DRN-5126339

The complaint

Mrs S has complained about what U K Insurance Limited (UKI) has paid in settlement of her claim for damage to her property under her Landlord Insurance policy.

What happened

Mrs S made a claim for accidental damage caused by her tenants. She wasn't happy with UKI's settlement for several reasons. But Mrs S only asked us to consider her complaints about two issues. Firstly, that UKI offered a lot less to replace the curtains that were damaged than she thought it would actually cost to replace them like for like. Secondly, that it deducted multiple excesses, but it should only have deducted one.

One of our investigators did this. He said he was satisfied with what UKI had allowed for the replacement cost of each of the sets of curtains. However, he noticed UKI had only offered settlement for three sets of curtains, when it seemed five sets had been damaged. He mentioned this to UKI and it agreed to increase the settlement to cover all five sets of curtains, but it said this meant two further excesses needed to be deducted. This meant UKI was willing to pay a further £151.14 in settlement of Mrs S's claim.

The investigator said this was a fair settlement for the curtains based on the evidence available and that if Mrs S wanted UKI to pay more she needed to provide evidence to substantiate her claim that the curtains were of a better quality than UKI had suggested. He also said it was fair for UKI to deduct multiple excesses.

Mrs S didn't agree with the investigator's view and asked for an ombudsman's decision. She made the following points in response to the investigator's view:

- The fact that the onus was on her to prove the curtains at her property were of a higher quality than UKI had suggested was why she offered to send samples of the damaged curtains to UKI. It would have been easy for her to get a third party company to inspect the curtains and testify to their quality and replacement cost. But she didn't think UKI would accept such an assessment and would instead require its own independent assessment. If that was not the case then UKI should have informed her of this when she suggested sending samples, rather than failing to explain why her proposal was not satisfactory and what options she had.

- It was not correct for the investigator to decide what was most likely to have happened in terms of how and when the damage to her property occurred. A case handler needs to assess a claim on the evidence and its merits, not on what they consider to be the most likely occurrence. And as a case handler the investigator needed to assess the case on the evidence provided by each party.

- It is standard for landlords not to be made aware of damage to their property at the time it occurs and instead they are made aware of it at the end of a tenancy. In view of this, it is fair to expect UKI to only apply one excess for damage which may have happened at different times, but was caused by the same people/tenants. This is because insurance case law has established this as a legal precedent for aggregation of losses. And the

investigator did not address the legal cases on the law relating to aggregation of losses. Mrs S specifically wanted me to address this. She cited two court cases and one article from a legal source on the issue.

I issued a provisional decision on 3 December 2024 in which I set out what I'd provisionally decided and why as follows:

Dealing firstly with the settlement amount allowed by UKI for the curtains. I'm satisfied that based on the evidence it had available the replacement cost UKI allowed was reasonable. And under the terms of the policy it is only required to base its settlement on the replacement cost as new for curtains of a similar quality. Obviously, it seems UKI made a mistake and only allowed for three sets of curtains and this meant its starting point before the deduction of any excess or excesses applicable was wrong. But it has accepted this and increased its settlement offer.

I understand what Mrs S has said regarding UKI's failure to make it clear to her that she could get her own independent report on the quality of the curtains. However, I wouldn't expect an insurer to specify exactly what evidence it needs in this sort of situation. Obviously, if Mrs S had suggested getting her own report, then I would have expected UKI to have said whether it would be acceptable. But I think it was a fairly obvious alternative to sending samples and Mrs S could have suggested it to UKI. So, I do not think the fact UKI didn't suggest it means it should base its settlement on a higher replacement cost. And I presume if Mrs S obtains an independent report on the quality of her curtains now, UKI would consider increasing its offer if it felt the report showed they would cost more to replace than it has suggested.

Turning now to the application of multiple excesses. I've considered the policy wording on the application of excesses as a starting point. This says the following under the section of the policy setting out the cover for landlords contents:

5 Excess

This Section does not cover and We will not be liable for the amount of the Section Excess stated in the Schedule being the first part of each and every claim, for Damage caused by any of the following Contingencies:

a Contingencies 6, 7, 8, 9, 12, and 15.
b Contingency 10.

All claims or series of claims, arising out of any one original cause, will be treated as one claim.

The excess stated in the schedule is £200. Contingency 15 is accidental damage.

I don't actually think this wording helps UKI because – in my opinion – a reasonable interpretation suggests the circumstances giving rise to Mrs S's claim means only one excess should apply. I say this because Mrs S actually only made one claim and it is clear from the wording that for one claim only one excess can be deducted.

Even if I were to accept Mrs S can be said to have made a series of claims, i.e. one for each set of damaged curtains, then I think these would be from one original cause, i.e. mainly staining to the curtains. I appreciate that UKI has argued that each incident of damage arose due to multiple events. But the wording refers to the original cause - not event. And I don't think it is clear on what the wording means by one original cause or by one claim. So, I think as a matter of what's fair and reasonable Mrs S as the policyholder should get the

interpretation most favourable to her. I say this because UKI had the opportunity to make its wording clear and failed to do so; whereas Mrs S had no influence on the wording at all. The most favourable interpretation is to treat the claim for the curtains as either one claim or a series of claims arising out of one original cause.

I also think the case law Mrs S has cited and the legal commentary she has cited alongside it gives a good indication of how the courts might view the issue. And Mrs S made UKI aware of the case law and the legal commentary alongside it. And I think the following comments from the commentary are a helpful guide and support my view on the fair and reasonable way to interpret the policy wording:

- *'similar acts or omissions in a series of related matters or transactions will be regarded as one claim. This has a broader effect than the first example. Claims that in some way fit together, as a matter of fact, viewing the transactions in the round, will aggregate; and*

- *a series of claims arising from one originating cause shall be considered a single claim. This is a broad aggregation provision. The word cause is less restrictive than event and can be a continuing state of affairs. The word originating opens up the possibility of finding a unifying factor that does not have to be the direct case of the loss or linked to one event.'*

It therefore follows that I consider as part of the fair and reasonable outcome to Mrs S's complaint UKI is only entitled to apply one excess to her claim for her curtains. So, it should settle her claim by paying the replacement cost of all the sets of curtains that were damaged by Mrs S's tenants, including the ones it missed from its original settlement offer, but only deducting one excess. It should also add interest to the additional settlement amount due at 8% per annum simple from one month after Mrs S submitted her claim to the date of payment. This is to compensate Mrs S for being without these funds.

My provisional decision

I've provisionally decided to uphold Mrs S's complaint about U K Insurance Limited in part and require U K Insurance Limited to settle Mrs S's claim for the curtains at her property that were damaged by her tenants and only deduct one £200 excess when doing so.

UKI should also add interest on the additional settlement amount due to Mrs S at 8% per annum simple from one month after she submitted her claim to the date of payment.

I gave the parties until 17 December 2024 to provide further comments and evidence in response to my provisional decision.

Mrs S responded to say she would not be submitting further information regarding the value of the curtains. But she did ask whether I could confirm that my decision was that only one excess of £200 should be applied to her whole claim.

I responded to Mrs S and explained that – as things stood – I considered UKI should only apply one excess to her entire claim. I also let UKI know this was my view.

UKI responded to say that it would accept my provisional decision and would be reviewing its policy wording in light of it. It did however raise the following points on why it didn't agree with my view that one excess should be applied to the whole claim:

- Taken to its logical conclusion, mine and Mrs S's position would mean that there would only ever be one claim on landlord policies with an 'original cause' of 'damage caused by tenants'. This does not make sense and is not the intention of insurance policies which

seek to treat different causes as different claims and aggregate excesses accordingly. For example, it cannot be the case that damage to a TV on one day and damage to curtains the next, can logically be attributed to the 'one cause' of 'damage caused by tenants'. This clearly not the intention of landlord policies or aggregation clauses. It cannot be the case that the determinative unifying factor in landlord policy claims, is only ever the tenant.

- As a matter of fact, it is inconceivable that five sets of curtains would have been damaged at the same time in the same incident. The 'original cause' cannot therefore be 'damage caused by tenants' since, as per (1) above, this would mean that there would only ever be one claim on a landlord policy, usually annually, on check- out.
- The legal commentary has been selectively quoted. The case referred to involved the criminal actions of a surgeon. His course of wilful criminal conduct as 'one cause' can be factually distinguished from the more random actions of the average tenant during a tenancy, unless perhaps the tenant's actions also amount to a course of wilful criminal conduct.
- The Court of Appeal held that all the claims within both sets were consequent on or attributable to one source or original cause; namely, the surgeon, his dishonesty, his practice of operating on patients without their informed consent and his disregard for his patients' welfare.
- The Court of Appeal sensibly declined to set a general rule as regards claims arising from the conduct of one individual, saying that 'There may be cases in which, on the facts, the behaviour of one individual will be too remote or too vague a concept to provide a meaningful explanation for the claims, but this is not one of them.'

Having considered UKI's comments, I wrote to Mrs S to explain that I felt it was fair and reasonable for UKI to apply an excess in respect of each type of item damaged.

Mrs S responded and made further comments, which I have summarised below:

- The wording in the policy setting out the fact that it covers damage to *Landlord's Contents, Contents of Common Parts and Floor Coverings* suggests all types of damage should be considered together, meaning an excess should be applied to her claim as a whole.
- In the circumstances giving rise to her claim the tenant not being seen as the original cause is simply not reflected in the policy wording.
- It is well established in both insurance and general contract law that the insurer's intention is not to be taken into account when considering the meaning of the policy wording and assessing coverage in light of it. The meaning should be assessed solely from the actual wording.
- Although she does not think the term UKI is seeking to reply is ambiguous, if it is (which UKI seems to accept), then it should be interpreted in her favour, as UKI is the party seeking to benefit from it.

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 now agree with Mrs S's view that only one excess can be applied to her whole claim. This is because, having given the matter a great deal of thought and considered the case law and various legal commentaries, I think this is a reasonable interpretation of the policy wording in relation to the circumstances giving rise to her particular claim. In saying this, I do think it is important for me to restate what I consider to be the key part of the wording relating to the application of an excess, which is as follows:

‘All claims or series of claims, arising out of any one original cause, will be treated as one claim.’

I do of course appreciate it was not UKI’s intention for this to mean it would apply one excess to a claim made for different items damaged at different times. But – if this was its intention – it could have made this clear in its policy wording. And I think its reference to one excess applying in respect of one original cause very much suggests if the cause is the same, then only one excess should apply. UKI has previously used an example of an escape of water affecting more than one area of the home; with this being one cause resulting in a series of claims. This may well be the sort of situation it was intending the wording to cover. But accidental damage caused by a tenant at different times is also one cause, albeit the timing of the damage itself is more spread out. So, I think the wording also suggests one excess should be applied to damage caused in this way, irrespective of when it occurred; provided it is part of one claim. If UKI didn’t intend this to be the case, it should have made it clear in the policy. This doesn’t mean there could only ever be one claim on a landlord’s policy with the original cause as the tenants. There are a number of possible causes of damage aside from the tenant or tenants, for example - and escape of water, as mentioned above.

I do not agree with UKI that I have selectively quoted from legal commentaries to support my view. I think the case law and legal commentaries support my view that what the policy wording actually says is the key. And that its everyday ordinary meaning must be applied. And that - if it is ambiguous - it should be interpreted in favour of Mrs S. Plus, I do think the case law around aggregation of insurance claims strongly supports the view that damage caused by the same person or persons accidently over a period of time can be considered as one original cause.

It will therefore be clear from what I’ve said, that having reconsidered the matter in light of Mrs S’s further comments, I’ve decided the fair and reasonable outcome to her complaint is for UKI to only apply one £200 excess when it settles her claim as a whole.

My final decision

For the reasons set out above and in my provisional decision, I uphold Mrs S’s complaint about U K Insurance Limited and require it to only apply one £200 excess when it settles her claim for damage caused to items in her property by her tenants.

U K Insurance Limited should also add interest on any additional settlement amount due to Mrs S at 8% per annum simple from one month after she submitted her claim to the date of payment.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs S to accept or reject my decision before 23 January 2025.

Robert Short
Ombudsman