Mrs O, who was the policyholder. And following Mrs O's passing, the eligible complaint would now be the estate of Mrs O. So, my decision has only thought about the impact caused to Mrs O, and her estate.

And I note from the evidence and information I've seen that I don't think it's in dispute that UKI's decision to void Mrs O's policy was a fair one. Even so, for completeness, I've considered the void circumstances, against UKI's underwriting criteria. And having done so, I'm satisfied that, had UKI been made aware Mrs O's property was unoccupied due to her hospitalisation, they wouldn't have offered cover at renewal. And I think that, as Mr O held LPA for some time prior to the renewal, it's reasonable for UKI to have expected him, or anyone else who held LPA, to contact them on Mrs O's behalf.

So, I think the actions UKI took when voiding the policy back to the point of renewal was a fair one, in line with industry rules and regulations. And I won't be commenting on this any further.

I also note that UKI have accepted there were unreasonable delays in them reaching and communicating this decision. As this has been accepted by UKI, again I'm satisfied that this point is no longer in dispute and so, I don't intend to comment on the merits of this issue in any further detail. Instead, I've focused my decision on what I feel does remain in dispute, which is what UKI should do to put things right considering the above.

I note Mr O has made very clear representations about the additional damage he feels was caused by UKI's delays in communicating the policy voidance. He's explained that had this been made clear to him sooner, he would've been able to take steps to repair the damage caused by the leak. And because he wasn't able to do so, he's explained further damage

has been caused, which he feels UKI should be responsible for.

I note the initial damage itself was caused by a water leak. While I don't think any of the initial damage is the responsibility of UKI to repair as I don't think there was a valid policy in place at the time of the leak, I recognise damage caused by water is likely to get worse if it's left unrepaired. And I've seen the quotes Mr O has provided, from March and November 2023, which clearly show additional damage has resulted due to the time without repairs being completed so, I can understand why Mr O would hold UKI responsible for this.

But crucially, where our service is satisfied a business such as UKI has acted unfairly, we must then think about what they should do to put things right. And when doing so, any award or direction we take is intended to place a customer back in the position they would've been in, had a business acted fairly in the first place. And to decide what we think this should be, we consider all the information and evidence available to us, and where appropriate, decide on what we think is most likely to have happened, based on the balance of probabilities.

In this situation, had UKI acted fairly, I think they would've voided the policy sooner than they did. I can see from the system notes they originally became aware of the occupancy issue at the beginning of January 2023. And I note this is when Mr O thinks he should've been made aware the policy would be voided.

But I don't agree with this. From UKI's system notes, I'm satisfied that following receipt of this information, they took steps to ensure a voidance was the right course of action, considering Mrs O's situation and the sensitivity this created. So, I do think they were attempting to act in Mrs O's best interests to ensure an ex-gratia payment wasn't an appropriate course of action. And when attempting to confirm this, I can see there were periods of time where they were waiting for responses from Mr O to their questions. And I must consider this when making my decision.

So, I don't think I can say UKI should've definitively voided the policy at this point. But I do think UKI could've reached this decision sooner, which as I've already stated above they've accepted themselves. And I do think the inconvenience this caused should be compensated for. But crucially, I don't think this means they should be directed to cover the additional damage and the costs to repair this. And I'll explain why.

I note that Mr O was made aware of the policy voidance in late April 2023. And I can see in the quote he obtained for repair work in November 2023, that the majority of the repairs still needed to be completed. And I've seen in conversations with our service, and UKI, Mr O made it clear he was arranging for the repairs to be completed gradually, as the property was unoccupied.

So, because of the above, even if Mr O had been made aware of the policy voidance and claim decline sooner, I don't think I can be satisfied, on the balance of probability, that Mr O would've proceeded to arrange for the repairs to have been completed in such a way that would've prevented the additional damage Mr O says was caused between January to April 2023, when he raised his complaint, from occurring. So, I don't think I can say that, had UKI made Mr O aware of the decline in a timelier manner, the additional damage that now needs to be repaired wouldn't be present.

And even if this wasn't the case, I don't think it would be fair to ask UKI to cover the costs set out in a quote obtained in November 2023, when the policy was voided some six months before, as I think it's reasonable for me to assume the condition of the property would've continued to deteriorate during those six months. And I have no reasonable way of being able to say for certain what damage would've been present in April 2023, compared to what was being quoted for repair in November 2023.

So, because of all the above and again recognising the fact that policy was voided fairly, meaning a valid policy wasn't in place at the time of the actual leak itself, I don't intend to ask UKI to cover these costs of the additional repairs Mr O feels are now required. I recognise this won't be the outcome Mr O, or estate of Mrs O, were hoping for. And I appreciate this leaves Mr O, and so the estate, with a significant financial outlay to ensure the repairs are completed to the property.

But as I've set out above, I think the policy was voided fairly and so, the costs to repair the damage caused by the initial leak would always have been a financial burden for Mrs O, or her estate, to cover. And while I don't dispute the extent of the damage is likely to have become worse due to the time that's elapsed between the actual leak, and the arranging of repairs, I don't think I can hold UKI solely responsible for this damage. Nor do I think it's likely this damage wouldn't have occurred anyway, even if UKI had been quicker to communicate the policy avoidance and claim decline.

So, I don't think they need to do anything more than the £500 payment they've already made. I must note this £500 payment was made to recognise the delays in reaching the avoidance decision, and the distress and inconvenience this would've caused to Mrs O as the eligible complainant. This is separate to actual financial losses caused by the leak, and the leak damage. And as Mrs O has passed away, and so the eligible complainant for any additional payment would be her estate, our service is unable to direct payments for distress and inconvenience to an estate as within our services approach, we don't deem an estate to be able to suffer distress and inconvenience in the same way."

Responses

Both Mr O and Mrs O, executors for the late Mrs O's estate, rejected my provisional decision, providing comments and additional information setting out why. This included, and is not limited to, their continued belief that it was UKI's delay in communicating the claim decline that led to the additional damage that was quoted for, and needed repairing, in the quote shown from November 2023. They provided invoices, and quotes, to show repair work had began in the summer of 2023 and so, they felt this supported their position that had the claim been declined sooner, they could've arranged repairs that would've prevented some of the additional damage that was now present. So, they maintained it was UKI's error that led to this damage, and they thought UKI should cover the costs of this. UKI didn't provide any further comments to consider.

.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.

Having done so, I won't be changing my original conclusions and so, I'm not upholding this complaint. And I'll explain why.

The reasoning behind my original provisional decision has been made clear and is included above. So, I won't be reiterating this again. Instead, I will be focusing on the comments Mr O and Mrs O have made following my provisional decision, alongside the additional information they've provided.

And when doing so, I again want to make it clear I have carefully thought about the emotive and sensitive nature of this complaint, considering the passing of Mrs O and the financial implications to her estate, as it's accepted the original escape of water was significant, resulting in a significant cost to complete the required repairs.

Having reviewed the additional information presented, alongside the comments made, I do appreciate Mr O has attempted to engage with contractors to effect repairs since the claim has been declined. I've seen invoices from June 2023 onwards alongside testimony of the steps taken to obtain a dryer for the property. So, I can understand why Mr O and Mrs O feel that this could've been done sooner, had UKI not delayed in communicating the claim decline, which I accept isn't in dispute.

But crucially, I don't think the evidence provided either before, or after, my provisional decision is persuasive enough to satisfy me that the additional damage documented in the quote from November 2023, most likely happened solely due to the delays UKI were responsible for, rather than the delays in completing all the required repair work after UKI communicated the claim decline.

I say this because the original quote Mr O refers to was dated 6 March 2023. So, UKI's claim decline was provided around 7 weeks after this quote was compiled. And it's accepted that at the time of this quote being compiled, the additional damage wasn't present.

And I must take into consideration the fact the second quote was compiled in November 2023 and so, around 7 months after the claim decline. So, for me to say UKI and their failures are solely responsible for the additional damage shown in the second quote, I'd need to see evidence that satisfies me, beyond reasonable doubt, that all the additional damage occurred in the 7 weeks between the first quote and the claim decline, rather than in the 7 months after the decline and the second quote.

And I don't think there is any evidence that persuades me of this on this occasion. Instead, on the balance of probability, I think it's most likely that the additional damage was most likely caused due to the length of time taken following the decline to ensure all necessary repairs were completed. And I note by November 2023, that hadn't been the case. While I do wholly appreciate and respect why this was the case, due to the financial impact caused to the estate as the claim had been declined and so, all the repairs were a financial burden of the estate, I don't think this is something I can fairly hold UKI responsible for as I'm satisfied the claim was declined fairly, and correctly.

So, as I don't think I can be satisfied the additional damage was caused solely by UKI's delays in declining the claim, I don't think I'm fairly able to assess, or say UKI are responsible for, the additional financial burden caused to the estate for the additional repairs that are now needed. And as I explained within my provisional decision, I think the £500 already paid by UKI fairly recognises the fact there were delays, while also taking into consideration some of the delays present before the decline were caused due to UKI awaiting responses from the estate and also represented UKI taking reasonable steps to ensure the decline was a fair one, considering the sensitivity of Mrs O's situation and the size of the claim itself. So, I don't think UKI need to do anything more on this occasion.

I understand this isn't the outcome Mr O, and the estate of Mrs O, were hoping for. And I want to reassure the estate I have carefully thought about all of the comments put forward, which do include their position regarding the delays in drying the property. But crucially, our service wouldn't expect a business to agree and arrange for drying of a property until a claim had been validated. And as the claim wasn't ever validated, I don't think UKI were ever responsible for the drying of the property.

And even if Mr O and the estate had been able to arrange for drying of the property sooner, I don't think I can fairly or reasonably say this would've prevented the additional damage that is now apparent. This is because it's clear from the schedule of works, and the cost of repairs, that the escape of water was a significant one.

So, even if drying had been undertaken sooner, I don't think I can fairly say this would've prevented, or rectified, the significant pre-existing damage that had already been caused by the leak itself, something which UKI were not responsible for under the terms of the policy they provided.

My final decision

For the reasons outlined above, I don't uphold Mrs O's complaint about U K Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs O to accept or reject my decision before 27 May 2024.

Josh Haskey
Ombudsman