

The complaint

The estate of Ms W complains about UK Insurance Limited (UKI), who declined a claim under the home insurance policy.

What happened

In July 2022, Ms W passed away. Her sister became the executor. Her sister contacted UKI to ensure that cover was maintained on the property and told UKI that the property would be occupied, for at least four times per week.

In December 2022, a claim was made following an escape of water, as damage was caused to the entire property. UKI instructed a loss adjuster to attend, but due to the volume of claims that it had experienced, the loss adjuster was booked to attend in January 2023.

During the claims process, UKI asked how often the property had been occupied. It was explained that the property was occupied between the 3 – 4 November, 24 and 25 November and 5 and 6 December. The loss was reported on 19 December.

UKI said that this didn't show that the property was occupied, as had been agreed (at least four days per week). UKI said that had it been made aware that the property was unoccupied, it would still have offered cover, but it would have applied endorsements to the policy.

The endorsements would have meant that someone would have had to have checked the property at least once a week. And during winter months (October to March), ensure that the heating was put on. UKI said that it retrospectively applied the endorsements, but as there was no evidence that the conditions of the endorsements were complied with, it declined the claim.

As the referral rights were given, a complaint was referred to our service. One of our investigators considered the complaint and didn't think it should be upheld. She said that it wasn't fair for her to ask UKI to cover a claim, where the policy terms haven't been complied with. Nor did she think it was fair where the endorsement (of a person visiting the property at least once a week) wasn't complied with either. Although she was empathetic, to the situation, she couldn't reasonably ask UKI to do anything further.

UKI accepted the view, the estate of Ms W did not. They felt that our investigator had implied that there was fabrication of the adverse weather conditions and they provided local news reports in support of this. As, this was one reason they were unable to visit the property. They said that there was no retrospective endorsement applied to the policy. They said that UKI failed to explain the consequences of the under-occupancy term in writing. Especially, when they were extremely vulnerable following the bereavement. They said that UKI had a duty of care to ensure disclosure of all material facts relating to recoverability under the policy.

They felt that UKI and our investigator failed to consider any aspect of the claim, even the costs that were incurred to obtain the emergency engineer.

Finally, they argued that the property had been occupied within 60 days and that it was regularly visited. So, they asked for a 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.

Having done so, I won't uphold this complaint, for much the same reasons as our investigator. I understand that this might be a disappointment to the estate of Ms W, but I hope my findings go some way in explaining why I've reached this decision.

I've considered both parties comments, terms and conditions of the policy and the evidence both parties have provided. I think the main issue of this complaint is whether UKI reached the right decision to decline the claim under the policy terms and conditions.

UKI declined the claim as it said that the estate of Ms W hadn't complied with the policy terms. The main term that it felt the estate of Ms W hadn't complied with was the under occupancy. So, I've had a look at this.

When the estate of Ms W took out the policy, she told UKI that the property would be occupied at least four times per week. I've listened to the call recording, in which Ms W explains that if it wasn't her, then a family member would occupy the property.

Ms W provided the following dates when she visited the property. They were 3-5 November, 24–26 November and the 5-7 December. There were no visits to the property from the 8-19 December. And it was on the 19 December, that the escape of water was discovered.

Ms W said that she was prevented from visiting the property due to adverse weather conditions. But I've had a look at weather reports in the month before the incident, as they are the best independent evidence. The reports don't disclose adverse weather conditions, that would have prevented Ms W visiting the property, to ensure that she complied with the policy terms. So, I'm not persuaded that Ms W would've been prevented from visiting due to the weather conditions, at that point. And I'm satisfied that Ms W had breached the terms of the policy, in the month before the incident, notwithstanding the poor weather conditions she mentioned.

Further, having listened to the call recording in which Ms W took out the policy, she made it clear that if she was unable to visit the property, then another family member would be staying at the property. I can't see that this was done either.

During Ms W's call where she took out the policy, it was explained to her that the property would need to be occupied for at least four nights per week. It was further clarified that if the conditions were unable to be met, then endorsements would be added to the policy. UKI just required Ms W to notify it of any changes, in particular whether the property would be unoccupied. I haven't seen any evidence, that Ms W did this.

Ms W said that UKI hadn't applied the endorsements retrospectively. Nor had it explained the consequences of under-occupancy terms in writing. But in January 2023, the estate of Ms W contacted UKI and advised that the property was unoccupied. From the evidence, I

can see that UKI applied the endorsements retrospectively. This meant that it applied those endorsements from the date the policy was taken out.

UKI, during the claims process, discovered that the property (although visited) hadn't been occupied. It further said that Ms W who confirmed the dates that she visited the property, amounted to occasional visits, or stays.

UKI relied upon the following term:

'During the period your home is unoccupied (as defined in the policy): A. The exclusions of loss or damage caused by theft or attempted theft, vandalism, or malicious acts, escape of water or oil or damage to the plumbing installation by freezing after your home has been unoccupied for more than 60 consecutive days shall not apply provided that: 1. All doors and windows are closed, and all locks bolts and other protective devices put into operation 2. Your home is inspected weekly by a responsible person 3. a) In the period the 1st of October to 31st March inclusive: the water system is turned off at the mains and drained or, if the home is centrally heated, the central heating system is left on at all times to maintain an air temperature of not less than 10C(50F) b) At other times - the water system is turned off at the mains 4. The electricity gas and oil supplies are turned off at the mains unless necessary to maintain central heating as required in 3 a) above.'

Based on Ms W's comments, I can't agree that she either visited the property on a weekly basis or complied with any of the other abovementioned endorsements.

I understand that the estate of Ms W said that UKI didn't make it clear in writing the consequences of the under-occupancy term. But, having reviewed the phone call, I think the agent clearly explained the term and enquired whether her or a family member was able to stay at the property at least four nights per week. Ms W confirmed that this would be done.

In addition, Ms W enquired what would happen if someone was unable to stay at the property for the amount of time. The agent advised Ms W to ensure that she contacted UKI to let it know if this was to be the case.

I've next looked at the policy documents. I note that they were sent to Ms W's address (and not the property address). I can see that the endorsements are clearly set out on page eight.

On page five of the documents, it provides a warning in bold letters that inaccurate or incorrect information could adversely affect the policy, including invalidating the policy and causing claims to be rejected. Consequently, I don't think its reasonable to conclude that UKI failed to provide the endorsements or the consequences of a failure to comply with the terms, in writing.

I understand that the estate of Ms W would like reimbursement for the cost of the emergency engineer who attended to disconnect the water supply. But, UKI investigated the entire claim and declined that claim, due to the non-compliance with the policy terms. So, I can't agree that it ought to have settled any aspect of the claim, given that the claim in its entirety was declined.

I've finally considered the estate of Ms W's comments that she regularly visited the property and had done so within the 60-day requirement. As previously mentioned, the dates given only show a total of nine days over a period of around five weeks. Whereas to have complied with the policy terms, the estate of Ms W would have needed to show that she (or a family member) had stayed at the property, over the same period, for at least 20 days.

Although I accept that the estate of Ms W visited the property, she didn't do so enough to comply with the policy terms. So, I don't think UKI were unfair to decline the claim where the estate of Ms W hadn't complied with the policy terms.

In the overall circumstances of this complaint, although I sympathise and acknowledge the emotional distress that Ms W would've been under, I don't think it's fair for me to recommend that UKI settle the claim, as the policy terms and conditions were not complied with. I'm therefore not going to tell it to do anything further here.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms W to accept or reject my decision before 5 January 2024.

Ayisha Savage
Ombudsman