

## **The complaint**

Mrs M complains that U K Insurance Limited (“UKI”) unfairly voided her landlord insurance policy and retained the premiums.

Where I refer to UKI, this includes the actions of its agents and claims handlers for which it takes responsibility.

## **What happened**

The detailed background to this complaint is well known to both parties, so I’ll only summarise the key events here.

In July 2021, Mrs M took out a landlord insurance policy online. She was asked a series of questions including whether she agreed to a set of statements. One of the statements said that all legal obligations as a landlord had been met, and Mrs M confirmed she agreed with this statement.

In May 2022, Mrs M made a claim for malicious damage caused by her tenants.

On reviewing the claim, UKI identified that there wasn’t a satisfactory EICR certificate in place nor were there any right to rent checks completed on the tenants. It said had it known this was the case, it wouldn’t have offered a policy because these are legal requirements which must be complied with.

UKI voided Mrs M’s policy from inception on the basis she’d made a qualifying breach of her duty to make a fair presentation of the risk. As it considered this to be a reckless breach, it retained the policy premiums.

Mrs M didn’t think this was fair. She said she thought she’d met all her legal obligations as a landlord; the statement presented to her was vague and if it had specifically set out what the obligations were, she would’ve ensured she’d complied with them. She raised a complaint about this and the behaviour of UKI and its agents, which she says was intimidating and she felt harassed.

UKI maintained its decision to void the policy. It said the onus was on Mrs M, as a landlord, to understand what her legal obligations were, and this information is in the public domain including on government websites.

As Mrs M remained unhappy, she brought her complaint to our service. But our Investigator didn’t uphold it. She was satisfied UKI had acted in line with the policy terms and relevant law and hadn’t treated Mrs M unfairly. Mrs M didn’t agree, so the complaint has 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'm aware I've summarised the key points to the complaint, and I haven't set everything out in full. We provide an alternative dispute resolution service, and our role is to provide an impartial review, quickly and informally. I use my judgement to decide what's fair, based on the main crux of a case. So, while I've considered everything, I won't comment in detail on every single point. Instead, I'll focus on the key points that are relevant to the outcome I've reached.

This was a commercial policy. Under the relevant law (the Insurance Act 2015) Mrs M had a duty to make a fair presentation of the risk. This means Mrs M had to disclose either:

- everything they knew, or ought to have known, that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms; or
- enough information to put an insurer on notice that it needs to make further enquiries about potentially material circumstances.

When Mrs M took out the policy, she was presented with a set of statements which said:

*“You, your business, or its subsidiary companies:*

- *owns, leases or are purchasing the property(ies) to be insured;*
- *have tenancy agreements of at least 6 months;*
- *meet all of your legal obligations as a landlord.*

*I agree with the statements above.”*

In order to move forward with the online quote, Mrs M was required to answer yes or no. If she'd answered no, the following message would've appeared:

*“Yes has not been selected. If you can't agree with the statements, we won't be able to give you a quote online, but we might be able to help if you call us.”*

UKI has told us that if Mrs M had called in to continue the quote and informed UKI that she couldn't agree that she'd met her legal obligations, it would've told her over the phone that it couldn't provide a quote at all.

Instead, Mrs M answered “yes”.

These statements were set out in the statement of fact attached to Mrs M's policy schedule which she would've been sent after purchasing of the policy.

I appreciate Mrs M says she answered the question to the best of her knowledge; she thought she had complied with her legal obligations. But the onus is on her to ensure the information she's providing is true and accurate, so she was required to take reasonable steps to check what her legal obligations were and ensure she'd met them. Alternatively, she could've contacted UKI for more information. It wasn't enough for her to make an assumption.

The Insurance Act says the policyholder “ought to know” what should reasonably have been revealed by a reasonable search of information available to them. So the policyholder should take reasonable steps to check any available information.

As a landlord of over ten years, I'm satisfied Mrs M ought to have known that an EICR certificate and right to rent checks were required. These regulations have been in place for some time. It's reasonable to expect her to comply with her legal obligations. And if she wasn't sure what her obligations were, to take reasonable steps to find out. The information is publicly available.

Mrs M tells us that she did have an EICR certificate for the property. But the document she provided to UKI showed that only a visual inspection had been completed, no tests were done. Looking at the relevant legal obligations, this says:

*“Landlords of privately rented accommodation must:*

- *Ensure the electrical installations in their rented properties are inspected and tested by a qualified and competent person at an interval of at least every 5 years.*
- *Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test.”*

As no tests were undertaken, I'm not persuaded Mrs M had met her legal obligations in this respect.

Mrs M provided UKI with the checks she'd completed on her tenants, including copies of their passports and bank statements. But there was no evidence to show she'd completed the appropriate right to rent checks.

Looking at the relevant legal obligations, Mrs M would've been required to check her tenant's immigration documents. As the tenants weren't British or Irish citizens, a passport check wouldn't be sufficient.

Mrs M tells us she doesn't like to *“discriminate or treat [tenants] less favourably based on the type of right to rent check”*. Whilst she may feel that way and she might choose to accept passports for all tenants – thereby breaking the law and putting herself at risk of a fine or court proceedings – UKI aren't prepared to insure landlords that are in breach of their legal obligations, and I don't think that's an unreasonable stance to take.

On this basis, I'm satisfied Mrs M's answer of “yes” to the statements listed was incorrect and therefore a breach of the duty to make a fair presentation of the risk.

For this to be a qualifying breach under the Act, UKI needs to show it either wouldn't have offered the insurance at all or would only have done so on different terms. UKI has shown us that if the correct information had been provided it would not have offered Mrs M insurance. So, this was a qualifying breach.

UKI says the breach was reckless. And in light of Mrs M's comments that she doesn't like to treat her tenants differently – despite the law being clear that there are different processes depending on a tenant's citizenship – I'm inclined to agree.

I'm persuaded that as an experienced landlord, Mrs M should reasonably have been aware of her legal obligations. And if she wasn't, it was reckless of her to answer the question without finding out more information.

The Insurance Act sets out the remedies available to an insurer in these circumstances. UKI is entitled to void the policy and can retain the premiums, which is what it has done.

Finally, Mrs M has told us she found UKI's behaviour intimidating, and she felt harassed. Having reviewed the file in full, I haven't been able to find any evidence of this and Mrs M hasn't given any specific examples. But it's disappointing to hear she's felt this way.

Mrs M has told us UKI informed her that loss assessors are "*unregulated cowboys*" when she mentioned she was considering appointing one. Whilst I wouldn't expect an insurer to deter a customer from seeking representation, my role isn't to punish businesses for things it's done. Rather, it's to ensure Mrs M isn't negatively impacted by its actions. As Mrs M went on to appoint a representative, I'm satisfied she hasn't been impacted by this comment.

### **My final decision**

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 12 August 2024.

Sheryl Sibley  
**Ombudsman**