

The complaint

Mr B complains about how U K Insurance Limited trading as NIG ("UKI") settled his claim on his landlord's insurance policy.

Throughout this complaint Mr B has been represented by a third party. However for ease of reading I've referred only to Mr B. All references include the actions of his representative.

What happened

Mr B had landlord's insurance with UKI for a number of properties he owns and rents out. In February 2021 he made a claim on the policy after one of his tenants moved out and left the property in a poor state.

UKI sent a loss adjuster to inspect the damage. It accepted the claim but said it would only pay for some of the repairs as not all of the damage was caused maliciously and instead was due to neglect by the tenant and wear and tear.

It also said that the sum insured (rebuild value of the property) on the policy wasn't sufficient. It said the property was underinsured by 15%, so the overall settlement would be reduced by this amount due to an average clause in the policy.

It also initially said that as each individual bit of damage was a separate incident, an excess of £250 would apply to each one.

It initially offered around £700 as a settlement but later increased this to £4846.13 after agreeing to include a replacement kitchen and only charging two excesses for external and internal damage, rather than for each item.

However Mr B remained unhappy with this. He said that all the damage was caused maliciously so the whole claim should be covered. He made a complaint but UKI didn't uphold it, so he brought it to this service.

Our investigator didn't recommend the complaint be upheld. She said she thought UKI's decision that some of the damage was due to wear and tear was a fair one and therefore the settlement offered was reasonable.

Mr B didn't agree and asked for the complaint to be reviewed by 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's policy covers theft and malicious damage by tenants. The term 'malicious damage' isn't defined in the policy, however this service generally considers it to be damage that is caused with malicious intent.

I've looked at the photos of the damage caused to Mr B's property. And I agree there is some that appears to have been caused maliciously. This includes damage to some of the doors that look like they've been punched. And the damage to the kitchen surface which looks to have been hacked off. As these items appear to have been damaged intentionally then I agree this would suggest malicious intent and therefore meet a reasonable definition of malicious damage.

However there is some damage that doesn't appear to have been caused with malicious intent. This includes staining on the floor and carpet. This damage doesn't appear to be from a one off event but instead appears to have happened over time, due to a lack of care.

UKI sent its loss adjuster to inspect the damage and based on their assessment and photos it's agreed to cover some of the damage including the doors, window ledge, plaster on a bedroom wall and the kitchen. And based on the evidence I think this a fair assessment.

The damage to the plug sockets, floor and carpet and the damage in the bathroom don't appear to have been caused by force but instead have worn and become damaged over time. And as damage due to wear and tear isn't covered by the policy, I think UKI has acted fairly by not including these items in its settlement.

I note Mr B has said that all the damage was caused by one event, when the tenant's partner attacked the property. He's provided a police report that he says shows this. I've looked at the report and I don't agree this is what it says. While it mentions domestic issues that have occurred in the household, it doesn't reference one event when all the damage was caused. It says that Mr B has said he thinks the damage was caused by the tenant's partner and comments on the extent of the damage. So I don't agree this shows that all the damage was caused maliciously.

Further, I wouldn't expect the police to comment on how the damage was caused, as this wasn't the purpose of their considerations. So I don't consider comments about the damage contained in the report persuasive when considering this complaint.

So based on the evidence I think UKI has acted fairly and reasonably by concluding that some of the damage wasn't caused maliciously and therefore isn't covered under the policy.

I've also considered UKI's decision to apply two excesses to the claim. The policy states as follows:

'The Company shall not be liable for the first amount of each and every loss stated under the excesses set out in the Schedule or otherwise stated in this Policy.'

As there is no evidence to suggest the damage is all linked to one event, then each individual event would be considered a separate loss with an excess applying to each. However I think UKI has taken a fair approach by applying only one excess to both the external and internal damage. So I won't ask it to do anything differently in regards to this.

Underinsurance

UKI has said that it's further reduced the settlement as the property was underinsured. It's said the sum insured was 15% less than it should have been to reasonably reflect the value. As this formed part of the settlement, I have also considered whether this was fair.

While I can see the policy contains an average clause that allows UKI to reduce the settlement proportionately, when considering underinsurance, this service would usually expect insurers to take regard of the relevant law. In this case that's the Insurance Act 2015. This is because we wouldn't expect a policy term to disadvantage a customer compared to the law. Insurers can opt to contract out of this law but have to meet a number of requirements (laid out in the act) in order to do this.

Where there is underinsurance, the Insurance Act requires insurers to reduce the settlement proportionately based on the difference in premiums that were paid and what would have been paid if the property hadn't been underinsured. I've asked UKI to provide details of the premium Mr B would have paid based on the reasonable estimate of the value. And I can see that he would have paid around 15% more. As UKI reduced the settlement by 15%, I'm satisfied Mr B hasn't been disadvantaged by the fact it relied on the average clause rather than the relevant law. I therefore won't interfere in its decision to do so.

For these reasons, I'm persuaded that UKI has acted fairly when settling Mr B's claim and have offered a fair and reasonable settlement. I therefore won't ask it to do anything further.

My final decision

For the reasons I've given, I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 August 2023.

Sophie Goodyear
Ombudsman