

The complaint

Mr O is complaining that U K Insurance Limited has declined a claim he made on his commercial property insurance policy.

What happened

In December 2022 Mr O contacted UKI to say his property had been damaged as a result of an escape of water in his neighbour's flat. And he said he wanted to claim for the damage on his commercial property insurance policy. UKI declined Mr O's claim as it said the property had been unoccupied for more than 60 days and it said there was no cover for escape of water in those circumstances. Mr O didn't think this was fair as he said he'd advised his broker that the property was unoccupied before the policy started.

Our investigator didn't uphold this complaint. He didn't think it was unfair for UKI to decline the claim given the property was unoccupied and he said, if Mr O was concerned about the sale of the policy, he'd need to raise this with his broker.

Mr O still didn't think this was fair as he said his broker did tell UKI his property was unoccupied and he paid an increased premium as a result of this. So he didn't think it was fair for UKI to then not cover the claim. As Mr O didn't agree with the investigator, the complaint's been passed to me to decide.

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.

I've decided to not uphold this complaint.

Mr O thinks it's unfair UKI has declined his claim due to the property being unoccupied because he explained this was the case when the policy renewed. So, in essence, I need to consider:

1. Was it fair for UKI to decline the claim; and, if so
2. Was the policy mis-sold to Mr O?

Decision to decline the claim

Mr O was claiming for damage to his property arising from an escape of water. Regarding this, the terms of the policy say the policy covers:

“Escape of Water from any tank, apparatus or pipe or escape of oil from any oil-fired heating installation, excluding Damage:

- a. caused by water discharged or leaking, from any automatic sprinkler installations;*
- b. when the Premises are Vacant or Disused; or*
- c. from any portable oil-fired heating installation.”*

Vacant or Disused is defined as “*Buildings or any part thereof that have become unoccupied, untenanted or which have not been actively used for a period of more than 60 consecutive days.*”

There's no dispute that the property was unoccupied so the strict interpretation of the clause means the claim isn't covered. But I've also thought about whether this was fair. Generally, in thinking about this I've thought about whether UKI's potential liability has increased because of the leak.

Mr O has said that he discovered the damage when he did his weekly check on the property. And, when he discovered the damage, he arranged to have the water turned off in his neighbour's flat. But the inference from this has to be that the leak continued until the damage was discovered. This is precisely why insurers don't want to cover escape of water claims where the property is unoccupied as the damage may become more significant if it goes undetected for a period of time. I also note the comments Mr O has made about the challenges he faced in getting the leak isolated. But, ultimately, I can't say that the fact the property was unoccupied hasn't had any impact on UKI's potential liability on the claim.

So, it follows, that I can't say it was unfair for UKI to say the claim wasn't covered under the terms of the policy.

Was the policy mis-sold?

When the policy renewed, Mr O explained to his broker that the property was unoccupied. The broker discussed this with UKI who explained that it would allow renewal on the same terms as the year before – i.e. with full cover. I've asked UKI what it would usually do where it's informed that a property is unoccupied and it's explained the cover would be limited to fire, lightening, explosion, earthquake and airplane cover. But it's provided a fuller level of cover. And I can see that it's clearly explained this to the broker.

I recognise Mr O feels that it's unfair that UKI reduced cover due to the fact the property was unoccupied, but it didn't reduce cover because the property was unoccupied. It's provided the policy in line with normal terms and subject to standard exclusion clauses. I should set out that most, if not all, buildings insurance policies will limit liability for escape of water where a property is unoccupied for the reasons I set out above. So UKI's actions are in line with standard industry practice. Ultimately I haven't seen anything to show that UKI has acted unfairly in this matter.

If Mr O feels the policy limitations weren't explained to him, he'll need to raise this with his broker as it was the broker's responsibility to highlight these terms. And I can't hold UKI responsible for the actions of the broker.

My final decision

For the reasons I've explained above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 2 December 2023.

Guy Mitchell

Ombudsman