

The complaint

Mr L and Miss W have complained about the way Jeffrey Mortonson administered a home insurance policy.

What happened

Mr L and Miss W own a property jointly. The property was insured under a policy arranged by Jeffrey Mortonson. The property was occupied just by Miss W until she went into a care home in January 2022.

Mr L phoned Jeffrey Mortonson and told them of the change in occupancy in May 2022.

He made a claim under the policy after the property was damaged by a water leak in December 2022. The insurer instructed a loss adjuster to investigate the claim. Mr L told the loss adjuster he visited the property at least fortnightly and often weekly.

The insurer said if it had known about the correct occupancy status of the property, it wouldn't have offered the policy to Mr L and Miss W. So it voided the policy, that is it treated the policy as if it had never been in force and it declined the claim.

Mr L and Miss W brought a complaint to this service. I issued a provisional decision explaining why I was minded to uphold the complaint. An extract from my provisional findings is set out below:

"In this decision I'm only looking at how Jeffrey Mortonson treated Mr L and Miss W. I am not looking at whether the decision by the insurer to void the policy was fair and reasonable.

I've listened to a recording of the call when Mr L told Jeffrey Mortonson about the change in occupancy. He said he and his partner stayed at the property "a day or two a week at the weekend". Jeffrey Mortonson's staff member asked whether it was correct to say that they stayed there "two or three nights a week". Mr L said "Yes" and added "Not every week, most weeks it's one to two nights and occasionally it's two to three nights during the week".

This conversation is confusing regarding occupancy. It was an important point and brokers have an obligation to ensure that they understand the customer's situation correctly so far as it impacts the policy. So I think Jeffrey Mortonson should have ensured there was no misunderstanding about whether Mr L was staying at the property at the weekends or during the week.

Having said that, I've read through the revised policy documentation sent to Mr L by Jeffrey Mortonson following that conversation. This includes a statement of fact detailing the questions he was asked and the answers he'd given. In the section headed "occupancy type" it says "weekday home". Mr L was asked to review the revised documentation carefully and let Jeffrey Mortonson know whether anything was incorrect. He didn't advise Jeffrey Mortonson that anything needed changing.

It seems to me that Jeffrey Mortonson made the initial mistake but equally Mr L was responsible for ensuring that the information in the Statement of Fact was correct. So the

blame is shared. To put things right I provisionally think that Jeffrey Mortonson should pay an amount equal to 50% of what Mr L and Miss W would have received had their insurer settled the claim in full plus interest.

It's not clear what the claim costs are. I note that Jeffrey Mortonson asked for information about these in September 2023 but didn't receive a detailed response. If the parties can't agree on the claim costs, a loss adjuster should be instructed to consider the evidence and assess how much, if anything, in their professional opinion the insurer would have paid to settle the claim if the policy had not been voided. The loss adjuster should be instructed jointly by the parties but at Jeffrey Mortonson's expense.

This matter has dragged on for a very long time. I appreciate that some of the delay was down to the insurer but there was also delay on the part of Jeffrey Mortonson in responding to Mr L's enquiries. Mr L was also caused a lot of trouble and upset by the policy being voided and as explained above, I hold Jeffrey Mortonson partly responsible for that. In the circumstances I think the sum of £250 is appropriate to compensate Mr L for that."

Mr L accepted my provisional decision. He said the insurer's loss adjuster had recommended that a further specialist report should be obtained but that was never done due to the policy being voided. He queried whether a loss adjuster would obtain a similar specialist report if necessary.

In summary Jeffrey Mortonson made the following points in response:

- Mr L hadn't responded to their offers to approach the insurer on behalf of him and Miss W;
- Mr L also didn't respond to their request for information about the costs that had been incurred as a result of the water leak;
- In the light of the above they thought it was unfair that they should be required to pay compensation for delays which were not their fault;
- They thought the repairs should have been completed by now and would prefer to settle the matter without the need for a loss adjuster to be instructed; and
- Subject to receipts or evidence of payment they would agree to pay 50% of what the insurer would have paid to settle the claim.

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 both parties have accepted that Jeffrey Mortonson should pay 50% of what the insurer would have paid to settle the claim, I see no reason to change that.

In view of the fact that over two years have passed since the water leak, I would hope that it's fairly clear at this stage what damage would have been covered by the claim if it had been accepted and that the appointment of a loss adjuster won't be necessary. It is meant to be a fall-back option in case the parties can't reach agreement.

The insurer's loss adjuster referred to specialist reports being obtained by Mr L. It appears these were from a plumber regarding the boiler and central heating system and an electrician regarding the power and lighting circuits. Mr L should provide these to Jeffrey Mortonson. If a loss adjuster is instructed, it will be up to them whether any further reports are needed.

I fully accept that Mr L failed to provide information about his losses in response to a request from Jeffrey Mortonson. However, two wrongs don't make a right and there were times when Mr L was waiting for information from Jeffrey Mortonson. The compensation is also intended to reflect the fact that Mr L suffered some trouble and upset by having the policy voided for which I hold Jeffrey Mortonson partly responsible. So I remain of the view that £250 compensation is appropriate in the circumstances.

My final decision

For the reasons set out above, I uphold this complaint and require Jeffrey Mortonson to:

- (unless agreement can be reached between the parties) jointly with Mr L choose and instruct (at the expense of Jeffrey Mortonson) a loss adjuster to assess how much, if anything, in their professional opinion the insurer would have paid to settle the claim if the policy had not been voided.
- pay Mr L and Miss W any sum it's likely that the insurer would have paid as above together with interest on that sum at the rate of 8% simple a year (less tax if properly deductible) from the date of the loss to the date of payment; and
- pay Mr L compensation of £250 for the trouble and upset caused to him.

Income tax may be payable on any interest paid. If Jeffrey Mortonson deducts income tax from the interest, it should tell Mr L and Miss W how much has been taken off so that they can reclaim the tax if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Miss W to accept or reject my decision before 8 May 2025.

Elizabeth Grant
Ombudsman