

The complaint

Mr A brings a complaint in his capacity as Director of limited company “T”, about U K Insurance Limited trading as NIG (“UKI”) declining a claim he made under a Property Owners insurance policy.

What happened

In December 2023, tenants moved into the insured property, which was owned by T. The tenants noticed some marks on the wall and these gradually got worse. So they got in touch with their landlord, Mr A.

A plumber attended, but couldn’t identify a leak, believing the issue to be related to rising damp. Mr A made a claim to his insurer, UKI, and UKI sent a surveyor out to investigate the cause of the problem. The surveyor concluded that the cause of the damage was rising damp, which wasn’t covered by the policy.

UKI declined the claim, saying the evidence showed it was most likely rising damp which was causing the problem, and reiterating that this wasn’t covered under the policy. It said it had considered the issue under the “Any Accidental Cause” section of the policy, but that the damage wasn’t covered under that section either.

Mr A complained. He said UKI was making excuses not to pay the claim. And that he’d been paying insurance premiums expecting the insurer to sort out problems like this. UKI said, in its response to the complaint, that the property had been injected with a damp proof membrane but that this was showing signs of failure, and the policy wouldn’t cover such a scenario. It maintained its position to decline the claim.

Because Mr A didn’t agree with UKI, he referred his complaint to this service. Our Investigator considered it, but didn’t think it should be upheld. The Investigator agreed with UKI, that the cause of the damp in this instance wasn’t covered by any of the relevant parts of the policy.

Mr A didn’t accept our Investigator’s view, so the complaint has now come to me to decide.

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 this is an informal service, I’m not going to respond here to every point or piece of

evidence Mr A and UKI have provided. Instead, I’ve focused on those I consider to be key or central to the issue. But I would like to reassure both parties that I have considered everything submitted. And having done so, I’m not upholding this complaint. I’ll explain why.

In order for there to be a valid claim under an insurance policy, the claim must arise from one of the insured events covered by the policy. That is, the damage or loss being claimed for must be as a result of an insured peril.

The onus is on a policyholder to show that an insured event caused the damage or loss being claimed for. Only when a policyholder can demonstrate this, does the onus switch over to the insurer to show that an exclusion applies or a condition of the policy has been breached. No insurance policy covers everything without limitations. So it's not unusual for a claim to be declined where it's been established that no insured event has taken place.

In this case, I'm satisfied that UKI has checked under each section of the policy to see if an insured peril occurred. It's concluded that the damage isn't covered under any parts of the policy, including the accidental cause section. And I've also carefully considered whether the claim could reasonably be covered under any parts of the policy, given the information and evidence available.

The policy provides cover for the following "Contingencies" (or causes) in relation to Damage to the Structure of the Building:

- 1) Fire
- 2) Explosion
- 3) Aircraft
- 4) Earthquake
- 5) Riot
- 6) Malicious Persons
- 7) Theft
- 8) Storm
- 9) Flood
- 10) Escape of water
- 11) Leak of beverages
- 12) Impact
- 13) Accidental discharge of sprinklers
- 14) Subsidence
- 15) Any accidental cause

Our Investigator said that as the damage was said to have been caused by damp, it could only reasonably be considered under sections 8, 9, 10, 11, 13 or 15 above. I agree, but I've also considered whether it could be covered by the Malicious Persons section – and I've not seen any evidence of this, or any allegation that the damage may have been due to a malicious act.

In relation to the other perils listed, a storm hasn't been identified as the cause, and the damage here isn't consistent with the type of damage a storm would usually cause, (such as roof damage for example), so I'm satisfied the storm peril doesn't cover what's happened here. And I don't consider the property to be in a high flood risk zone so I don't consider the flood peril to be relevant either.

Mr A has said there has been an escape of water from the ground, which has risen up the building, so he thinks the policy should cover the damage under the escape of water section. But the escape of water section specifies that the policy covers:

"Escape of Water from any tank, apparatus or pipe or escape of oil from any oil-fired heating installation, excluding Damage:

- a caused by water discharged or leaking, from any automatic sprinkler installations*
- b when the Premises are Vacant or Disused; or*
- c from any portable oil-fired heating installation".*

The experts who investigated the damage couldn't identify a pipe that had been damaged or any other apparatus that was leaking. And as the rising damp cannot be described as an escape of water from any of the sources listed, I don't consider the damage can be covered under the escape of water section.

There's no evidence to suggest that there were any leaks from storage containers, pipes or apparatus, so I don't consider the damage can be covered under the leakage of beverages section of the policy.

And the damage isn't consistent with sprinkler damage, nor is there any evidence to suggest it was caused by a sprinkler, so I can't say it would be covered under the accidental discharge of sprinklers section either.

Finally, I've considered whether there was any other accidental cause – and whether the damage could be covered under this section, which deals with any other one-off accidental incidents not covered by any of the other listed insured perils. But I'm afraid there's no indication that a damp proof membrane was broken accidentally, for example, or that there was any other accident which caused the rising damp.

It follows therefore, that as it hasn't been shown that the damage was caused by any of the insured perils, I don't consider UKI has acted unfairly in declining the claim. Mr A says rising damp isn't excluded from the policy. He's right, but exclusions are only looked at *after* it's been established that the damage is caused by something the policy covers. And as I've mentioned, the onus is on the policyholder to show that their claim is for something that's covered by the policy, because insurance policies don't provide cover for every eventuality. If the policyholder can't do that, (which is the first test) then the insurer doesn't need to rely on any exclusion (the second test) in order to decline the claim.

And in this case, as an insured peril can't be identified as the cause of the damage, this means the damage wasn't caused by anything the policy covers. So it's not necessary to move on to the second test and look for a specific exclusion, as the first test of whether or not the damage is caused by an insured event, hasn't been met.

I'm sorry to disappoint Mr A, but my role is not to look into the wider insurance industry's practices more generally. I can only consider an individual complaint and the circumstances of it. I'm not saying rising damp will never be covered by any policy – just that it isn't covered by this particular policy. So I'm afraid that as it hasn't been demonstrated that the claim is covered, I won't be requiring UKI to do anything differently in relation to it.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 19 January 2025.

Ifrah Malik
Ombudsman