

## The complaint

J, a limited company, complains UK Insurance Limited trading as NIG (“UKI”) has unfairly declined a claim, for malicious damage, it made on its commercial property insurance.

J is being represented in bringing this complaint by one of its directors. However, for ease I’ve referred to all comments and actions as being those of J.

## What happened

J owns a commercial let property. In 2020 a new tenant (tenant one) asked for permission to make alterations for a café. J agreed to the alterations, and those were funded by tenant one.

In August 2022, a new tenant took over the lease for the property (tenant two) on the same terms as tenant one. In October 2023, tenant two, having become insolvent, vacated the property. J’s director visited the property and made a claim to UKI. J said tenant two had caused damage to the property as they’d made unauthorised alterations and removed its fixtures and fittings from the property. J said the damage had caused significant financial loss to it, and as such was malicious.

UKI considered a claim, but ultimately it declined it. It said whilst works may have been unauthorised under the tenancy agreement, that didn’t in itself make the damage ‘malicious’. It said for damage to be considered ‘malicious’ there had to be an element of spite, ill will or the like directed at the insured premises or to J as landlord.

J complained about UKI’s claim outcome. UKI issued a complaint final response letter in July 2024; it didn’t agree to change its position in relation to the damage. And it said, because the damage wasn’t caused by an insured event covered by the policy, it wouldn’t meet a claim for loss of rent incurred as a result.

Unsatisfied with UKI’s response, J referred the complaint to the Financial Ombudsman Service for an independent review. Our Investigator thought UKI had acted reasonably in declining the claim for malicious damage to the property. However, she recommended UKI consider a claim for theft under the policy terms, subject to J providing a list of items removed from the premises by tenant two.

UKI didn’t accept that outcome. It said a full claim for theft hadn’t been made, and if J wanted to make a theft claim, it would be considered. But it said directing it to consider one, as a resolution to this complaint, was unfair.

J said its losses in relation to the theft amounted to £35,000, so it welcomed them being considered. But it maintained that it believed the damage to be ‘malicious damage’ under the terms of the policy. J thought its losses in that respect were around £14,000. And if that were accepted, then his claim for lost rent, of a total of around £8,300 should also be paid.

As both parties didn’t accept our Investigator’s outcome, it came to me to decide. I issued a provisional decision on this complaint. I said I was minded to agree with our Investigator’s findings on the damage not being covered by the policy as malicious damage, but I didn’t intend to uphold the complaint and direct UKI to consider a theft claim. I couldn’t see that a theft claim had been made, and a complaint about any response (or lack of response) to that claim had been made.

Provisionally I said:

*“When making a claim on an insurance policy, it is for the insured – so in this case J – to demonstrate it has suffered a loss covered by the policy. If it can do so, then UKI will generally need to accept the claim unless it can fairly rely on a valid exclusion to decline it.*

### Malicious damage

*J considers that tenant two carried out alterations without its permission, which is a breach of the lease. Its changes included redecorating and removing flooring. However, J’s policy doesn’t cover him for changes made to the building or its fixtures without its permission. So that in itself, whilst it may be a breach of the lease, doesn’t mean that the insurer should step in to cover the cost of reinstating the property.*

*The insurance policy will only respond for listed insured events. J says it has done extensive research on ‘malicious damage’ and malicious persons, and it considers the damage caused by tenant two to be malicious damage because it was done intentionally, without justification and caused harm to J because reinstating the property would put it to a financial loss.*

*The terms of the policy do cover “theft and malicious damage by tenant”. The policy doesn’t provide a definition of “malicious damage”; however, this Service considers it generally to mean damage done with a deliberate intention to cause harm. As such, it’s important to look at what the damage is, as well as the likely intention and motivation of tenant two.*

*I’ve reviewed J’s video provided of the property, as well as the reports and J’s witness statement. A partial redecoration was done to parts of the building, where walls were painted, with some walls not being completed. I’m persuaded UKI has reasonably said this isn’t malicious damage. I consider it more likely the redecoration (which amounted, as far as I can see, to partially painting walls white) was done more for tenant two’s own benefit or as part of a planned refurbishment, rather than to cause harm to J.*

*Similarly, J said light fixtures were removed, causing small holes in the ceiling. The tenancy agreement stating no alterations should take place without express permission is not enough to persuade me UKI acted unreasonably in deciding this damage wasn’t malicious damage. In my view the holes are small, showing where the wire had previously come down from the ceiling, the ceiling itself showed no signs of being damaged to such an extent that it could be considered to be intending to cause harm to J. The moving of a light switch, whether allowed by the terms of the tenancy or not, is not evidence of an intent to cause harm.*

*There was some aluminium sheeting removed from walls in the kitchen, some of which was left in the property. I accept this has caused some damage to the walls where the sheeting was attached with an adhesive. But I’m not persuaded this is evidence of malicious damage. I consider the more likely intention of its removal was either as part of a planned refurbishment. J has said he considers tenant two removed some fixtures and fittings to put into another of its businesses. That might be the case, but that is not evidence of intention to cause harm to J. That, to me, shows tenant two was acting in its own interests rather than with any ill will towards J. And this Service takes the approach that acting without care, or even neglect, is unlikely to evidence malicious damage unless there was also a deliberate intention to cause harm.*

*J says he’s now obtained information showing tenant two has a history of not paying staff and going into liquidation. Whilst that might be the case, it is still not evidence that it intended to cause harm to the property or J.*

*I’ve reviewed J’s extensive review of literature around malicious damage, but I’m not persuaded having done so that the damage should reasonably be considered under the insured peril of malicious damage. Whilst I accept there was damage that J would’ve needed to pay to reinstate, J being at a loss doesn’t evidence an intent of tenant two to cause it harm.*

*As such, I find UKI has reasonably declined the claim in that respect. I appreciate J said it couldn't rent out the property to a new tenant without works being needed. But under the policy terms, payment of loss of rent is dependent on an insured event (as listed in the policy) being accepted. So it follows that since I'm persuaded UKI acted fairly in declining the claim for malicious damage, there is no insured event under the policy which would allow for a loss of rent claim to be considered. So UKI's refusal to pay loss of rent was a reasonable one.*

### Theft

*Our Investigator recommended UKI reconsider the theft of fixtures and fittings under the policy terms, but I don't intend to direct it to do so as a resolution to this complaint. Our Investigator recommended this as she'd looked at the terms of the lease between J and tenant one, which said the tenant had ten working days after the termination of the lease to remove all chattels belonging to or used by it. As such, she thought it was reasonable that J considered that ownership of any fixtures and fittings installed by tenant one that remained in the premises more than ten working days after tenant one leaving in mid-2022, had transferred to the ownership of J.*

*In response to our Investigator, UKI said a theft claim hadn't been made. It said the kitchen cladding had been mentioned as being removed, but that remained in the property, so theft wouldn't apply. And it said the removal of a coffee machine had been mentioned by J. But under the terms of the lease, tenant two would've been required to remove this at the end of its tenancy.*

*I think it's important to set out that this Service reviews complaints, not claims. As such I can only consider a complaint about UKI's decline (or non-consideration) of a theft claim, if one has been made to it. I haven't seen anything in the file which suggests J has made a claim to UKI for items it considers to have belonged to it, being stolen by tenant two. Or that, UKI has either ignored this claim or declined it, and J has complained about either of those.*

*There is no mention of any complaint about a declined (or not responded to) claim for theft in UKI's FRL. And the complaint form completed by J when referring the complaint to this Service doesn't mention a complaint about items being stolen from the property not being covered by UKI, or that UKI hasn't considered a claim made for this. It only refers to the claim for damage to the property being declined. As such, whilst I'd expect UKI to consider any claim J wants to make in relation to theft, I'm not going to require UKI, as a resolution to this complaint, to consider a theft claim. Should J want to make a claim to UKI, it will need to demonstrate it has suffered a theft of items.*

### Handling of the claim

*J has said that months passed with poor responses and eventually an assessor was sent to the property. He's asked for compensation for time spent in handling matters. Having reviewed UKI's file, it seems to me that it declined it within around six weeks of the claim being made. I've seen a note on the claim file from 30 November 2023 that J had challenged the decline of the claim. UKI considered J's further arguments, around the damage J considered to be illegal and therefore malicious, and a repudiation letter is noted on the file as being sent in March 2024. It's not clear to me why UKI took around three months, having received that further information from J, to decline the claim.*

*However, I'm not persuaded it would be reasonable to award compensation for such delay when UKI had already set out its position on the claim promptly having initially received it. I can also see that since March 2024, J continued to correspond with UKI, given it disagreed with the claim position. I've no doubt this was inconvenient for J and took up a lot of its director's time. But this Service doesn't make awards for time spent handling claims, that is part and parcel of what happens when a claim is made and information needs to be*

*provided, site visits made etc. This Service can make awards where a business' mistakes have caused unnecessary inconvenience to J, but I haven't been persuaded it did make any error in how it considered the claim."*

UKI didn't provide a response to my provisional findings. J did. It said it would accept the position in relation to malicious damage. However, it said it had made a claim for theft under the policy, and UKI had considered it. As such it asked that I reconsider the position on theft, and as a result, consider the associated loss of rent claim relating to the insured event of theft.

### **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 J accepted the position in relation to malicious damage, I see no reason to depart from my provisional findings set out in relation to that. As such my provisional findings in relation to the malicious damage are now that of this, my final decision.

I accept, having reviewed matters again and reviewing J's information provided in response to my provisional findings, that J did reference theft of items when making the claim. And I can see that UKI's response to that, at one point, was to say that J had no cover for landlords' contents as part of the policy. However, the difficulty is that I can't see, in all of the information provided by J, that a *complaint* was made about UKI's position in relation to theft. Most of the correspondence – and dispute – between the parties related to the definition of 'malicious' in relation to what J saw as damage to its property, in tiles and cladding being removed.

I also find that UKI didn't, in its final response letter, provide any response to a complaint about why it hadn't agreed items as being 'stolen' from the property. And as set out in my provisional decision, this Service considers complaints, not claims. As such it wouldn't be appropriate for me, at this stage to comment on items J considers UKI unfairly declined under the 'theft' part of the cover. J can raise this with UKI. But I don't think it's appropriate for me to make any findings on that here. As such, I'm not going to review J's position that loss of rent should also be paid given the 'theft' of items.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 29 October 2025.

Michelle Henderson  
**Ombudsman**