

## **The complaint**

Mrs B is unhappy U K Insurance Limited trading as Churchill (UKI) said she needed to make multiple claims with multiple excesses under her commercial property insurance policy, rather than treating all the damage as one claim with one excess.

## **What happened**

Mrs B owns a property which she let out to a tenant. When the tenant vacated the property Mrs B discovered damage to the front door and two windows, so she contacted UKI, her commercial property insurer, to make a claim.

UKI said that as there was damage to the door and two separate windows, three claims would need to be made, each with a separate excess payable. UKI said each window claim would attract a £100 excess, and the door claim would have a £200 excess.

As Mrs B was unhappy with UKI's position she approached this service.

Our investigator considered the complaint and upheld it. She said that the policy terms said that only one claim would need to be made if it was from the same cause. So, she said UKI should consider the claim as one malicious damage claim, with one policy excess.

UKI agreed that only one claim should now be registered and said that they would consider it in this way. But, UKI said this is because Mrs B had now provided a different version of what caused the damage, which now allowed them to consider it one incident in line with the terms. UKI disagreed that they treated Mrs B's claim(s) incorrectly when she contacted them to discuss the loss.

Our investigator didn't agree. She said regardless of the new version of what happened being provided, she said UKI should still have treated it as one claim from the outset.

UKI didn't agree and asked for a final decision from an ombudsman.

I was minded to reach the same overall outcome as our investigator, but there were some additional things I thought UKI needed to do to put things right. So, I issued a provisional decision, to give both parties the opportunity to comment on my initial findings before I reached my final decision.

## What I provisionally decided – and why

In my provisional decision, I said:

*“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’ve reached the same overall outcome as our investigator. But there are additional things I’m minded to direct UKI to do to put things right. Therefore, I’m issuing a provisional decision, to give both parties an opportunity to comment on my initial findings before I reach my final decision.*

*After the tenant had vacated Mrs B’s property, she discovered damage had been caused to the front door and two separate windows. When discussing this with UKI, they advised that this would be three separate claims, with a £200 excess for the door, and £100 for each window.*

*Our investigator asked Mrs B how the damage had occurred, and she said:*

*“Unfortunately as I wasn’t at the property and didn’t speak with the tenant before he left I only know what the neighbours have told me. (Tenant name) had a disagreement with someone about money and it ended in a fight at the property. The door was kicked in and windows broken. The police were called but no arrests made.”*

*Mrs B’s policy covers malicious damage. It also covers malicious damage by tenants as a policy extension. However, here I don’t think the extension is the part required to claim under, as from the above, it was someone else rather than the tenant that caused the damage maliciously.*

*Our investigator considered Mrs B’s policy terms and conditions, and in particular the part I’ve highlighted below:*

*“Excess*

*This Section does not cover and We will not be liable for the amount of the Section Excess stated in the Schedule being the first part of each and every claim, for Damage caused by any of the following Contingencies:*

*A Contingencies 6,7,8, 9,12 and 15.*

*B Contingency 10.*

*C Contingency 14.*

**All claims or series of claims, arising out of any one original cause, will be treated as one claim.”**

*The investigator said that as the claim was for malicious damage (contingency six), it was one cause, and in line with the above term, she said that UKI should have treated the claim as one with one excess applicable, rather than multiple.*

*UKI agreed that it would now be one claim for malicious damage rather than three. But they said this was on the basis of the new information about what happened from Mrs B, which she hadn’t told them about before. And they didn’t think that treating it as three separate claims in the first instance, based on what Mrs B reported at that time, was incorrect.*

*However, our investigator maintained that it should have been one claim from the outset regardless. Having considered everything, I'm minded to agree with our investigator. I'll explain why.*

*I've listened to the call Mrs B made to report the damage to UKI. She explained that she'd reported the damage to the Police who had told her to contact her insurer. Mrs B said the front door appeared to have been kicked in, and two windows had been smashed.*

*UKI said that the front door would be considered as a malicious damage claim, with a £200 excess. And they said the windows would be considered under the separate glass and sanitary ware part of the policy, and because they were in different rooms, they would be different incidents, each with a separate £100 excess. Therefore, UKI said it would be one malicious damage claim and two separate glass and sanitary ware claims.*

*However, from the call recording, I think UKI should have considered all three areas of damage under malicious damage from the outset, rather than malicious damage for the door, and separate accidental damage claims for each of the windows. I say this because Mrs B told UKI she had reported all the damage to the Police as malicious damage. If Mrs B had only reported the door as malicious damage to the Police, then it might have been reasonable to take the approach UKI did in considering the windows separately under accidental damage to glass and sanitary ware.*

*Whilst I accept the windows and the door were in different rooms, it's not unreasonable to assume (as Mrs B did and reported to the Police) that if someone had maliciously kicked the door in, then the windows likely had been maliciously smashed too. Instead UKI focused on the tenant accidentally damaging the windows (separately and on different occasions) and the door being maliciously kicked in separately. Whilst Mrs B couldn't know for certain at that point, the fact all had been reported to the Police by her as maliciously damaged, I think this is how UKI should also have considered the claim from the outset.*

*UKI has said that the likelihood is that it was caused at separate times, which is also why it considered there were multiple incidents and therefore multiple claims. However, the policy terms above don't refer to the incident's needing to be the same to treat it as one claim, instead they refer to the cause being the same. And I'm minded to conclude it would have been reasonable to treat all the claims as malicious damage from the outset, and therefore that was the cause (regardless of the incident being the same or not), so this would only be one claim and excess in line with the policy terms.*

*With this in mind, I don't think UKI acted fairly by advising the damage would be three claims, with three separate excesses, when Mrs B reported the damage.*

*Our investigator said UKI should reconsider the claim as one. I'm minded to agree with this and unless anything changes as a result of the responses to my provisional decision, I'll be directing UKI to consider the reported windows and door claim as one malicious damage claim.*

*This is to an extent academic as UKI has agreed to now do this, based on Mrs B explaining what had happened to cause the damage. But as I think UKI should have done this from the outset, this means I also need to consider the impact not doing so had on Mrs B.*

*Mrs B has had to have repairs completed in the interim rather than pursuing all three claims with three excesses. So, in addition to reconsidering the claim as one, I'm also minded to direct UKI to add 8% simple interest to any cash settlement, from one month from the date the claim was made (to take into account a reasonable amount of time it would have taken to consider the claim) to date of settlement.*

*In addition, I also think that Mrs B has been caused additional inconvenience as a result of UKI only giving her the option of making three claims - which I don't think was fair for the reasons outlined. This has then led to Mrs B paying for all the repairs in the interim rather than pursuing multiple claims. Unless anything changes as a result of the responses to my provisional decision, I'll also be directing UKI to pay Mrs B £100 compensation for the additional inconvenience caused.*

*I also note from the file that Mrs B also contacted UKI two months after reporting the malicious damage to make an additional claim for replacement carpet as she reported it had glass in it as a result of a break-in. At that point UKI said this would be a fourth claim, with an additional excess.*

*As far as I'm aware, as Mrs B said this was caused during a break-in, and two months after the previous claim, this was a separate theft incident to the malicious damage claim above. Therefore, this would, as UKI say, be a separate claim and attract a separate excess."*

So, I was minded to uphold the complaint and to direct UKI to consider the reported door and windows claim as one malicious damage claim with one excess, and to add 8% simple interest to any cash settlement. I was also minded to direct UKI to pay Mrs B £100 compensation.

### **The responses to my provisional decision**

Mrs B responded and agreed with the provisional decision.

UKI responded and also agreed with the provisional decision.

### **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.

And I've thought carefully about the conclusions I came to in my provisional decision. Having done so, as neither party has provided anything which would lead me to depart from my provisional findings, my final decision remains the same as my provisional decision, and for the same reasons.

## **My final decision**

It's my final decision that I uphold this complaint and direct U K Insurance Limited trading as Churchill to:

- Consider the reported door and windows claim as one malicious damage claim with one excess.
- For any cash settlement, add 8% simple interest\* from one month from when the claim was made to the date of settlement.
- Pay Mrs B £100 compensation.

\* If U K Insurance Limited trading as Churchill considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs B how much it's taken off. It should also give Mrs B a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 7 August 2023.

Callum Milne  
**Ombudsman**