

## **The complaint**

Mr C and Mrs C are unhappy with the service provided by Tesco Underwriting Limited (TUI) after refusing to pay their claim, and avoiding their home insurance policy.

Mr C and Mrs C are both parties to this complaint. Mr C has primarily dealt with this service. For ease of reference I have referred to Mr C throughout this final decision.

TUI is the underwriter of this policy. Part of this complaint concerns the actions of third parties instructed on the claim. TUI has accepted that it is accountable for the actions of third parties instructed by it. In my decision, any reference to TUI includes the actions of any third party instructed by TUI during the course of Mr C's claim.

## **What happened**

On 1 June 2021 Mr C's application for planning permission was agreed by his local council. The proposal of work included '*First Floor side extension with juliet balcony to rear and single storey side extension.*'

On 1 March 2022 Mr C renewed his home insurance policy with TUI. The renewal invitation letter explained '*Please check that your current cover continues to meet your needs.*' The renewal confirmation documentation explained:

### ***What to do next***

*Please check all your documentation as these provide information on your cover and the details we hold about you. It is important you check your details are still correct, as inaccurate information could result in claims not being paid or your policy being voided. If you find anything that isn't right, please give us a call...*

The statement of fact recorded there were three bedrooms in the house and two bathrooms. Mr C attempted to claim under his policy following an escape of water incident in December 2022. While assessing Mr C's claim, Mr C confirmed the number of bedrooms and bathrooms had changed. The updated statement of fact issued in December, following Mr C's disclosure of the work completed, recorded there were four bedrooms in the house and three bathrooms. As part of its investigation into Mr C's claim TUI found that building work had been on-going at the risk address since around October 2021.

Following investigation Mr C was informed that TUI wouldn't be paying his claim, and that the policy would be avoided, and premium returned. TUI responded to Mr C's complaint saying the policy wouldn't have been offered if Mr C had disclosed the extent of the building work being undertaken. TUI paid Mr C £50 in recognition of the parts of his claim that hadn't been handled in line with its usual service standards.

Mr C was unhappy with TUI's response and brought his complaint to this service. The Investigator didn't ask TUI to do anything in settlement of Mr C's complaint. Mr C rejected these findings, saying the building work was completed in August 2022. Mr C raised

concerns about the claims process and the way his claim had been dealt with. As the complaint couldn't be resolved, it has been passed to me for decision.

I issued a provisional decision on Mr C's complaint. This is what I said about what I'd 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'd like to reassure the parties that although I've only summarised the background to this complaint, so not everything that's happened or been argued is set out above, I've read and considered everything that's been provided. 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.*

#### *Claim decision*

*When we investigate a complaint about an insurer's decision on a claim, our role is to consider whether the insurer handled the claim in a fair and reasonable manner. So I've considered if it's fair and reasonable for TUI to have relied on the principles of misrepresentation to avoid the policy and therefore decline the claim.*

*TUI has effectively said Mr C misrepresented the policy. It says had it known the extent of building work being completed, it wouldn't have offered cover. I've carefully considered TUI's position, alongside the circumstances of Mr C's claim. TUI didn't set out, in its decline letter or complaint response, what it was about the building work that meant cover would've been declined. But later, following out Investigator's view, said that this was because of the building work taking more than 12 months to complete.*

*During TUI's investigation Mr C confirmed that due to the difficulties in finding a suitable builder, building work didn't start until October 2021. At the time of taking out insurance in March 2022 Mr C's building work had been on-going for around six months. Mr C has explained that building work was completed around August 2022. I note the Investigator had relied on a date of August 2023. However Mr C later confirmed this was a typo and should've read August 2022. I'm persuaded by what Mr C has explained given that there was no evidence of on-going building work from the loss adjuster's report (including photos) when a site visit was completed following the claim in December 2022.*

*Keeping in mind the timescale of building work starting in October 2021 and being completed around August 2022, I'm persuaded that the work was completed within 12 months. So I'm not satisfied Mr C made a misrepresentation at the time of taking out insurance in March 2022. As building work was already six months into the project at the time of taking out insurance, and was completed around four months later, it's likely that any disclosure made by Mr C at the time would've fallen within the underwriting guidelines relied on by TUI as the basis for avoiding the policy and declining the claim.*

*I'll take into account any further information I receive in response to this provisional decision but based on what I've seen so far, I intend to require TUI to treat the policy as having not been avoided and consider his claim in line with its policy terms.*

*When settling the claim I am minded to say TUI cannot deduct the cost of the premium refunded to Mr C when the policy was avoided. This is on the basis that it was because of TUI's actions that Mr C was forced to purchase additional insurance after his policy was avoided and claim declined.*

#### *Communication and delays*

*Mr C's claim following an escape of water was reported to TUI in December 2022. TUI instructed another company, S, to complete the claims handling aspect of Mr C's claim. I have seen that even as late as June 2023 (six months after the claim was reported), S was in contact with Mr C letting him believe that the claim would be paid out. But only a few days after this communication, Mr C was told that TUI had decided not to pay his claim. I think it would've come as a shock and disappointment to Mr C to learn that his claim was going to be paid (as communicated by S), and then later be told that this was incorrect.*

*I accept that claims on this nature, given the complexity and changing scope, can take time to verify and ensure compliance with the policy terms. I also accept that during the six month there were some periods where TUI made reasonable attempt to reach Mr C to discuss his claim, but a call couldn't be successfully arranged and this led to further delays.*

*But even with these factors in mind, TUI didn't do enough to ensure clear and efficient progression of Mr C's claim at times. I think there were periods where the claim remained inactive and it took some prompting and phone calls from Mr C to chase for an update. Mr C had also repeatedly advised about the poor living conditions following the escape of water causing more damage to his home. But I can't see that TUI did anything to support Mr C or expediate the claim. Having considered these service failings I'm minded to direct TUI to pay compensation in recognition of its poor service, and the impact on Mr C.*

*Having considered our award bands alongside what's happened on this claim, I'm minded to ask TUI to pay Mr C £350 in compensation (in addition to the £50 already paid when the final response letter was issued). I say this because this amount reflects the upset and inconvenience caused to Mr C because of the lack of timely updates, and poor communication on the claim. This amount also recognises the attempts made by TUI to try and verify details for the claim, and the period of delay TUI can't reasonably be held responsible for when these contacts were unsuccessful.*

*When thinking about fair and reasonable compensation I've also considered the overall direction for putting things right. All things considered I'm satisfied the compensation amount is fair and reasonable and in line with our approach.*

#### **Additional damage**

*Mr C says additional damage was caused to his home because of the decision on his claim not being communicated until six months after the date of the incident. I'm minded to ask TUI to pay for claim related damage only. When considering what damage is claim related, it's fair and reasonable for TUI to limit payment to the issues detailed in the scope of work completed by S at the time the claim was reported.*

*But as part of its overall consideration of Mr C's claim TUI should consider the additional damage referenced by Mr C as separate damage being claimed for. TUI should keep in mind the principles of fair and reasonable when assessing this part of Mr C's claim. Should Mr C's concerns remain unresolved, this would be the subject of a new complaint that would need to be raised with TUI to answer first.*

#### **Putting things right**

*I am minded to ask Tesco Underwriting Limited to:*

- 1. Amend records and any central databases to make sure any record of the avoidance is removed;*
- 2. Provide Mr C with a letter saying that the avoidance is removed for him to show to*

- future insurers;*
3. *Settle Mr C's claim for damage caused by the escape of water (subject to Mr C providing evidence of the costs incurred);*
  4. *Pay interest on the payment made for (3). The interest should be calculated from the date Mr C made payment, to the date of payment to Mr C. The rate of interest is 8% simple interest per year\*; and*
  5. *Pay compensation of £350.*

*\*If Tesco Underwriting Limited considers that it is required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr C how much it has taken off. It should also give Mr C a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

### **My provisional decision**

*For the reasons given above, I am minded to ask Tesco Underwriting Limited to follow my directions for putting things right as detailed above.*

### **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 invited both Mr C and TUI to respond to my provisional decision. Mr C accepted the provisional decision and didn't provide any comments. TUI rejected the provisional decision and provided further comments. TUI say *'The customer told our technical referral unit on 16/05/2023 that the work was ongoing and was due to be completed in the next few weeks. The customer also advised they had further work planned to the attic. The call is attached.'*

I have listened to the additional call provided by TUI at this stage in our process. During this call Mr C confirmed he completed some refurbishment work to the property himself, including painting and decorating in March 2021. He informed the TUI case handler that building work started around October 2021. Mr C was asked *'When did the work complete?'* To this, Mr C replied *'I think it was 12 weeks- by February 2022.'* The TUI call handler asked if all work was completed. Mr C said *'No not all works, I still got on-going work like the for garden and garage, ad-hoc things... The building inspector wanted it all fire boarded and it's being plastered and painted.'* The call handler asked what Mr C was doing with the garden. Mr C said *'retiling it... getting rid of all the existing dirt...'*

The conversation continues about the outstanding work as follows:

TUI call handler:       *When do you expect the work to be completed with the garage and the garden?*

Mr C:                       *The garage is pretty much completed.*

TUI call handler:       *So what's the expected completion date?*

Mr C:                       *With the garden I don't know in all honesty. I think I'm going to do the attic now as well. Like clear out the attic.*

TUI call handler:       *So when do you think everything will be completed?*

Mr C:                       *With the garden itself, probably two weeks. If I do get the attic done, I don't have a clue, maybe four weeks?*

TUI call handler: *So you haven't started anything?*

Mr C: *No.*

TUI call handler: *If you get it done you must let us know. There are certain restrictions that will apply when tradespeople are in your property.*

Mr C: **The claim was for a water leak but that was way after trade people had left my property.** The leak was from the old, existing pipework. The garden work started a few weeks ago. **Since summer last year there has been no work going on.** (emphasis added)

I note following this call with Mr C, TUI arranged to further call to discuss Mr C's claim in July 2023. The final response letter advised '*Following the information provided by you on 11 July, the Underwriter instructed us to void the policy on 26 July, and backdate the cover to 1 March 2022, as if the cover never renewed.*' I'm persuaded that TUI didn't have enough information to reach a decision on Mr C's claim in May 2023, and it was for this reason that an additional call was set up.

Turning to the call of 16 May 2023 recently provided by TUI in support of its position, I accept that during this call Mr C refers to work to his property being on-going. But in the same call he also advises that work was completed within 12 weeks of October 2021, and that he hasn't had any tradespeople in his property '*since summer last year.*' Mr C's reference to '*summer last year*' matches the information given to this service when asked about when the work to his property was completed, as he referred to the month of August. My provisional decision explained why I'm persuaded the date of August 2022 is more persuasive than August 2023. And Mr C's response to the TUI call handler in May 2023 further confirms this.

It is for a business to evidence that its policy terms have not been met. Following our Investigator's view, TUI said that this was because of the building work taking more than 12 months to complete. However building work isn't a defined term. I've considered the ordinary meaning of the term 'building'. And in doing so, I'm inclined to say that it relates to the structural parts of a house such as the walls and roof. I accept that Mr C has confirmed that some work to his home remained on-going at the time of speaking with the TUI call handler in May 2023. But given what Mr C has explained, I'm persuaded that this work primarily forms part of the refurbishment you'd expect after building work has been completed on a property. This evidence alongside Mr C's testimony about when tradespeople left his property, supports Mr C's position about when building work was completed.

In the circumstances I don't think TUI has shown that disclosure of the building work would've impacted its decision to offer Mr C insurance at the time of his application in March 2022. Mr C's building work had been on-going for six months at the time of applying for insurance. The evidence supports that building work, applying the ordinary definition of building, was more likely than not completed around August 2022. Thinking about the underwriting guidelines relied on by TUI, I don't think TUI's decision to avoid Mr C's policy, and reject his claim is fair and reasonable.

Neither party has provided anything that materially changes the outcome of Mr C's complaint, or my direction for putting things right. So I'll be directing TUI to put things right as set out in my provisional decision.

## **Putting things right**

Tesco Underwriting Limited is directed to:

1. Amend records and any central databases to make sure any record of the avoidance is removed;
2. Provide Mr C with a letter saying that the avoidance is removed for him to show to future insurers;
3. Settle Mr C's claim for damage caused by the escape of water (subject to Mr C providing evidence of the costs incurred);
4. Pay interest on the payment made for (3). The interest should be calculated from the date Mr C made payment, to the date of payment to Mr C. The rate of interest is 8% simple interest per year\*; and
5. Pay compensation of £350.

\*If Tesco Underwriting Limited considers that it is required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr C how much it has taken off. It should also give Mr C a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

## **My final decision**

For the reasons provided I uphold this complaint. Tesco Underwriting Limited must follow my directions for putting things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 4 December 2024.

Neeta Karelia  
**Ombudsman**