

## **The complaint**

Mrs A and Mr A complain about how U K Insurance Limited (UKI) dealt with a claim under their home insurance policy for damage to a fence and paving at their property.

UKI use agents to administer the policy and to assess claims. References to UKI include these agents.

## **What happened**

In October 2023 Mrs A and Mr A contacted UKI to say they were having problems with a neighbouring property. A house was being built on the land and the builder constructing the house had caused damage to Mrs A and Mr A's boundary fence, fence posts and path by excavating a trench, extending under the fence. The damage meant Mrs A and Mr A didn't think their property was secure. As the building work was ongoing, they weren't sure about the extent of the damage and would contact UKI again.

Mrs A and Mr A called the following month for an update on their claim. They thought the damage had been caused deliberately, so UKI said they would need a crime reference number for them to consider a claim for the damage, which Mrs A and Mr A provided.

Mrs A and Mr A contacted UKI again in January 2024 for an update, but UKI had closed the claim. UKI re-opened the claim and appointed a contractor (W) to assess the damage. W attended later in January, but due to the complex circumstances of the claim, W considered they weren't the appropriate contractor to assess the claim. So, UKI appointed a second contractor (S) to assess the claim.

S visited the property in February 2024 and produced a report. The report found there was damage to the fence and could have occurred during construction of the house on the neighbouring land, caused by the builder laying services in a trench next to the fence. The report concluded it would be very difficult to prove the damage had been done maliciously.

Given the report's conclusions, UKI said they wouldn't accept the claim under the policy section covering vandalism or malicious acts, as they couldn't prove the builder caused the damage intentionally. UKI referred to what they considered to be vandalism or malicious act.

Unhappy at UKI's decision not to accept the claim, Mrs A and Mr A complained. In making their complaint, they referred to the Criminal Damage Act 1971, believing it meant the damage should be covered. They also said they'd been initially advised that if they provided a crime reference number the claim would be covered. And S told them the claim would be covered. They also thought S's report (which they'd had to chase for a copy) didn't show the full extent of the damage. They were also unhappy at how long it had taken UKI to assess the claim and decline it.

In their final response, issued in March 2024, UKI referred to S's report concluding it would be very difficult to prove the damage to the fence was done maliciously. Referring to the policy section on cover for loss or damage caused by vandalism or malicious acts, UKI noted the policy didn't define 'malicious acts' but referred to a dictionary definition setting out the

term meant “*The intentional destruction of public, commercial or private property.*” UKI said there wasn’t any evidence to substantiate the builder intentionally causing the damage to the fence, so their decision to decline the claim was correct.

However, UKI accepted they hadn’t administered the claim well, as Mrs A and Mr A weren’t aware their claim had been closed. This caused delays in UKI assessing the damage and Mrs A and Mr A being told their claim wouldn’t be considered. UKI apologised for this and awarded £300 compensation for the upset caused to Mrs A and Mr A.

Mrs A and Mr A then complained to this Service, unhappy at UKI declining their claim and the time they’d taken to consider and then decline the claim. They also thought they’d been told the claim would be covered if they provided a crime reference number. They were also unhappy with the report from S.

Our investigator considered the complaint but didn’t uphold it, concluding UKI didn’t need to take any action. Considering the policy section for vandalism and malicious acts, she also noted this Service wouldn’t consider someone acting without care sufficient to show deliberate intent to cause harm. From the available evidence, she didn’t think it persuasive to show intent (on the part of the builder) to cause harm. Damage was the result of the building works and the digging of trenches for underground services to be installed directly next to Mrs A and Mr A’s property. So, the investigator concluded it wasn’t unfair or unreasonable for UKI to decline the claim under the vandalism and malicious act section of the policy.

While the investigator reached this conclusion, she considered whether the damage might fall under the accidental damage section of the policy. Accidental damage was defined as sudden and unintentional physical damage that happens unexpectedly. In this case, the builder was intentionally digging trenches to install underground services as part of the construction work, which happened over a period of time. She didn’t think it was sudden or unintentional, so the damage wouldn’t fall under the accidental damage section of the policy.

However, the investigator did think the overall service from UKI had been poor and they should have set Mrs A and Mr A’s expectations about what they would be considering when the claim was made, and that provision of a crime reference number wouldn’t, of itself, mean the claim would be accepted under the vandalism and malicious act section of the policy. Also, UKI took no action after they’d been provided with the crime reference number until Mrs A and Mr A contacted them for an update. And S’s report wasn’t provided when Mrs A and Mr A requested it. The investigator thought UKI’s offer of £300 compensation for the distress and inconvenience caused by their poor service was fair.

Mrs A and Mr A disagreed with the investigator’s conclusions and asked that an ombudsman review the complaint. They thought if the damage wasn’t considered malicious then it would be accidental. They’d also been advised to contact UKI’s legal team, who hadn’t done anything (and they’d referred to the legal team’s service in their 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.

My role here is to decide whether UKI have acted fairly towards Mrs A and Mr A.

The two main elements of Mrs A and Mr A’s complaint are, first, the decline of their claim for damage to their fence and path under the vandalism and malicious act section of the policy. They say the damage would fall under this section of the policy and had been told it would (on production of a crime reference number). UKI say there wasn’t enough evidence to show

the damage was a malicious act. Mrs A and Mr A also say if the damage didn't fall under the vandalism and malicious act section of the policy, then it should fall under the accidental damage section. UKI say the circumstances of the damage mean the policy definition of accidental damage wasn't met.

The other main issue is the handling of the claim and the time taken by UKI to decline the claim. This would also include their unhappiness with S's report and the delay in providing it to them. UKI acknowledge shortcomings in their assessment and handling of the claim, awarding £300 compensation for the distress and inconvenience caused.

In considering both issues, I've carefully looked at all the evidence and information provided both by Mrs A and Mr A and by UKI, including from the various experts. In doing so, I should note that my role isn't to assess the merits or otherwise of Mrs A and Mr A's claim – it's to decide whether UKI have acted fairly towards Mrs A and Mr A. Having done so, I've concluded they acted fairly and reasonably. I know Mrs A and Mr A will be disappointed by this conclusion, so I'll set out the reasons for reaching this conclusion.

I've first considered whether UKI acted fairly and reasonably in declining the claim. In their letter declining the claim, UKI said while the policy covered damage from vandalism or malicious act, they couldn't prove the damage was due to either. They gave the following interpretation (definition) of the terms:

*"Vandalism is the action involving deliberate destruction of or damage to public or private property. The term includes property damage, such as graffiti and defacement directed towards any property."*

*"A malicious act is a wrongful act done intentionally by any person without just cause or excuse. It can also refer to the wilful or reckless acts of a person or persons, other than you or your agents or other representatives and employees, carried out with the vindictive intention of damaging your buildings and/or contents."*

UKI also refer to S's report, which contains the following statement:

*"I am not sure there has been malicious damage as such here. There is damage to the fence that is without question however this has been caused during the construction of a house on the neighbouring land. It may well be that the builder caused the damage while laying services in a trench next to the insured's fence but proving that this was done maliciously is very difficult. The insured says he thinks it is malicious due to the fact he complained, and it happened again. I am not sure this proves this."*

The report concludes:

*"Please refer the claim to insurers to get them to decide if they see this as malicious damage or a civil matter between the insured and the neighbouring builder. I would expect that this is more likely to be the latter."*

Looking at the photographs included in the report, I can see that the ground immediately under the fence has been removed, which I take to be the trench referred to by S. Looking down, there is a gap underneath the fence, which leaves the fence without a solid underpinning, causing it to lean in some places. Photographs provided by Mrs A and Mr A also show the extent of the excavation of the ground adjacent to their property and the void created underneath their fence. I've also seen a video taken by W which shows damage to the fence and to the path next to it, which has fallen away towards the excavated ground.

Looking at the definitions of vandalism and malicious act, there has to be clear intent to damage (in this case) the property of Mrs A and Mr A. While it's not in doubt there was damage, it's a consequence of the excavation of the trench at the neighbouring property. Photographs of the excavation show pipework, which I think indicates the purpose of excavating the trench.

As a Service, our approach to cases involving malicious damage or acts is that we would consider damage to be malicious if the person damaging the property intended to do harm. In the circumstances of this case, while the excavation of the trench has led to damage to the fence and path, I don't think it can be reasonably shown that the intention of excavating the trench was to damage Mrs A and Mr A's property, even though that was the effect.

In bringing his complaint and listening to calls between Mrs A and Mr A and UKI, it's clear they had problems with the builder going back several years, including what they've said about the attitude and behaviour of the builder towards them. I don't doubt what they've said, nor the impact this has had on them, but it doesn't prove malicious intent by the builder in excavating the trench.

Mrs A and Mr A say they were asked to provide a crime reference number and were told it would mean their claim being accepted. I've listened closely to the recordings UKI provided of the two calls between Mrs A and Mr A in November 2023. In the first, the call handler (having discussed the case with colleagues) asks Mrs A and Mr A if they've contacted the police or obtained a crime reference number. Mrs A and Mr A say they hadn't considered this and say they will do so. The second, shorter call is where Mrs A and Mr A provide a crime reference number.

On the specific point about whether Mrs A and Mr A were told the claim would be accepted if they provided a crime reference number, listening to the relevant parts of the first call, the call handler says UKI 'can look at' and then 'potentially look at it' [whether the claim would fall under the vandalism and malicious act section of the policy]. While I can understand Mrs A and Mr A thinking this meant the claim would be accepted, I think the language is more contingent and less definitive, hence the phrasing 'can look at' and 'potentially look at'.

As I've said, it isn't our role to assess claims, but to decide whether UKI have acted fairly and reasonably in declining to cover the claim under the vandalism and malicious act section of the policy. Given the points above, I've concluded UKI didn't act unfairly or unreasonably in declining to cover the claim under that section of the policy.

I've then considered whether it was fair for UKI to also decline the claim under the Accidental Damage section of the policy.

As part of our investigation of Mrs A and Mr A's complaint, we asked UKI if they'd considered the claim under the Accidental Damage section of the policy. They referred to the following policy definition of Accidental Damage:

*"Accidental damage is sudden and unintentional physical damage that happens unexpectedly."*

UKI also provided the following description of the issue at Mrs A and Mr A's property, saying it doesn't meet the definition of Accidental Damage:

*"PH called he has had problems with his neighbour the neighbour is building a house next to his and has dug out his posts and the path of PH garden there are 15 posts that have been damaged and the path is now not secure for his dogs. There have been ongoing problems with this builder for three and a half years and family legal have sent a letter."*

UKI haven't said specifically what part of that description doesn't meet the definition, so I've considered whether it's reasonable for UKI to say the Accidental Damage section of the policy wouldn't apply to the claim.

Looking at the definition, I think the damage could be characterised as unintentional, given what I've concluded about it not clearly intentional (which would fall under the definition of a malicious act). Excavating the trench was intentional, but the damage to the fence wasn't. I also think it reasonable to think the damage was unexpected, in that Mrs A and Mr A couldn't reasonably have expected their fence and path to be damaged, even with the history of issues they'd had with the builder.

So, I think the key element here is whether the damage was 'sudden'. Looking at the circumstances of the case, on balance, I don't think it unreasonable to think the damage wasn't 'sudden' in that excavation of the trench would have taken some time, even if it was initially on the neighbouring property but then extended towards and then under the fence and path.

As all three elements of the definition of Accidental Damage need to be present for damage to fall under the definition, then I've concluded it wasn't unreasonable for UKI to decline the claim on the grounds the definition hadn't been met.

Having reached these conclusions about the decline of the claim, I've then considered the issue of the handling and assessment of the claim, including the time taken for UKI to reach their decision to decline the claim and their communication with Mrs A and Mr A.

Looking at the sequence of events, following the initial notification of the loss, it wasn't until Mrs A and Mr A contacted UKI in November 2023, and then again in January 2024, that UKI took steps to appoint a contractor (first W, then S) to visit the property and inspect the damage. It also appears the claim was wrongly closed and then re-opened. And it wasn't until the end of February 2024 that UKI told Mrs A and Mr A they were declining the claim. Which was four months after they'd first contacted UKI.

UKI accept they didn't administer the claim well, as Mrs A and Mr A weren't aware their claim had been closed. This caused delays in UKI assessing the damage and telling Mrs A and Mr A their claim wouldn't be considered. And I think UKI could have been clearer that providing a crime reference number wouldn't automatically mean the claim would be accepted, which would have set their expectations more clearly.

I've considered these factors in the context of what Mrs A and Mr A has told us about the impact of the delays on them, alongside the published guidelines from this Service on awards for distress and inconvenience. Taking all the circumstances of the case into account, I've concluded £300 for distress and inconvenience is fair and reasonable, so I won't be asking UKI to make a further award.

The other issue Mrs A and Mr A have raised is about the actions of the Legal Team. There is some reference to this aspect in the evidence and information provided, more particularly by Mrs A and Mr A following the decline of their claim. However, this decision covers the decline of Mrs A and Mr A's claim by UKI under the home insurance policy (buildings section). And UKI's final response similarly covers this aspect. So, I haven't considered this aspect in this decision.

Taking all these points together, I've concluded UKI haven't acted unfairly or unreasonably towards Mrs A and Mr A, so I won't be asking them to take any further action.

**My final decision**

For the reasons set out above, it's my final decision not to uphold Mrs A and Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 6 December 2024.

Paul King  
**Ombudsman**