

complaint

Mr N and Mr D complain about U K Insurance Limited (UKI) and the settlement it gave after a property insurance claim.

background

Mr N and Mr D are involved in property investment, management and maintenance. They leased a property to a tenant but in 2016 it suffered water damage. It appeared that water had seeped into the property after torrential rain had flooded a courtyard at the back of the property. They say UKI's loss adjuster attended the property and said the tenant had to vacate the property so that the source of the water could be found and remedial work take place. The tenant left towards the end of October.

UKI's loss adjuster compiled a report which noted some issues with work that had previously been carried out to the courtyard. This had, in effect, made water ingress more likely. The loss adjuster spoke with the tenant and it appears there had been a few issues of concern to the tenant during the period they'd been staying at the property and they had decided to leave of their own volition.

The loss adjuster initially considered two possible causes of the water damage; water ingress from storm and a leaking pipe in a sub-floor. Given Mr N and Mr D's business of property investment and maintenance they appointed contractors to conduct investigations to establish whether there was a leaking pipe.

In early December UKI's loss adjuster was still waiting on a report from Mr N and Mr D and by January 2017 an infra red survey was being arranged. There was no evidence of a leaking pipe. But a boiler that Mr N and Mr D has previously been advised to replace was thought to be a potential source for a leak. But this was found not to be the case and there was no leak ever found. The water damage was solely related to storm damage water ingress.

The loss adjuster's view was that payment for loss of rent should be restricted to four months. This was because investigations to trace a leaking central heating pipe were unnecessary. Well before the storm damage a plumber had previously advised Mr N and Mr D to replace the boiler at the property. This was because it was found to be faulty but this advice had been ignored. It transpired that the boiler had a leak at the pressure release valve which caused water to vaporise giving the impression it was leaking when it wasn't. The loss adjuster explained that had the boiler been replaced as advised then there wouldn't have been any investigation into a possible leak under a sub-floor.

In May 2017 the loss adjuster wrote to Mr N and Mr D to explain that UKI would only pay four months' loss of rent as that was deemed reasonable in the circumstances. This was on the basis that the only insured event was storm damage that had allowed water to penetrate the property. And this was the only event that had been found to cause the damage, there being no evidence of a leaking pipe. UKI considered four months a reasonable period to dry the property and have remedial work carried out.

But Mr N and Mr D weren't happy with this as that only took loss of rent to around mid-February 2017. The property had been unoccupied for a further period of almost three months before the loss adjuster had written to them in May.

After this, further investigations took place (not by UKI) and then work to put the damage right. A tenant re-occupied in the September but this meant the loss of rent covered 11 months. And so Mr N and Mr D believe 11 months should be the period UKI pays for loss of rent.

The investigator didn't uphold the complaint. He said there hadn't been a leaking pipe and the delay in reaching this conclusion had been due to the fact that the boiler hadn't been replaced when previously advised. And also because of the number of investigations into a leak that didn't exist. It wasn't UKI that had delayed things but requests from Mr N and Mr D as well as a leaseholder. And so the investigator agreed that four months was a reasonable period for loss of rent.

Mr N and Mr D accepted that UKI shouldn't necessarily pay for the entire 11 months but thought there was some middle ground and felt rent to the end of June was reasonable. This was on the basis that the loss adjuster should probably have investigated the boiler first being an expert in claims such as this, and this would have reduced the delay. But also once the go ahead was given to re-lay the damaged floor this alone took six weeks. And so four months begins to look less than reasonable given the requirement to dry out and strip back floors and walls and then reinstate.

The investigator maintained his view that four months was reasonable. This was because payment for tracing a leak was only covered if a leak was found. And it was Mr N and Mr D who'd insisted on the investigations to trace a leak that didn't exist. He explained that the policy only covered loss of rent after an insured event. The event here was storm flood damage through water ingress and four months was a reasonable period.

Mr N and Mr D disagreed and thought the end of June for loss of rent was fair. They said the loss adjuster only gave notice the floor could be re-laid in mid May and this alone took six weeks. So, by the end of June the property would have been available for another tenant. They asked for an ombudsman to decide their complaint. UKI simply said the loss adjuster couldn't authorise work when Mr N and Mr D insisted on carrying out further investigative work themselves.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The dispute in this complaint centres on what a reasonable period is for loss of rent. The policy explains it covers loss of rent from an 'insured peril'. One of the perils is damage caused by storm or flood. So there's no issue that Mr N and Mr D are entitled to an amount of money. The policy also entitles them to loss of rent because of an escape of water from a leaking pipe. But there wasn't a leaking pipe so, under the policy, they're not entitled to loss of rent. That being said, I consider what's fair and reasonable in all the circumstances, and this might mean I think it's fair to require UKI to do something outside the terms of the policy.

My starting point is that I am satisfied the only insured peril in play in this complaint is the flood damage. I'm not satisfied that it has been shown on balance there was any other contributory factor, such as a leaking pipe. And having looked at everything I'm satisfied that four months is a reasonable amount of time to dry out the property and carry out remedial work. Some of the work carried out at Mr N and Mr D's own expense was 'tanking', in other words work to prevent future damp ingress. That isn't something that was covered as part of

the claim and this isn't disputed. But it added time to reinstatement works that shouldn't be factored in to what a reasonable period is for loss of rent as a consequence of the claim.

I've also thought carefully about the boiler issue and the part it played. I am satisfied that before this claim plumbing advice had been given that the boiler needed to be replaced. It was the fact that the boiler appeared to be leaking that Mr N and Mr D insisted that investigation work be carried out (by their appointed contractors). This took time and ultimately proved fruitless. What was discovered though was that there was a fault with the boiler that resulted in vaporisation which gave the appearance of a leak. I'm satisfied that had the boiler been replaced as advised then in all likelihood this wouldn't have been an issue with the claim to UKI.

I then turn to Mr N and Mr D's point about the loss adjuster being an expert and so should have investigated the boiler first. This would have inevitably speeded up the entire process and meant the property would have been available to rent much sooner.

In some circumstances I might agree with Mr N and Mr D but not in this complaint. They are professionals in property investment, management and maintenance. As part of their business they deal with property maintenance and have access to 'in-house maintenance'. Indeed, they instructed their own contractors to deal with repairs and investigation. They were in a better position than UKI given they knew the history of the issues with the property and that they hadn't replaced the boiler when advised to. I'm satisfied of a number of things;

- the tenant left the property at their own choice not that UKI required the property to be vacated,
- UKI didn't delay any investigation,
- The investigation of a leaking pipe was at Mr N and Mr D's insistence,
- they were aware the boiler needed to be replaced well before this claim arose,
- had the boiler been replaced there wouldn't have been an investigation to trace a leak that didn't exist,
- as there wasn't a leaking pipe there's no policy cover for loss of rent due to any investigation to find such an issue.

Having thought about everything carefully in the circumstances of this complaint I'm satisfied four months is a reasonable period of time for the work that was required under the policy. And so it follows that four months is a fair and reasonable period to pay loss of rent for the reasons explained.

my final decision

I don't uphold this complaint and make no award against U K Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Mr D to accept or reject my decision before 9 April 2018.

Sean Hamilton
ombudsman