

The complaint

Mr G complains that U K Insurance Limited trading as NIG (“NIG”) unfairly declined a claim made under his business’s commercial insurance policy following an arson attack at his commercial premises.

Any reference to Mr G in this complaint includes his representatives, and any reference to NIG includes its appointed agents.

What happened

The circumstances which led to this complaint are well known to both parties, so I’ll provide a brief summary of the background and will focus on giving the reasons for my decision.

Mr G is a sole trader, operating a vehicle repair and MOT centre. I’ll refer to his business as “C”. In June 2023 there was a break-in, theft and arson attack at C’s premises when a former employee broke in, stole equipment and cash and then set the property on fire. Cover was refused by NIG on the basis that C hadn’t complied with three condition precedents to liability, one of which related to security measures at the premises.

Mr G complained. He said C had reasonably met the relevant terms and conditions in the policy, but NIG maintained its position to decline the claim. Mr G remained unhappy, so he referred his complaint to this service.

Our Investigator considered the complaint, and ultimately recommended it should be upheld. She thought while NIG hadn’t acted unreasonably in declining the claim for the reasons it did, it hadn’t handled the claim as well as it could’ve – and that this had caused Mr G distress and inconvenience for which he should be compensated.

NIG accepted the Investigator’s recommendations but Mr G maintained that the claim had been unreasonably declined, and asked for an Ombudsman to review the complaint. So the matter 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 raised or comment on every piece of evidence Mr G and NIG have provided. Instead, I’ve focused on those I consider to be key or central to the issues in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I’m upholding this complaint in line with our Investigator’s recommendations. I’ll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the ‘Insurance: Conduct of Business Sourcebook’ (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make

a claim and give appropriate information on its progress; and not unreasonably reject a claim. It should also settle claims promptly once settlement terms are agreed. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

I've first considered whether the claim was declined unreasonably. The first condition precedent to liability which NIG says wasn't complied with is:

"Section 1: Material Damage —

M124S — Minimum Standards of Protection

It is a condition precedent to the liability of the Company under Sections 1 and 3 of this Policy that the following protections be fitted to the under mentioned openings at the premises and put into full and effective operation at all times outside of Business Hours:

All opening basement and ground floor windows and fanlights and all other windows fanlights and skylights which are accessible from roof balconies canopies fire escapes or downpipes with either:

- *a) key operated window locks with the Keys removed outside Business Hours or*
- *b) solid steel bars not less than 15mm (5/8) apart securely fixed to the building structure surrounding the window opening or*
- *c) windows permanently sealed shut to prevent opening or*
- *d) internal or external metal grilles securely fixed to the building structure surrounding the window opening or*
- *e) metal roller shutters with key operated locks."*

A further condition precedent to liability which NIG has relied on is:

"2. Theft Protections

It is a condition precedent to the liability of the Company that all fastenings and protections on the Premises and all additional fastenings and protections which have been stipulated by the Company, shall be maintained during the currency of this insurance and put into full and effective operation at all times outside Business Hours."

NIG has also relied on the alarm condition precedent to liability which says:

"3. Intruder Alarm

This Condition only applies if the Intruder Alarm Condition is shown as operative in the Schedule.

f. the Insured maintains secrecy of codes for the operation of the Intruder Alarm System and no details of same are left in the Buildings at the Premises."

An insurer is entitled to deny liability for a claim if conditions in the policy aren't met. The Insurance Act 2015 however, says that an insurer can't do this if the policyholder can show that non-compliance with that condition wouldn't have increased the risk of the loss occurring.

In relation to the first and second conditions, which both required window protections to be fitted and to be in operation outside business hours, I don't think Mr G has shown that the conditions had been complied with. I'll explain why.

While the available evidence shows some force was used to gain entry through what I'd consider to be a ground level window, NIG says only minimal force was used, which – if correct – would demonstrate that the window operations weren't in proper working order. Mr G says the policy doesn't require there to have been violent entry in order for the claim to succeed, and that the intruder did use force on a window which didn't have any issues in 2017 when a full inspection of the premises was carried out by NIG.

I've considered what Mr G has said, but I don't think evidence that windows were secure in 2017 means they were maintained subsequently (as required by the policy conditions) and that they were secure in 2023 when the break-in occurred.

And there's expert evidence that minimal force was used, in the preliminary appraisal report dated 6 July 2023. I say this because that report was produced following a scene examination, and confirms that the window was poorly fitted such that even in the closed and locked position, if it was pulled down and out from the outside, the three locking points could be disengaged and the window could easily open. I find this explanation plausible and persuasive, as it's sufficiently detailed and is supported by photographic evidence.

As the intruder gained entry through the rear window, I'm satisfied that that non-compliance with the window security conditions is likely to have increased the risk of the loss occurring. It follows therefore that I don't consider NIG acted unreasonably when relying on the window protection conditions.

The preliminary appraisal report dated 6 July 2023 also deals with the issue of the alarm. The report says Mr G mentioned that the intruder had turned off the alarm since, as an ex-employee, he knew the alarm code. This was recorded in the site notes of a meeting between Mr G and the loss adjuster on 30 June 2023. The site notes from 4 July 2023 also refer to Mr G stating in discussions that the intruder knew the alarm code and had likely unset the alarm following his entry into the risk address.

I've also seen the handwritten statement in the site notes which supports what NIG has said about the discussions that took place. I consider it highly unlikely that the contents of the handwritten statement are untrue. I think it's far more plausible that this was the testimony given, and it was written down so I consider this contemporaneous evidence which is reliable. And at the time NIG declined the claim, this was the most persuasive evidence available.

I've looked at the subsequent evidence that's been provided – following our Investigator's assessment of the complaint. For example, Mr G says the alarm was later found to have been in the "active" mode and several witnesses have come forward saying they heard the alarm. But this doesn't change my view that NIG didn't act unreasonably when it declined the claim on the basis of the evidence it had at the time.

Whilst I accept that the evidence Mr G has now provided refers to the alarm going off and ringing for around ten minutes, and Mr G suggests on this basis that the intruder did not use the code to disable it, I'm not persuaded by this evidence as it isn't as reliable as the contemporaneous documents I've seen from nearer the time. It also wouldn't be fair for me to uphold the complaint on the basis of this new evidence.

I understand the additional evidence has been passed to NIG, so it can consider it to see if it can still fairly rely on the intruder alarm condition precedent to liability, in order to decline the claim. If it maintains its decision to decline the claim on the basis of the new evidence provided, it should explain why – and Mr G can then make a further complaint to NIG if he doesn't agree with what it says.

But I have to consider whether NIG acted fairly and reasonably at the time it declined the claim, on the basis of the available information, and I think it did. Mr G has said NIG had a duty to act reasonably at all times, and that it should've investigated further because it missed crucial information that Mr G has since referred to NIG. I understand the point Mr G is trying to make. But my consideration of this complaint is limited to the actions of NIG up to the point it issued its final response letter to Mr G in October 2023.

And while ICOBS says an insurer should provide reasonable guidance to help a policyholder make a claim, it's not the insurer's responsibility to help make the claim on the policyholder's behalf. It's for a policyholder to prove they have a valid claim under the policy, and if this can be shown, it's then for an insurer to demonstrate that there's an exclusion in the policy or a condition which hasn't been met, in order to decline it.

In this case I'm satisfied NIG has demonstrated that the conditions it's relied on have been applied fairly to decline the claim. So I'm not going to require it to do anything further. If Mr G has additional evidence that hasn't been considered by NIG, then he is free to send that to it for it to consider.

I've considered the level of service NIG provided and I do think there were instances of avoidable delays in its handling of Mr G's claim – particularly the delay in letting Mr G know he wasn't covered. I think as a result of those delays, Mr G was caused some inconvenience over a period of weeks, for which he should be compensated. And I consider £150 to be a fair and reasonable amount of compensation in the circumstances, due to the likely impact and length of the delays.

Putting things right

U K Insurance Limited trading as NIG should pay Mr G £150 compensation for the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint and I direct U K Insurance Limited trading as NIG to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 July 2025.

Ifrah Malik
Ombudsman