

The complaint

Ms P's complaint is about a claim she made on her U K Insurance Limited ('UKI') legal expenses insurance policy, which UKI declined.

Ms P says UKI treated her unfairly.

What happened

Ms P's property was damaged because of an escape of water from the property above hers. A claim was made by the freeholder of Ms P's property on its buildings insurance policy. As part of that claim repairs were carried out to Ms P's property, which Ms P says weren't conducted properly and caused damaged to her home.

Ms P made a claim on her legal expenses insurance policy for cover to pursue a claim against the loss adjusters and builders involved in administering the claim made by her freeholder on its buildings insurance policy. UKI referred the claim to a panel firm to consider.

Overall their advice culminated in UKI taking the position that the claim wasn't covered because:

- It didn't fall under the contract section of the policy; Ms P didn't have a direct contract with the loss adjusters, the builders or the building insurer responsible for the claim.
- The property section of the policy excludes claims in relation to the construction of Ms P's building or land.

Ms P wasn't happy with UKI's position or their handling of her claim generally. She felt there were unnecessary delays on the panel firm's part in relation to completing their review of her claim and that UKI discriminated against her as a leaseholder by not covering her claim. UKI don't accept they've done anything wrong.

Our investigator considered Ms P's complaint and concluded that it shouldn't be upheld. She said there was no cover under the policy for the claims Ms P wanted to bring. She also addressed some additional concerns that Ms P had raised but didn't uphold those either. Ms P doesn't agree so the matter has been passed to me to determine.

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.

Having done so, I won't be upholding Ms P's complaint for broadly the same reasons set out by the investigator.

Before I explain why, I want to acknowledge both Ms P's strength of feeling about her complaint against UKI and the number of submissions she's made. I note that she's sent a

considerable volume of documents to help support her position. I won't be making reference to all of those within this decision, nor will I repeat her submissions in any detail. In this decision I will focus on the crux of the issues complained about and address them accordingly. No disrespect is intended to Ms P in this regard, it just reflects the informal nature of our Service.

I've dealt with the main issues raised under the headings below for ease of reference.

Reasons UKI declined the claim

The policy terms most relevant to the claims Ms P was making are contained under the property and contract section of cover.

The contract section of cover requires there to be a dispute about an agreement Ms P entered into. In this case I haven't seen anything that supports Ms P has a direct agreement with either the loss adjusters or builders involved in administering the claim made in respect of her property. The loss adjusters were engaged by the buildings insurer and the buildings insurer has a direct contractual relationship with her freeholder, but not Ms P. That's not unusual where a freeholder is involved. As far as I can see, Ms P didn't engage the builders herself so again I can't draw the conclusion that this is a claim that would fall within the contracts section of cover.

I've gone on to consider the property section of the policy. This section excludes cover for *"advice, specification, design, construction, conversion, extension, renovation or demolition on any land or relating to any buildings"*. Whilst it might not have been Ms P's intention for her property to be renovated, I think the nature of the works required to make good her property amount to this. In the absence of a policy definition for *"renovation"*, I've applied the ordinary dictionary meaning which refers to *"the act or process of repairing, renewing or restoring to good condition"*. So, I think the exclusion relied on by UKI under this section still applies here.

Overall, I don't think it was unreasonable for UKI to turn down cover. From what I've seen Ms P's claim isn't one that falls into the types of claims the policy provides for.

I understand she now wants to obtain a Solicitor's opinion to help support that her claim should be covered. Ms P is of course entitled to do that. If she does find a supportive legal opinion which suggests she does have a contract with the parties she wants to claim against, she can present that to UKI to consider further.

Right to representation

Ms P feels that UKI have prevented her from returning to the panel firm for representation. I think that's correct in so far as her legal expenses insurance cover is concerned. The panel firm were instructed by UKI to consider Ms P's claim under the policy terms. Given their findings, UKI concluded there was no cover. I've already determined that their stance was reasonable in this regard, so it follows that Ms P is not currently entitled to cover.

That doesn't mean that she's prevented from accessing representation, however. She is of course free to contact the panel firm to enquire whether they're prepared to act for her on a privately paying basis. That's not something UKI would be involved in nor have any influence over. They just wouldn't be providing insurance cover for that representation, but as I've said above, that is a position they're entitled to take under the policy terms.

Complaints about freeholders and discrimination

Ms P has said the policy she took out is discriminatory because it doesn't cover claims against freeholders.

It's right that the policy excludes claims arising from or relating to leases, tenancies or licenses to occupy land or buildings. So, in this case that exclusion would prevent Ms P from bringing a claim against her freeholder for breach of the lease. But I don't think this means UKI have discriminated against her or other leaseholders.

An insurer is entitled to determine the types of claims it is and isn't prepared to cover. By adding this exclusion, it's taken a decision not to offer cover for claims like the one Ms P might be considering against her freeholder. The exclusion isn't unusual in policies of this nature but rather, representative of the risk appetite of many before the event insurers. We wouldn't generally interfere with an insurer's decision to limit cover in this way. As long as it has set out what it was and wasn't prepared to cover clearly, it's not something we would generally look behind.

In this case I've not seen anything to suggest that the extent of cover wasn't made clear to Ms P. From what I've seen it was set out within her policy documents. If those weren't made available to her before the policy was taken out, then that will form the subject of a separate complaint she'd need to pursue against the seller of the policy. I understand this is something she's now considering and is therefore not a matter I'll be commenting on further.

Overall, however, I don't think that UKI's decision to apply the exclusion it has in relation to leases in its policies amounts to discrimination.

Delays

Ms P says that UKI caused delays in the administration of her claim. She says the documents it sent over to the panel firm were incomplete and this has meant they had to be sent again. Ms P says this caused both delays and inconvenience to her.

I've considered everything Ms P has said and the documents she's provided but looking at the timeline, even if I take into account that UKI didn't send absolutely everything Ms P sent them to the panel firm, I can't say this led to a considerable delay in the claim being determined.

Rather it seems that a decision was made on her claim within a matter of weeks. And given the information had already been sent by email to UKI by Ms P, it was readily available to her to forward on to the panel firm. So, I can't say there was a significant impact on her as a result of this, such that UKI need to do anything more to put things right or that the information she felt she needed to resend was even necessary for the panel firm to determine her claim.

As I understand it, they already had access to the policy terms applicable to her claim so were aware of the exclusions that were relevant to it. This coupled with the information she provided about her claim was probably enough to determine that issue.

Other matters

I understand Ms P is unhappy with other matters such as the escape of water claim she made, but that's not something I can consider in this complaint. If she hasn't already done so, she can raise that with the relevant insurer directly and if she remains dissatisfied with their response, she can refer that complaint to this Service once eight weeks have expired.

My final decision

For the reasons set out above, I don't uphold Ms P's complaint against U K Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 5 October 2023.

Lale Hussein-Venn
Ombudsman