DRN-4678432

The complaint

Mr and Mrs M complain HCC International Insurance Company Plc trading as Tokio Marine HCC (HCC) didn't settle their claim in full under the buildings section of their unoccupied residential property insurance policy due to underinsurance.

What happened

The facts in this matter are well known to both parties. I've therefore summarised the background and focused on the reasons for my decision.

In November 2022, Mr and Mrs M took out an unoccupied residential property insurance policy with HCC. When Mr and Mrs M applied for the insurance, the buildings sum insured (BSI, also known as the value at risk or VAR) was set at £730,000.

In late December 2022, there was an escape of water due to a burst pipe in the loft and Mr and Mrs M made a claim on their policy for the damage caused. The initial report for HCC stated the correct BSI is £651,264 and the sum insured was adequate. The claim was accepted by HCC and progressed in the usual way with drying out works completed by early May 2023 (including stripping out the property and removing asbestos).

In February 2023, HCC agreed to cover the costs of a loss assessor, J, for Mr and Mrs M. Three quotes were submitted by J with figures around £508,000 to £541,900 (including VAT). As the quotes were higher than anticipated, HCC said it wanted to check the VAR. A report was provided by V with a VAR of £862,000. On 16 May, HCC told Mr and Mrs M the BSI was inadequate and had been changed to £862,000. However, as the amount they gave was within 20% of £862,000, it wouldn't affect the claim.

HCC obtained a further valuation through its loss adjuster who arranged for a surveyor, G, to visit the property. G calculated the VAR to be £995,900 at policy inception having backdated the valuation of £1,017,262 from the date of loss. According to G's valuation, Mr and Mrs M were substantially underinsured. HCC said, in these circumstances, the terms of the policy allowed it to apply the average principle to the claim – pay for the part which was insured having deducted the percentage of underinsurance. It said this was 73.3% being the value insured by Mr and Mrs M (£730,000) divided by G's VAR (£995,000).

Mr and Mrs M complained to HCC about the use of the average clause to reduce the payment to them, failure of HCC to pay J's fee and the distress and inconvenience caused by HCC's handling of the matter. In response, HCC ultimately offered 73.3% of their claim and paid £336,879 to Mr and Mrs M in September 2023 having taken account of payments already made. This was stated by HCC as an offer in full and final settlement of the claim albeit – after communications from Mr and Mrs M – recognising their right to refer the matter to this Service. In relation to the distress and inconvenience caused by emails from May being left unanswered, it paid £150 compensation. HCC didn't agree it unduly delayed matters as it was entitled to consider the claim which took time given the amounts involved.

As a result, Mr and Mrs M brought their complaint to this Service for an independent review. They explained when applying for the policy they were asked the BSI. Below this was the

following statement which was repeated in the statement of fact sent to Mr and Mrs M after taking out the policy.

> '*(Full cost of reconstruction in present form. This amount must also include outbuildings, garages, domestic oil and gas pipes, domestic fuel tanks, swimming pools, tennis courts, drives, patios, terraces, walls, gates and fences)*'

Mr and Mrs M used the figure of £730,000 for the BSI. As they were in the process of buying the property, they took this from a survey report prepared in July 2022 by a chartered surveyor who'd spent several hours at the property. He confirmed he reached the valuation using data from the RICS Building Cost Information Service (BCIS). So, Mr and Mrs M say, having acted reasonably, HCC shouldn't be allowed to apply the average clause.

HCC was asked why it didn't agree Mr and Mrs M had completed the BSI using information expected from a reasonable consumer and what else it would've expected them to do. It said Mr and Mrs M haven't provided professional evidence the VAR from G is flawed.

The Investigator reviewed matters and explained it was her view HCC couldn't rely on the average clause in this matter. HCC didn't agree. It made, in summary, the following points.

- Comments about the appropriateness of Mr and Mrs M's surveyor's valuation methodology and comparison with G's valuation. Also, G's valuation report has not been contested or evidence provided to the contrary.
- It isn't fair or reasonable for Mr and Mrs M to insure their property using a basic/reasonable approach given the two special features it has (wooden paneling and parquet flooring) and then expect underwriters to fund an excellent refurbishment of the property (specifically mentioned in reference to the kitchen to be supplied).
- The BSI was inadequate at the time of loss and policy inception.
- The premium paid does not reflect the VAR.

The Investigator explained why the points raised didn't change her view and shared Mr and Mrs M's response to the same. HCC said nearly 80% of properties are underinsured. And offered to settle the claim by '*instructing its loss adjuster to review the costings in line with the photos taken prior to the strip out works were completed, and also using the* [online sales information from when the property was bought by Mr and Mrs M] *indicating the property in it's sale condition, to negotiate a settlement based on replacement on a like for like basis.'*

Mr and Mrs M say HCC carried out a review and a cost validation dated 31 May 2023 and had access to the photographs and information referred to when doing this. So, they don't agree it's fair for it to now reopen those discussions and feels this is only being done to reduce the overall claim value in anticipation of not being allowed to rely on the average clause. They've explained on numerous occasions to this Service and HCC the impact this matter has had and continues to have on their financial situation as well as their personal circumstances, health and wellbeing.

The matter was passed to me for a decision. I reviewed the recent correspondence and, in late January 2024, wrote to HCC to suggest the matter would more appropriately be resolved without the formality and time a published final decision takes. This was particularly in light of HCC's offer which appeared to no longer be relying on the average clause to reduce the amount offered and instead seeking to reconsider the claim and any betterment.

At the end of January, HCC responded with two letters – one responding to my email (dated 29 January) and one in response to the Investigators email from early November 2023

(dated 19 January). These letters restated many of the points raised previously by HCC. A number of the key points are summarised below.

- It's entitled to rely on the average clause as a standalone contractual right and no party has suggested its inclusion in the policy is unreasonable or unclear. It isn't conditional upon evidence of Mr and Mrs M's knowledge of the adequacy of the sum insured when the property was taken out, any steps the policy holder has taken to verify this or the explanation of the position by HCC. And the average clause makes it clear the cost of building the property is to be taken as at the date of loss.
- The court would support HCC's position.
- G's evidence is a more accurate and thorough assessment of value than the surveyor used by Mr and Mrs M and information obtained by this Service.
- A RICS compliant valuation is the most accurate valuation possible.
- Mr and Mrs M haven't shown why G's evidence is incorrect.
- HCC is concerned about betterment in the quotations provided such as worktops and quality of cabinets in the kitchen. It's offer mentioned above was '*to seek to negotiate a fair and reasonable settlement of the claim, quantifying and stripping out any elements of 'betterment*'. And its loss adjuster has only provided their opinion of the costings by reference to the property in its stripped out condition and taking into account similar properties in the locality. They haven't previously reviewed the costings of the works by reference to the photographs which show the actual condition of the property prior to the loss.
- This Service blurs the contractual right to apply average and the considerations if HCC were seeking to rely on misrepresentation when Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) isn't applicable here.
- Our Service's website guidance on underinsurance shows it's common for home insurance policies to include an average clause and it can be relied on if it's clearly worded. It also says the guidance is unclear and open to interpretation. As a matter of public policy, this Service shouldn't routinely conclude an insurer can't apply average in the event of underinsurance. This would have a significant impact on the home insurance market regarding premiums charged.
- HCC have acted fair and reasonably at all times in their handling of the claim and request the clarity a published decision provides.
- It questioned whether this Service has reviewed and considered the contents of HCC's letter dated 19 January and asks for the decision to cover various points by reference to legal or statutory principles, confirm if the average clause is clearly worded and the points raised in the letter of 19 January 2024.
- The brokers Mr and Mrs M bought the policy from should've explained the relevance of the accuracy of the building sum stated and average clause. And, when asked for the BSI, it was made clear what this meant by reference to the statement set out above which starts '*Full cost of reconstruction in present form*'. And the forms explained the importance of ensuring the information provided is accurate.
- It doesn't agree interest should be awarded, nor at the rate suggested.

I issued a provisional decision on this complaint on 27 February 2024 where I said the following.

'*I recognise I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm also not going to respond to every single point made by the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. If there's something I've not mentioned, it isn't because I've ignored it. I've given careful consideration to all of the submissions made before arriving at my decision and I'm satisfied I don't need to comment on every individual argument to be able to*

reach what I consider to be a fair outcome. Our rules allow me to do this and it reflects the informal nature of our service as a free alternative to the courts.

Having done so, I'm currently satisfied Mr and Mrs M's complaint should be upheld. I'll explain why.

Underinsurance and the average clause

Firstly, I'm satisfied CIDRA doesn't apply to this matter. Questions about the rebuild cost of a home can vary depending on the opinion of the person assessing that cost and CIDRA isn't relevant to matters of opinion. Instead, I need to consider whether HCC can fairly and reasonably rely on the average clause to reduce Mr and Mrs M's claim.

HCC say the BSI given by Mr and Mrs M at inception was lower than the cost to rebuild the property. It's relying on the average clause in their policy to pay a proportion of the claim (73.3%). I don't agree this is fair and reasonable in the circumstances of the case. This is because I'm not satisfied HCC asked a clear question about the BSI and gave Mr and Mrs M sufficient information to enable them to:

- *answer the question in the manner HCC is now suggesting they should have – that is, an estimate provided by BCIS and/or a qualified chartered surveyor operating consistently with industry practice is inherently insufficiently detailed to establish adequate cover; and*
- *made clear the implications of them failing to do so.*

Mr and Mrs M used the surveyors valuation report they'd recently been provided to answer the question about the BSI. It's difficult for someone without experience to know the rebuilding costs of a property. And it seems to me to be reasonable for Mr and Mrs M to think the valuation they'd been given by an appropriately qualified surveyor of £730,000 would provide the cover they needed.

HCC says G's valuation was 'prepared in accordance with the official guidance of the RICS for the preparation of valuations for insurance purposes and have been carried out in a highly detailed manner'. And this means it's a 'more thorough and accurate assessment' of the VAR than the valuations provided by Mr and Mrs M's surveyor, HCC's first report from the loss adjuster or V or BCIS as they all 'used the more basic and simplistic method of an online tool'. But I haven't seen any evidence HCC's position on the acceptability of certain types of valuation reports was brought to Mr and Mrs M's attention in the application process. In fact, I haven't seen evidence valuation reports are mentioned at all.

I also note the average term in Mr and Mrs M's policy refers to the cost of rebuilding the building at the time of loss or damage. But the question asked refers to the costs of reconstruction 'in present form' implying the relevant date is that of application. Nor does the question ask for the consumer to include debris removal and professional costs. So, whilst this may have been what HCC wanted - in addition to a specific type of valuation – Mr and Mrs M had no way of knowing this without being told. And I'm satisfied from the information provided by HCC, this wasn't made clear to Mr and Mrs M. Nor do I think the question gave them enough information to lead them to conclude the valuation report by a qualified surveyor only four months prior wasn't going to be an accurate representation of the BSI, or how to assess this figure in the way HCC now suggests was required.

HCC says Mr and Mrs M haven't shown G's VAR is incorrect, with evidence. But that isn't the test I'm considering here. It's important to recognise, in this matter alone, five different valuations have been provided with a range of answers even ignoring the others which include incorrect information like additional bathrooms.

£660,000	*BCIS (with a range of £601,000 - £874,000) online calculator*
£651,264	*Preliminary report of the first loss adjuster (provided for HCC)*
£730,000	*Mr and Mrs M's surveyor*
£862,000	*V's valuation (provided for HCC)*
£995,000	*G's valuation (provided for HCC)*

HCC hasn't shown the valuation of £995,900 is the correct answer and all the others are incorrect. And the range provided shows – in my view – the VAR isn't an exact science.

I'm satisfied the question I need to consider is whether Mr and Mrs M's answer was within the reasonable range of answers based on what they were asked and the steps they took to determine the BSI. In light of the information provided, including three valuations for HCC, I consider it was. This is even without considering the lack of clear explanation about what the BSI should include, what date it should be calculated for and how it should be calculated.

I note HCC says it has used the VAR at the date of policy inception rather than the date of loss as an important concession to Mr and Mrs M. I don't agree. Given the above, this is the fair approach for it to take.

If Mr and Mrs M had been given sufficiently clear information, I'm satisfied they would've complied with a requirement to obtain a report which specifically relied on the RICS guidance and not the BCIS calculator (and adjusted the BSI figure, if needed). I can't see any reason why they would knowingly have left themselves underinsured.

So, as I consider Mr and Mrs M's answer was reasonable in light of what they were asked, it'd be unfair for HCC to rely on the average clause in this particular matter. I've gone on to consider how it should put things right, particularly taking into account both parties conduct in this matter and all the evidence before me.

<u>Cash settlement</u>

HCC made a cash settlement offer with its final response to Mr and Mrs M's complaint. This was referred to as being in full and final settlement of the claim in the amount of 73.3% of £521,267.90 (inclusive of VAT). This includes the following:

- *£45,360.08 for the strip out, drying, asbestos removal and electric usage the loss adjuster's assessment of the reinstatement works; and*
- *£475,907.82 being G's value of £483,029 with a reduction to account for a lower amount for the replacement of the front door.*

Since the matter has been with this Service, HCC has raised issues of betterment and said it needs to arrange for its loss adjuster to provide costings on the Schedule of Works by reference to the online sales photographs which show the condition of the Property prior to the loss, particularly regarding the kitchen. This is so it can 'seek to negotiate a fair and reasonable settlement of the claim, quantifying and stripping out any elements of 'betterment'. I don't agree this is appropriate. I'll explain why.

Extracts from G's report dated 31 May are set out below.

> *'We have been asked to review and comment on the contractor's quotation... Our estimate for repair works is £402,524.77 excluding VAT. Although many of the itemised costs provided by the contractor were reasonable, a few items, mainly relating to the plasterboard, wallpaper and internal door works were higher than expected. We have commentated and adjusted the items accordingly. Where no*

quantities were provided, we have used the drawings provided to generate our own figures.'

A report of the loss adjuster dated 6 June discusses the kitchen, appliances, a front door, contingencies and PC sums. It concludes by saying the following.

> *'Taking in to account the potential overstatement on the claim above, we consider that costs should be considered as follows:*
>
> | | |
> |---|---|
> | *General repair spec* | *£402,524.77* |
> | *Less reduction in electrical* | *£3,000* |
> | *Less reduction on front door* | *£5,000* |
> | *Curtain poles* | *£2,875* |
> | *Contingency* | *£15,000* |
> | *Total* | *£376,649.77 plus vat = £451,978.80* |
>
> *Noting the potential reduction in costs above, together with the payments made to date, the claim is circa £493,228.72. This does not allow for any allowance for surveyors fees and the above costs would be subject to negotiation.*
>
> *As highlighted in previous reports, it may be more appropriate to consider settlement on a cash basis with the Insured in order to conclude all aspects. We would suggest that this should be in the region of £350-400,000.'*

On 9 June, the loss adjusters report states the following.

> *'We have received an invoice from [G] for their professional fees for preparing and issuing Reinstatement Cost Assessment and Cost Validation. Insurers will be aware from our most recent Interim report that tender documents have been received and we have provided detail of costs and suggested settlements in relation to the overall claim. This is based on the findings from both ourselves and following the involvement of the surveyors during their inspection, review of the original damage and discussions with the Insured and their own surveyors.*

So, whilst I note HCC wants to look at these costs again, it's my view the claim should be settled without being reconsidered. This is because it had already reached the end of consideration of the claim. Indeed, this is a complaint about settlement and the basis for which it reduced its cash settlement by 26.7%. It doesn't seem reasonable to suggest the cash settlement offer – stated as being in full and final settlement by HCC - was made based on an amount it hadn't already verified. Nor do the extracts from the reports referred to above show this to be the case. Whilst I recognise HCC says the online sales photographs weren't taken into account and it should now have the opportunity to do so, I see no reason for this - they're a publicly available record and the policy is on a like for like basis. Given the progress of this matter to date and impact on Mr and Mrs M, I don't consider it fair nor reasonable for it to now reopen this aspect of the claim.

This being the case, HCC should cash settle Mr and Mrs M's claim (and do so without application of the average clause). It should use G's value of £483,029 for settlement inclusive of VAT. I don't agree a reduction should be made from this amount for the door, electrical, curtain poles or the contingency as no evidence has been provided to justify any reduction is appropriate for the same. Even if such evidence was provided, I'm acutely aware this assessment was in May 2023 and the quotations were provided before then – almost a year ago. Further, G focused on the lowest tender provided of three. I therefore consider the elements of betterment (if any) not already quantified and stripped out by G and the loss adjuster will be eliminated by the general rise in the cost of building works since May

2023. The cash settlement referred to above is separate to the amounts already paid and the fees of J which it agreed to be responsible for.

Given the estimates provided to HCC have VAT included and the overall cost of the works, I consider it reasonable to assume Mr and Mrs M will incur VAT on the works to reinstate the property. Taking into account the sums involved, I don't consider it fair or reasonable to require them to finance the VAT upfront and recover this from HCC. So, whilst HCC states this is a further important concession it has made in paying the VAT to Mr and Mrs M, I'm satisfied it's the fair approach in this matter.

Interest, losses and Service

HCC doesn't agree interest is due nor at 8%. But interest is being added to the settlement sum to reflect the fact Mr and Mrs M weren't given money when they should have been and so haven't had that money available to use. This will have inevitably impacted their plans and intentions with the property and led to an increase in costs for them. The interest rate we usually use is 8% simple a year. I haven't seen any evidence to show why this isn't appropriate in this matter.

Given my findings above and the fact G's report on the lowest tender was completed on 31 May, I'm satisfied it's fair for interest to accrue due on the balance of the cash settlement due to Mr and Mrs M from 30 days after the date of G's report. This recognises HCC would have needed a reasonable period to consider the report and pay the claim as a result of the recommendations therein if it hadn't sought to rely on the average clause. I consider this award of interest is fair and reasonable in the circumstances of the matter.

The policy was for an unoccupied property and there's no benefit under the policy to recover lost rent or alternative accommodation commonly found in buildings insurance policies for residential homes. So, I've thought about whether there is an obligation for HCC to compensate Mr and Mrs M on a fair and reasonable basis for the additional costs they will have inevitably incurred as a result of the time it has taken for the claim to be resolved in addition to the interest award set out above. I'm not satisfied it should. I haven't seen any evidence that - but for the escape of water and way HCC has handled the claim – Mr and Mrs M would have acted differently. Nor have I seen any evidence Mr and Mrs M have started the reinstatement works but haven't been able to complete them, for example, because of HCC's reliance on the average clause. I don't therefore intend to make any separate award in this regard.

HCC paid £150 for failing to respond to some emails. I don't consider this covers the extent of the impact it has had in this matter. I'm minded to increase this by a further £500 to a total of £650 compensation. This is to take account of the additional time, trouble and upset caused by HCC's handling of the claim above. That is, what I consider was the fair and reasonable time for it to investigate the claim and the usual distress and inconvenience which will generally be experienced after a substantial buildings' insurance claim like this.

Ancillary matters

I haven't seen any suggestion HCC isn't going to pay the fees of J and I note it agreed to do so in February 2023. However, for completeness, it should ensure the same are discharged along with any late payment fees and interest due (if any). If Mr and Mrs M have paid these fees, they should be reimbursed upon them sending reasonable evidence of the same to HCC. Interest will accrue due on any amounts they paid to J to discharge its fees from the date they paid J to the date HCC settles this part of their claim.

A number of comments made by HCC refers to the guidance on our Service's website as supporting their position. It also states the guidance is unclear and open to interpretation. Some extracts given by HCC were missing the context provided by the remaining text from the webpage. In any event, the guidance is just that – generic guidance based on the wide range of matters this Service may take into consideration in various scenarios and it's not intended to be specific to every case.

I note HCC's concern about the impact of this decision on the general insurance market. I think it's important to explain a decision issued by this Service focuses on the individual circumstances of the complaint raised and it doesn't provide binding precedent on future Ombudsmen nor regulate the way a firm conducts future business – that is a matter for the Financial Conduct Authority. Each case at this Service will turn on its own specific facts. That said, firms may find decisions of the Service useful in understanding the approach we may take in similar matters and adapt their own processes to ensure they're delivering good outcomes for consumers which includes the information it is providing to assist customers in establishing adequate cover, thus avoiding latent issues.

Finally, in HCC's letter of 29 January 2024 questioned whether this Service had reviewed and considered the contents of its letter dated 19 January. But we hadn't been able to do so as both letters were received under cover of the same email.

Putting things right

To put things right, I currently intend to require HCC International Insurance Company Plc trading as Tokio Marine HCC to take the steps outlined below.

1. *It is not entitled nor permitted to make any adjustment for underinsurance in this claim for the reasons substantially explained above.*

2. *It must therefore complete its calculations on this basis and pay the balance to Mr and Mrs M within 30 days of being told the final decision has been accepted by them.*

    a. *Start with G's value of £483,029.72 (inclusive of VAT). It must pay VAT at the point of settlement rather than requiring Mr and Mrs M to recover this for the reasons already explained.*
    b. *Add to this £45,360.08 for the drying out works etc.*
    c. *From the total claim (£528,389.80), it can deduct the amount it paid for the drying out works (£45,360.08) and sum it paid to Mr and Mrs M in September 2023 of £336,729.29 which they agreed to accept as an interim payment to allow them to commence works, in advance of bringing their remaining dispute about the application of the average clause to this Service.*
    d. *I calculate this leaves a balance to be paid to Mr and Mrs M of £146,300.43.*

3. *On the sum of £146,300.43, it must pay interest* at 8% a year simple from 30 June 2023 to the date of settlement.*

4. *Pay Mr and Mrs M £500 compensation in addition to the £150 already paid.*

5. *Pay the fees of J, the loss assessor, as set out above, adding simple interest* at 8% if Mr and Mrs M have already discharged J's fees.*

**If HCC International Insurance Company Plc trading as Tokio Marine HCC considers it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr and Mrs M how much it's taken off. It should also give Mr and Mrs M a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if*

appropriate.'

Mrs M responded to discuss matters with the Investigator. And she asked for some sensitive personal details to be removed from the published decision. Overall, she confirmed their acceptance of the provisional decision.

HCC responded. It doesn't accept the provisional decision and set out a list of points it wanted me to consider before finalising and publishing my decision. Many reiterated points HCC had made previously.

The matter has now been returned to me for a 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.

I've carefully reviewed HCC's points but they've not persuaded me to change my decision. I say this because the provisional decision already responded to the majority of these points, and I haven't seen anything to change the findings made as a result. I haven't repeated the details and findings made in the provisional decision as these are already set out above. I would just add the following.

1. The reference to J, loss assessor, is the firm of Chartered Surveyors who have acted for Mr and Mrs M in this claim.
2. B says the fact a broker sold this policy hasn't been mentioned. And this is highly relevant because the broker was responsible for advising Mr and Mrs M about the question and average clause. But the broker has been referred to along with the information provided by B about the sale - it was asked for the question(s) from when Mr and Mrs M applied for the policy along with any additional guidance or help they were given. In response, B supplied the statement (extracted in the background) which appears just below the heading 'Building sum insured (min.£60,000 – max. £3m for residential)' and a blank box with a £ sign. It hasn't shown with evidence, nor suggested, the broker was given any additional information or guidance B required it to tell Mr and Mrs M before setting up the policy which would've enabled them to answer the question in the way B is now suggesting it required them to. The reasons for this are set out, in detail, above and in the provisional decision issued.
3. I've set out above why I'm satisfied I have reached a decision that is fair and reasonable in all the circumstances.
4. Regarding the award limit, HCC and Mr and Mrs M reached an agreement about the cash settlement which was stated as being '*in full and final settlement*' by HCC. HCC paid the balance of the cash settlement of £336,729.29 to Mr and Mrs M in September 2023. That settlement and so the amount already paid doesn't form part of the complaint. Further, interest, costs and interest on costs are excluded from the award limit.

In response to Mr and Mrs M's request for sensitive personal information to be removed from the published decision. That information has been taken into account in this complaint and shared with both parties. As such, I'm satisfied they've had the opportunity to comment on the same. So, I don't consider it necessary to repeat this - to the same level of detail - in the background to this decision and so it has been summarised.

Putting things right

To put things right, I require HCC International Insurance Company Plc trading as Tokio Marine HCC to take the steps outlined below.

1. It is not entitled nor permitted to make any adjustment for underinsurance in this claim for the reasons substantially explained above.

2. It must therefore complete its calculations on this basis and pay the balance to Mr and Mrs M within 30 days of being told the final decision has been accepted by them.

    a. Start with G's value of £483,029.72 (inclusive of VAT). It must pay VAT at the point of settlement rather than requiring Mr and Mrs M to recover this for the reasons already explained.
    b. Add to this £45,360.08 for the drying out works etc.
    c. From the total claim (£528,389.80), it can deduct the amount it paid for the drying out works (£45,360.08) and sum it paid to Mr and Mrs M in September 2023 of £336,729.29 which they agreed to accept as an interim payment to allow them to commence works, in advance of bringing their remaining dispute about the application of the average clause to this Service.
    d. I calculate this leaves a balance to be paid to Mr and Mrs M of £146,300.43.

3. On the sum of £146,300.43, it must pay interest* at 8% a year simple from 30 June 2023 to the date of settlement.

4. Pay Mr and Mrs M £500 compensation in addition to the £150 already paid.

5. Pay the fees of J, as set out above, adding simple interest* at 8% if Mr and Mrs M have already discharged J's fees.

*If HCC International Insurance Company Plc trading as Tokio Marine HCC considers it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr and Mrs M how much it's taken off. It should also give them a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons explained above and in my provisional decision, my final decision is that I uphold this complaint. To put things right, HCC International Insurance Company Plc trading as Tokio Marine HCC needs to take the steps outlined above to put things right. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 11 April 2024.

Rebecca Ellis
Ombudsman