

## **The complaint**

Mr L, on behalf of 'G' – a commercial enterprise, complains about the response by SiriusPoint International Insurance Corporation ('SP') to a claim they made on their 'restaurants and pubs' commercial insurance policy.

Much of G's dissatisfaction relates to the actions of SP's appointed agents ('B1'). As SP have accepted responsibility for their appointed agent's actions, in my decision, any reference to SP should be interpreted as also covering the actions of their agents.

## **What happened**

The background to this complaint is known to G and SP. Rather than repeat in detail what's already known to both parties, in my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

In June 2024, G took this insurance policy out for their pub through a broker ('B2'). G's premises were affected by a sewage flood in August 2024. G says a third party water company ('B4') initially responded to the flood. G made a claim against their policy with SP. The claim was accepted and repair works began. Shortly afterwards, as part of claim validation, SP flagged some concerns about information that had been provided by G at policy inception – primarily about G's financial history. G was given an opportunity to respond.

SP said that G had failed to make a fair presentation of the risk they wished to underwrite at policy inception. They avoided the policy, ceased work on G's premises and returned the premiums paid. G raised a complaint about the policy avoidance and said SP's appointed agents, B1, had stripped out much more of their premises than was required.

SP offered £150 compensation for service failings, but didn't uphold the main part of G's complaint. As G remained unhappy, they referred their complaint to our Service for an independent review. Our Investigator considered the complaint but didn't recommend that SP needed to do anything further. As the dispute remains unresolved, the complaint was then referred to me for a decision.

I recently sent both parties a copy of my provisional decision. As the deadline for responses has now passed, I've considered the complaint for a final decision.

## **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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service. This is particularly relevant in this complaint, as the documents submitted by both parties totals over 2,800 pages. I can assure both sides in this dispute that I've reviewed all the evidence

before coming to my decision.

Although G is a commercial entity, behind that entity is a person – Mr L. I'm very sorry to hear of the very difficult time Mr L has experienced in his personal life since this claim event and the impact on his livelihood. I'm also very saddened to hear about the bereavement Mr L suffered.

### *Responses to my provisional decision*

Only G responded to my provisional decision. I won't repeat in detail the points raised by G, but I have considered them. In summary, G has said there was no need for SP to remove as much of the floor of the pub as they did. I've already made extensive findings on this point in my provisional decision.

As no new evidence or arguments have been presented that would materially change the outcome reached in my provisional decision, I find no fair or reasonable reason to deviate from my earlier findings. Those findings are included below and form the basis of this, my final decision.

### *The scope of my decision*

It's important that both parties note what my decision is addressing:

- I can consider the actions of SP and their appointed agents – primarily B1 and the initial cleaning company appointed ('B3'). SP have said B3 are not their agent, or B1's, but I disagree as they were appointed by B1 and were acting as an appointed agent. I say this because it's clear G didn't appoint them to carry out works.
- I cannot consider the actions of the broker involved in setting up this policy, B2. G has already made a separate complaint to B2 and if they remain unhappy with any element regarding the sale of this policy they'd first need to raise that with B2 before our Service could investigate that matter.
- There are also various other parties that have been involved in this claim. Although I may refer to them, I'm not considering their actions. For example: the water company ('B4') and the freeholder/landlord of G's premises ('B5'). G can seek legal advice regarding the response of B4, as it may be the case that they have grounds for recourse against B4. I note in their email to G dated 18 November 2024 they offer referral rights to the Consumer Council for Water. G can find more details here: <https://www.ccw.org.uk/advice-and-support/make-a-complaint/>
- I also won't be considering the landlord's unhappiness with any of their owned fixtures and fittings being removed without their consent, loss of rental income or property devaluation. G (Mr L) is the eligible complainant here in the complaint I can consider. The landlord is free to take legal advice or action against SP, should they wish to.

There are two main parts to G's complaint:

1- The policy avoidance, and

2- The actions of SP's agents when responding to the claim. G claims their unnecessary actions have caused an avoidable loss.

Based on what I've seen, G has primarily focused on the damage to their premises they allege was avoidable (caused by SP) since our Investigator sent their initial assessment. But for completeness and because I can clearly see the devastating impact on G's livelihood since this flood occurred, I'll address the entirety of the complaint referred to our Service by

G.

### *The avoidance of the policy*

G - as a commercial customer, had an obligation under the Insurance Act 2015 to make a fair presentation of risk to SP at policy inception. I have noted G's comments about the actions of B2 (their broker) - but I'm not considering their role in the sale.

After a very thorough review of the evidence, I find that G did not make a fair presentation of risk - when failing to disclose information about their financial history. SP have shown us supporting evidence that had they been made aware of the true facts, they'd have not offered cover on any terms. Under the Insurance Act, this means the information not fairly presented was a qualifying misrepresentation.

I also find SP were entitled to take the actions they took (avoiding the policy from inception and declining the claim) in line with the remedies available under the Insurance Act. SP were also entitled to retain the policy premiums, but they've said they returned them and as that's in G's best interests, it's not something our Service would seek to interfere with.

I've then considered if any mitigation applies here - that would mean SP following the Insurance Act doesn't deliver a fair and reasonable outcome in the specific circumstances of the complaint. I've noted G's explanation (lack of awareness and that they were a victim of financial crime) outlined in an email to B2 dated 16 October 2024 as to why they didn't disclose all the relevant financial information (primarily about previous County Court Judgments) to B2. But on balance, I'm not persuaded by their explanations or that it sufficiently mitigates their failure to fairly present the risk at policy inception.

It follows that although G wants business losses covered under the policy, as I've found SP can fairly avoid the policy - I won't be directing them to consider those losses under the policy terms. However, I will consider the impact of SP's initial response to the claim prior to the decision to avoid the policy.

### *The response to the claim*

SP's response to this claim has proved the most contentious part of this complaint. G has highlighted in detail the situation they now find themselves in and the resultant impact. In summary, they argue that much of the initial strip out works were unnecessary and as SP chose to stop works and avoid the policy - they will now incur a much greater cost to reinstate the property.

I've then considered the explanation provided by SP to justify the works carried out and their actions. When notified of the claim they responded promptly to an emergency, when arranging B1 (loss adjuster) and B3 (clean up company) to visit the property. This was positive. In response to our Investigator's assessment, SP explained the works were required to make the premises safe, particularly as a premises that served food.

SP have provided a call recording between G and the cleaning company, prior to their visit to G's premises. In my opinion, this is very important evidence for setting the scene in the lead up to B3 arriving at G's premises. The key parts of the call are summarised below (bold added for emphasis by Ombudsman):

- G says "...everything stinks, I've washed it [flooring], bleached it...the smell just won't go anywhere...the skirtings are all swollen up..."
- The agent asks G: "has it affected the whole down floor?". G replies: "**Yeah, 320 square meters....the whole bottom downstairs...it went the whole way down one**

*way and back the other...you can't get the smell out...I can't open because I'm worried about like customers, not just the smell, getting diseases..."*

- The agent then says: *"it might be that the flooring needs to be uplifted if they don't clean it and the smells' not going away.....we'll bring it back with us..."*

G says: *"They'll need a lorry for 320 square meters..."*

B3, as the experts in this type of emergency response, then carried out a visual inspection, as well as taking numerous moisture readings through the premises. The reports show high moisture readings across the ground floor. G argues it was primarily the games room area affected, but there were also manhole covers in the bar/kitchen area and near the bathrooms. The moisture readings support that these areas were also impacted. The alternative explanation is G got things wrong when explaining the situation during the referenced phone call and the high moisture readings were caused by a non-claim related event. As already stated, I'm also satisfied that G was reasonably aware it was likely the flooring would be taken up prior to B3 visiting.

Therefore, on balance, I'm satisfied that B3's actions when carrying out stripping out works were within the range of proportionate and reasonable responses to this specific claim event. I say this based on a very careful consideration of the evidence.

I've also thought carefully about why G wouldn't have objected to the extent of the works (notwithstanding the bar area) at the time - if they genuinely felt they weren't needed and would only delay their premises opening. For example, in a phone call to our Service, G has referred to letting B3 into the premises to carry out disinfectant works and then returning later to floors being ripped out without their consent, including in areas not affected by the flood. But the referenced call shows that G was aware of what B3 likely intended to do. G has explained they weren't on site during all this time and to having CCTV (email to business dated 15 November 2024) that supported their version of events (which areas were affected by the flood), but this hasn't been provided and since the complaint was passed for a decision G has said the footage has no longer been retained. In my opinion, the extent of works being carried out only wasn't acceptable to G after the decision to avoid the policy was communicated to them.

I also note an email dated 13 December 2024 from the freeholder (B5) that G provided to our Service. It that email, it refers to living in a building with 'raw sewage since August'. But this isn't supported by videos G provided to our Service which they say highlighted the lack of damage to the property and unnecessary stripping out that occurred. In the relevant videos, G refers to various areas of the premises being 'as dry as a bone', but in the referral email to our Service, G said B3 put in 'drying machines to dry out the floor left after a few days and there still here to this day, 11th of November, 12 weeks draining my electricity'. It stands to reason that in the absence of further significant moisture entering the premises, the property will have dried over time with the natural and assisted drying that will have occurred since the flood event.

A flooring expert statement was provided by G on 20 January 2025, many months after the loss event and it stated:

*"I noticed that the whole of the flooring had been ripped up and not just the infected area. The infected area was only 30sqm I can confirm on my findings that the whole flooring did not need to be ripped up and there were no signs of damp."*

This is undermined by the rest of the evidence, including what G told B3 in the referenced call and the detailed expert reports relied on. In any case, I wouldn't reasonably anticipate there would be damp if the areas affected by the flood/sewage water had been removed and drying had taken place. G provided photos taken after the flood (but before ripping out

occurred), that they say support unnecessary ripping out took place. The ripping out will have taken place not just to prevent damp or further damage, but also for hygiene reasons - as non-surface areas not visible will have been contaminated by the floods. G also refers to this in their call with B3.

SP have said that some stripping out (skirting boards for example) will have occurred to assist drying and other work as it would've been difficult to match new to old flooring. It wouldn't be uncommon where a business might struggle to match flooring because of wear and tear, discolouration etc, that they might remove more than was necessary to ensure the result matched visually.

Recently, a report from B4 (the water company), who responded before SP appointed B3 to attend has been provided. It supports that this was a significant sewage flood event. Of particular interest are the photos time stamped '23.03'. These appear to be photos taken of a photo on another device, presumably very shortly after flood event. They show a significant amount of sewage matter. I note G was provided with a 'flooding claim form' and the incident notes recorded: *'...clean up was not undertaken due to [G] happy to clean up themselves and anything further is undertake by their insurance...'*

Overall, the evidence provided by G doesn't sufficiently undermine the evidence SP relied on to justify carrying out their response to the claim.

#### *Other points raised by G*

G has referred to contents that may have been removed by SP (their agents) during the initial claim response. Our Investigator has recently clarified with G whether the contents belonged to them, or the landlord/freeholder. For ease, beyond economic repair below has been shortened to 'BER'.

G has said:

*"I own the furniture that was taken I got them off [freeholder name redacted by Ombudsman] when I paid for my lease the documents will be with my solicitor. A full copy of my lease and fixtures and fittings was supplied to the loss adjuster when the claim was made. Bucket chairs the sofas was removed from the building. I put a few tables and normal chairs in storage out the back at the request of B3 to carry out there works. A conversation took place regarding the one sofa in sports all where the flood was to be taken the others in non affected areas no such conversations took place..."*

I've then referred to relevant documents from B3's initial response to the claim:

#### **"BER CONTENTS**

**- 14x upholstered chairs**

**- 6x sofas**

**\* Further contents requires disposal, policy holder has confirmed that they will go through and dispose, pool tables and gaming machines will need reviewing...**

#### **CONTENTS**

**- All contents require assessment and removal, PH Will dispose of anything deemed BER"**

SP's loss adjuster (B1) compiled a separate report on 4 September. A copy of this report was previously provided to G. The key part of the report relating to contents part of this dispute is below:

- *"Your Insured has purchased most of the pub's contents from auction houses at reduced rates. [B3] have suggested that all soft furnishings, wood tables, chairs will be considered BER items"*
- ***"Items of contents have been removed into the rear garden area ready for disposal by the Insured."***
- *"...the Insured is likely to replace items such as sofa's and tables/chairs from discounted auction sites for the pub trade."*
- ***"The Insured has advised he will be disposing of the contents himself which is considered BER and has alternative storage facilities for salvageable items."***

The evidence doesn't support that SP removed or deprived G of their contents (aside from the disputed flooring and fittings that were removed). I invited G to provide any further evidence to support that SP removed and disposed of their contents that weren't BER in the early stages of the claim prior to this final decision – but nothing further has been received. They can provide it for consideration before I consider the complaint for a final decision.

### *Summary*

- The policy avoidance was fair and in line with the remedies available to SP under the Insurance Act 2015.
- Ultimately, 'but for' the policy avoidance, SP would be liable for all costs incurred when responding to this claim and it's understandable that as G will have to cover reinstatement costs themselves - they'd want to keep costs to a minimum. But on balance, the evidence supports that SP and their agents followed a reasonable course of action when responding to the claim and stripping out the interior.

### **Putting things right**

SiriusPoint International Insurance Corporation (SP) offered G £150 compensation for service failings in their final response letter dated 15 November 2024. I find that to be fair, reasonable and proportionate. I direct SP to make this payment, if they've not already done so.

### **My final decision**

My final decision is that I don't uphold this complaint, with the exception of directing SiriusPoint International Insurance Corporation to pay G the previously offered £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 15 May 2025.

Daniel O'Shea  
**Ombudsman**