

The complaint

Mr B complains about U K Insurance Limited's decision to decline a claim made under his landlord insurance policy when he discovered water damage to his property after his tenants moved out.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

Mr B has a landlord insurance policy underwritten by UKI which covers a property he owns and rents out.

Mr B's tenants moved out of the property in March 2023. When the property was inspected, it was found that ceilings in the downstairs rooms had been damaged by water.

Mr B made a claim to UKI. He says there was no leak from the pipework in the house - the damage had been caused by the tenants using the shower with the shower door open and/or the curtain *outside* the waterproof area.

He says UKI's appointed loss adjuster accepted this explanation when he inspected the property – and said the claim would be covered.

UKI declined the claim. They said the damage had been caused gradually. They also said Mr B had an obligation, under the terms of the policy, to maintain the property and to take all reasonable steps to prevent or minimise any loss or damage and he hadn't met that condition.

Mr B wasn't happy with this and made a complaint to UKI. He also complained about some aspects of the service UKI had provided.

UKI apologised for not telling Mr B right at the outset that he would need to obtain at least two quotes for repairs if the claim was accepted. They also said they could understand his frustration at being on hold for 40 minutes when he rang their claims phone line.

However, they maintained that their decision to decline the claim had been correct, given that the damage had happened gradually and Mr B had told them he hadn't inspected the property for three years or so.

Mr B wasn't happy with UKI's response and brought his complaint to us. Our investigator looked into it and didn't think UKI had done anything wrong.

Mr B disagreed and asked for a final decision from an ombudsman.

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.

Mr B tells us that his tenants told him – at some point – that there was a problem with water leaking in the property but that they'd fixed it.

That "fix" appears to have been to paint over the water affected areas and/or to replace some of the seals in the bathroom.

Mr B says the tenants didn't report the damage to the ceilings to him. And they didn't allow him access to the property to inspect the damage and/or their supposed repairs.

I have a great deal of sympathy for Mr B as regards difficult position he finds himself in. It appears the tenants have understood there was a problem, but not fixed it properly – nor allowed Mr B the chance to do so.

However, I'm not going to uphold Mr B's complaint against UKI and I'll explain why.

I should start by saying that there's a difference of opinion here about what caused the damage. Mr B says his tenants were using the shower facilities inappropriately and causing water to spill out of the waterproof areas.

UKI say the relatively new seals in the bathroom indicate that the seals had previously fallen into disrepair – and that was likely how the water was getting into the areas of the building above the ceilings and then affecting the ceilings themselves.

I don't think I need to resolve that argument because I don't think the damage is covered by the policy in either case.

The policy terms clearly say that UKI will cover an escape of water from any tank, pipe or apparatus. This will cover instances where, for example, a pipe or tank leaks water due to damage to the pipe or tank itself.

But this term won't cover water getting into areas it shouldn't be in because individuals aren't using their facilities properly and/or are causing water to spray or splash outside showers or baths. Nor will it cover damage caused when grouting or seals aren't maintained.

This is also reflected in the conditions set out in the policy, which say that the policyholder must maintain the property and must take all reasonable steps to prevent or minimise loss or damage.

There's also cover in the policy for accidental damage. That's not defined as such in the policy terms. But it would reasonably and normally be interpreted to mean damage caused by a single, one-off and unexpected incident – an accident.

That provision wouldn't therefore cover damage which has occurred over a prolonged period of time - even if the damage weren't caused intentionally.

And in the case of Mr B's property, it's very unlikely the damage to the ceilings - to the extent they needed significant repair or replacement – has occurred due to a one-off, unexpected incident. Indeed, I don't think anyone is suggesting that's the case.

In other words, the damage may well have been caused unintentionally, but that doesn't make it accidental damage intended to be covered by the policy terms. Because as well as being unintentional, accidental damage would be expected to have occurred suddenly and unexpectedly.

There's a reason that accidental damage provisions in insurance policies work that way. If they didn't, then policyholders would in theory be able to make claims for damage which has occurred over long periods of time due to neglect and/or a failure to maintain the property and/or a failure to take reasonable steps to avoid loss or damage. Just so long as that damage wasn't brought about by an intentional act

Insurance policies aren't usually there to cover things which have become old to the extent they no longer function and/or have suffered wear and tear and/or have been gradually worn down. And they certainly aren't there to cover on-going maintenance of a property.

In this case, by Mr B's own admission, he's been unable to enter the property for three years or more to inspect or maintain it. Some – but certainly not all - of that may be due to COVID. Some may be due to unwillingness on the part of his tenants.

But whatever the cause, it's difficult to make any sort of case that Mr B has complied with the conditions set out in the policy which require the policyholder to maintain the property and to take steps to guard against – or minimise – loss or damage.

That's particularly so given that Mr B was made aware by the tenants that there had been an issue with water damage but didn't then take steps to get (legitimate and lawful) access to the property to check that the tenants' repairs had been effective.

That being the case, I can't reasonably conclude that UKI have done anything unfair or unreasonable in declining Mr B's claim.

Taking a step back and looking at things more broadly, it's clear the damage to the property was allowed to continue over a prolonged period of time and/or the property wasn't maintained as it should have been. Mr B might reasonably blame his tenants for that, but I don't think he could justifiably regard UKI as responsible for putting the damage right.

I should say that I fully understand that tenants have certain rights in law and that tenants may not always be cooperative. But there are steps open to landlords which would allow them to comply with conditions such as those set out in this policy, through lease and contract terms – and ultimately the courts.

I'd add that UKI are entitled to decide what risks they're willing to take on in providing insurance cover. If they don't wish to take on the risk of providing cover where the landlord can't access the property and/or inspect it and/or maintain it, then that's a decision for them.

As long as they make that clear to the prospective policyholder, through the policy terms or by other means – as I believe they did in this case - then the decision whether to buy and pay for the cover is with the customer.

In this case - assuming Mr B was familiar with the policy terms, as he ought to have been – he would or should then have realised that when he didn't attend, inspect or maintain the property for a quite prolonged period of time, UKI wouldn't be obliged to cover this kind of damage.

When Mr B brought his complaint to us, he was primarily concerned about the decision on his claim. He didn't specifically ask us to look into the service issues he'd raised with UKI.

I will quickly comment on those issues here though. I'm satisfied that UKI's apology for the long time Mr B spent on hold when he called their claims line was a fair and reasonable response to Mr B's complaint.

The same goes for UKI's admission that they might have told Mr B sooner that he'd have to get two quotes if the claim was accepted. They apologised for that – and I think that was a fair response. Ultimately, it had no real effect on Mr B at all since the claim wasn't accepted.

My final decision

For the reasons set out above, I don't uphold Mr Bs complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 March 2024.

Neil Marshall
Ombudsman