

The complaint

Mrs C is complaining about the amount U K Insurance Limited (UKI) has paid after she made a claim against a commercial property insurance policy that covered a property she owned.

What happened

In January 2023 an overflowing bath from the flat above the property Mrs C owned and rented out caused damage to her property. She appointed a loss assessor – who I shall refer to as A – to handle the claim on her behalf. A contacted UKI to claim for the damage against the insurance policy that covered the building.

UKI appointed its own loss adjustor who, in turn, appointed a surveyor to provide an estimated cost of repair. However, there were delays in receiving the surveyor's report. So UKI arranged for another surveyor to inspect the property. It also paid Mrs C £300 in compensation for this delay.

In May 2023 the surveyor said he thought it would cost around £20,000 + VAT to repair the property. A disagreed with this as it estimated the repair cost to be around £43,000 + VAT. It said it thought UKI's surveyor had omitted a number of items that required repairing. UKI didn't agree as it thought A's assessment was overinflated.

Following this, A arranged for an inspection by another surveyor, who thought it would cost around £39,000 plus VAT to repair the property. UKI still thought this cost was overinflated, so it didn't agree to pay this.

Mrs C didn't think UKI's response was fair. She also highlighted she had given her tenants a 25% rent reduction because of the damage to the property. And she wanted UKI to cover this due to its delays. UKI said the property was habitable, so it declined to cover the lost rent and maintained £300 was fair compensation for the delays it had caused.

I issued a provisional decision partially upholding this complaint and I said the following:

“Claim settlement

In the first instance I should set out that it's not this Service's role to set out how UKI should settle the claim. It's our role to assess whether UKI has acted fairly and reasonably in saying how it wants to settle the claim.

It's clear there is a significant dispute surrounding the estimated costs of repairs with both UKI and Mrs C's agents having vastly differing views in regard to how much it would cost to repair Mrs C's property. A sets out that UKI's surveyor has omitted a number of repair requirements from his report. UKI believes A has overinflated the repair costs.

Following this dispute, A instructed another surveyor to commission a report. A has explained it didn't appoint the surveyor to act on Mrs C's behalf, but as an independent expert consumer and his appointment was in accordance with part 35 of the civil procedure

rules. And I can see the surveyor has also confirmed this was an independent inspection.

However, I'm not persuaded by it because he's said he was "instructed to do a desk-top cost exercise for benchmark purposes only." I haven't seen anything to show he specifically inspected the property, nor was UKI invited to provide its own submissions before the surveyor compiled his report. It seems to me that the surveyor compiled this report based on information provided by A. So I don't think I can reasonably say it's a fully independent report.

I can see that UKI offered to use its own contractors to complete the work, but A replied to say that Mrs C would only use A to complete the repairs. But I don't think UKI should reasonable be liable to pay more than it would pay to use its contractor. And UKI did not authorise the amount A said it would charge. I can't say this was unreasonable.

UKI has highlighted a number of concerns it has with both A and the subsequent surveyor's report which I can't say was unreasonable. It seems the charges are almost universally more than it would cost UKI's contractors to complete the works and in some cases significantly more. I note A has raised concerns about the scope of works UKI presented as it believes UKI has excluded some necessary works. But I'm not persuaded that I've seen enough to say UKI's scope or works was unreasonable. UKI offered to use its own contractors but rejected this option.

Ultimately UKI is entitled to be mindful of keeping the claim costs down, so long as it exercises that cost fairly and reasonable. In contrast, I'm also acutely aware A completed the repair works itself. So it was naturally in its own interests to increase the amount UKI pays as much as possible. I'm not saying it has acted in an underhand way. But I'm not persuaded A has given me anything to show it cost it more than what UKI has paid to complete the works that were required to repair the insurance covered damage.

So, taking everything into consideration and based on what I've seen, I can't reasonably say that what UKI has paid to settle the claim was unreasonable.

Loss of rent

The policy says UKI will cover "Loss of Rent and other revenue and charges and cost of alternative accommodation, increased cost of working and any other additional cost incurred for the provision of accommodation and associated services if the buildings are uninhabitable due to damage to the same buildings by any of the events 1 to 14 of this section."

So UKI will only cover any lost rent under the terms of the policy where the property is uninhabitable. This isn't unusual. While the damage was extensive, it didn't render the property uninhabitable. I recognise Mrs C gave her tenants a rent reduction up until the time the repairs were completed. But this wasn't covered under the terms of the policy.

However, it seems to me that there was a two month delay in the handling of the claim due to the first surveyor not providing a report. I think this has meant Mrs C has suffered a larger loss of rent than she would have done had UKI and its agents handled the claim as they should have done. I don't think it's fair Mrs C suffers this loss. So, in addition to the £300 in compensation it's already awarded, I think UKI should refund Mrs C two months of the reduced rent (subject to her showing she suffered this)."

A didn't agree with my provisional decision and, in summary, it said the following:

- The surveyor did a video review of the property prior to the desktop assessment. And he

sent a follow up email saying that a site visit would not have altered his opinion. A said assessing a property in this way is not unusual.

- A said it agreed to take on the repair work at an agreed cost of £47,474.50. It said it charged Ms C £47,474.50, keeping 5% as its project management fee in accordance with contract terms and paid the balance £45,181.54 to the contractors who undertook the repairs. And it said it evidenced proof of paying these funds.
- It said that, at no point did UKI intend to use the services of its network contractors. And it highlighted it had a reserve of £50,000. It said it asked UKI if it wanted to use its network contractors, but instead of challenging it, it instructed a loss adjustor. And the loss adjustor agreed to the scope of works. It said UKI's surveyor had said UKI wasn't intending on using its network contractors.
- It thinks it would be a wholly unfair ruling to expect Ms C to be out of pocket for the amount which is owed for her repairs, as it would cause a financial loss to her and not restore her to her pre-loss condition. She has paid premiums in good faith and expects to be fully indemnified for her loss.
- Ms C calculated her loss of rent to be around £1,800.

UKI queried whether the compensation already paid was sufficient to cover the loss of rent.

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 taken all parties comments into consideration, but I've still come to the same conclusion as I did in my provisional decision.

Firstly, I'm not persuaded A has given any material submissions surrounding the concerns I set out about the costs being inflated. I recognise that UKI's loss adjustor put forward a claim reserve of around £50,000, but that doesn't mean that's how much he expects UKI to have to pay, but a requirement to put aside a set amount of money to cover potential future costs. Faced with the quotes presented by Ms C's agents, it was required to have such a claim reserve. It doesn't mean that this what UKI had to pay to settle the claim.

A has set out that UKI didn't want to use it's chosen contractors. But it did offer to do so at the outset, but A rejected this option saying:

"You [UKI] have offered to use network contractors. This is somewhat irrelevant to the argument we are presently having about scope of repairs. Nonetheless kindly note that our client is not looking for you to assist by appointing your network contractor. She has already advised you, by way of a legally binding Mandate, that the repairs will be undertaken by [A]."

So UKI clearly set out that it was willing to use its network contractors to complete the works given the disputes surrounding the costs, but Mrs C and A didn't agree to this and set out that A would be completing the works.

I thank A for providing further clarification from it's second surveyor. But I remain of the opinion that the surveyor wasn't independent as it was only basing his assessment based on the information provided by A. I haven't seen anything to show UKI was given an opportunity to provide its own submissions. I don't dispute its contents, but as I said in my provisional decision, I need to assess whether I think UKI's settlement offer is fair. I remain of the opinion that UKI could have resolved the claim for the amount it set out. It offered to use its own contractors given the concerns on costs, but A set out it and Mrs C weren't willing to entertain this. It's not unusual after this for insurers to choose to settle the claim by paying what it would cost to use its own contractors and it's not unreasonable it does so.

I recognise Mrs C may be out of pocket as a result of this. But, as I said, I need to think about whether the way UKI wanted to settle the claim was fair. For all the reasons I've set out previously, I think it has. It was Mrs C's and A's choice to proceed with the repairs at a cost of £47,474.50 in full knowledge that UKI wasn't willing to pay that. And, as I said, I can't say UKI's proposed settlement was unfair.

Mrs C has helpfully given a detailed breakdown of the reduced rent she gave her tenants. It seems she gave a £300 per month rent reduction during the period when works weren't being carried out. I still think UKI should pay for two months lost rent in addition to the distress and inconvenience payment. The lost rent is an *actual* financial loss Mrs C has suffered. So I think it's only fair she's compensated in addition to the £300 it's offered for distress and inconvenience.

My final decision

For the reasons I've set out above, it's my final decision that I partially uphold this complaint and require U K Insurance Limited to refund Mrs C two months of the reduced rent – totalling £600 – in addition to the £300 in compensation it previously offered if it hasn't already paid this. It should pay this to Mrs C directly.

I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 2 May 2024.

Guy Mitchell

Ombudsman