

complaint

Mr T has complained about his home insurer, Elite Insurance Company Limited (has ceased writing new business but continues to fulfil existing contracts of insurance). He thinks it's handled his claim, made following a flood, poorly.

background

Mr T's home was damaged by a flash flood in June 2016 when a road drain near his house overflowed. In November 2017 Mr T's home had still not been reinstated and he complained to his MP and this service.

Our investigator felt that Elite should appoint a new loss adjuster to handle and re-assess the claim going forward. He said Elite should dry the property again and pay Mr T's storage costs incurred since it stopped paying for storage several months previously. He said it should also pay Mr T £2,000 compensation.

Mr T felt an independent loss adjuster was required – that he wasn't able to trust anyone appointed by Elite. Elite said it didn't really agree with our investigator's view but appointed a loss adjuster anyway who contacted Mr T. It said it would dry the property again and pay an additional two months storage, but not all of it. Regarding compensation it said it would pay £1,000. The complaint was passed to me for a decision to be made.

I issued some provisional findings and then, after receipt of responses from both parties, I issued some revised findings about what I felt Elite should pay. Both parties have now responded to my further findings as well, I've considered those responses and I'm now issuing my final decision, which includes copies of my previous findings.

My provisional findings

"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 think Elite handled this claim particularly poorly and that Mr T has likely been prejudiced as a result. Given the time that has passed already I don't think it would be fair to put Mr T through any further re-assessment. I think a pragmatic approach is reasonable in the circumstances here; I'm issuing a provisional decision to share my thoughts on this with both parties. I'll state at the outset though, that I'm not going to include all the details relating to the claim. In the interest of getting this long overdue claim resolved I'm going to keep this short but I have read and understood everything that's happened.

Its good industry practice following water damage to; remove damaged contents and/or any that would hinder drying, get the property stripped and put drying equipment in place, as soon as possible. Here drying equipment went in early but six weeks later moisture readings were taken showing 100% moisture to all floors. No readings from walls were taken. Contents weren't removed, and the property wasn't stripped. Elite failed Mr T in this respect.

Moreover it authorised Mr T to dispose of contents and only afterwards told him photos of items were needed.

The drying company ceased drying as it felt the levels wouldn't decrease further. But they had been decreasing week on week. There's no sign that Elite told Mr T of this issue – or warned him that this likely meant there was something else going on in his property

preventing proper drying. But nor did this account for the fact that in places the plastic floor tiles covering the concrete floors hadn't been removed.

Several months later, (around nine months after the flood), after Mr T had gone to the trouble of appointing a loss assessor and getting his own surveyor's report, Elite agreed to send a further disaster specialist to the property to assess what was likely happening there. That specialist found evidence of salts indicative of rising damp. It said given the moisture readings there was likely a problem in this respect. But accepted that the flood had affected the whole ground floor. The information was shared with Mr T's loss assessor. Several leaks were also identified – it isn't clear whether the location and nature of these were shared with Mr T. They also said that drying couldn't continue and would never be successful with the contents in the property – the contents that Elite hadn't removed when it had sought to dry the property initially.

Shortly after the flood Elite said it would settle the buildings element of the claim with Mr T at a cost of around £3,200, this increased later to circa £3,400, then £3,900. The scope for this was for repair to the lounge/diner, kitchen and hall. After the disaster specialist visit referred to in my paragraph above, Elite accepted that drying out to the whole ground floor was necessary and added this to the scope. It didn't add any reinstatement costs for rooms not detailed previous but which were now included in respect of drying. The new cost was around £8,900. Mr T produced estimates showing the reinstatement cost to him would be around £21,000. It isn't clear what amount, if any, Elite has actually paid to Mr T.

I also note that Elite said it had chosen not to carry out the reinstatement work, although it had initially intended to. Whilst how a claim is settled is its choice, Elite can't fairly settle based on what it would cost it do the work when it has entered into a contract to repair. However, in this case, I think it best for both parties that Elite does settle the matter in cash to allow Mr T to move forward effectively with the repairs to his home.

Regarding contents, the retail value, as assessed by one of Elite's specialists, for Mr T's large furniture items, was around £20,000. It noted damage to all wooden items at low level due to the flood waters. Another of Elite's specialists recommended that the kitchen appliances were replaced as they contained foul water from the flood. And whilst items were left to sit in a damp house they would have continued to deteriorate. I'm also satisfied that items not initially affected by the flood would have been damaged in the months following it given the high humidity levels. This is one of the reasons why the industry accepts that appropriate clearance and stripping as quickly as possible following water damage is so important. Mr T provided a long list of the other affected contents items, but I haven't seen a total replacement cost for them all. A general overview of the figures suggests at least £10,000.

Mr T hasn't been reimbursed for the cost of electricity used to dry the property. I can't understand why Elite hasn't made any offer in this respect – the drying equipment usually used records utility usage, so reimbursement is usually a simple act. I haven't seen evidence from either side showing what the usage might be. I'll consider anything submitted in response to this decision otherwise, given there was three months of drying – going by the moisture readings taken – I'll allot a compensatory sum to this which allows for the fact that some extra usage has occurred but reflects that fact that it isn't clear how much – £200.

Mr T has also had storage costs that Elite hasn't covered. They have been shown to be £1.92 a day (including VAT). The last payment Elite made seems likely to have covered costs only up until 30 October 2016. Arguably the items need to remain in storage until Mr T

has received payment to allow him to clear, dry and reinstate his home – I'm provisionally going to suggest a payment of £2,000 to cover this. Again, this is somewhat of a pragmatic approach allowing time for our process here to end, payments to be made and significant but unquantified work (in terms of time) to be completed (which, if he hasn't already done so, will necessarily include Mr T fixing some leaks). This may change if I receive quantification of the likely period of the work, see below.

And Mr T is fairly due interest on the sums he's paid out to date for storage. Strictly interest – which is simple and at a rate of 8% – is applied to each sum paid from the payment date and until settlement is made. But to make things easier here I'm going to suggest that a payment of £200 should reasonably account for interest owed and that Elite should pay this.

Mr T and his family have been living in uncomfortable conditions and without their white kitchen goods which were condemned. Therefore I think they are fairly owed compensation in the form of a disturbance allowance to account for extra spending. I'm going to say that Elite should pay £10 per person living in the house per day from 23 June 2016 (the date of the flood) and until they move out of the home for the repairs to begin.

For the property to be stripped the family will have to move out. Elite should pay them a sum to enable them to obtain reasonably suitable accommodation for the period of repairs. Given the health of at least one family member who has a lung condition its fair to say that the house will not be habitable until the final builders clean has been completed following reinstatement and decorating work.

In response to this provisional decision then, I need Mr T to provide details stating how long the work is likely to take; including any likely lead time, time to remove sufficient contents to adequately strip and dry the property and then reinstate it. I can then consider this, giving Elite a chance to make comments if it wishes and set an exact period for which Elite will have to pay for the family to live elsewhere, in line with the policy wording.

So I propose that Elite now makes a series of payments to Mr T to resolve this claim. As I said at the outset, I'm taking a pragmatic approach here with a view to ending this long running issue for Mr T with a fair and reasonable settlement which is based on the detail I have to hand. I'm not going to require Elite to apply interest to any sums, apart from outstanding storage costs. I also think it should pay him £2,500 compensation as I'm satisfied that he has been caused significant distress and inconvenience.

Further, given how badly I think this claim was handled, I can understand why Mr T felt it necessary to involve his own loss assessor and surveyor. I haven't seen that the loss assessor has charged a fee for his involvement. But the surveyor charged Mr T £360 which was paid on 31 January 2017. I'm going to require Elite to pay this sum to Mr T along with interest from 31 January 2017 and until settlement is made."*

My further provisional findings

"I've now received and reviewed further information from both parties. I'm almost ready to issue my final findings, I apologise for any worry or upset Mr T has been caused whilst this has progressed but I have been moving things on as quickly as possible. There are a few changes and updates that I need to make both sides aware of:

reinstatement quotes

Mr T's loss assessor had said the work would cost £21,000 and I said Elite should pay this. Mr T's loss assessor has since said that £21,000 was only for one part of the work. The three relevant quotes, totalling £37,638 were sent to Elite (although it had seen them before). Elite said that it feels the work is over-scoped; in the main it relates to work not necessary as a result of the flood.

I'm not persuaded by what Elite has said. I'm still satisfied that the evidence shows water from the flood was trapped under floor tiling that wasn't removed – that stripping the floor only consisted of lifting the ply boarding, that old thermo-plastic tiles underneath were left in place. This likely caused high levels of humidity in the home which resulted in further damage. I've no reason to think the work detailed in these quotes isn't necessary. I've seen nothing to evidence the costs in respect of the work are unreasonable or that Mr T is unlikely to incur them and no part of them relates to VAT. Therefore, I'm satisfied that Elite should pay him this sum.

Elite has shown me that, in respect of reinstatement work, it has already paid Mr T £3,267.36. I'm going to deduct this sum from the cost of the three quotes, meaning Elite, if my final decision remains the same, will have to pay Mr T £34,371.

However, there has currently been no assessment of what it will cost to dry and clear the property. If Mr T wants to receive further settlement to cover the cost of this work he'll need to submit evidence of costs once he has it to Elite for consideration. Likewise there has been mention of testing the electrics – once costs are received and if Mr T wants Elite to pay an additional settlement, he'll have to send it the evidence for consideration.

contents

I noted costs of around £20,000 had been assessed by Elite's expert for replacement of large furniture items. And a list of smaller contents items had been submitted which I concluded might reasonably total around £10,000. Elite said not all the furniture needed replacing, it could be restored. Mr T's loss assessor provided a spreadsheet of smaller contents items showing costs totalling £29,000.

Elite's own experts didn't suggest that items could be restored. Instead they gave replacement prices. I'm not minded to change my mind on this now.

Nor am I minded to increase my suggested settlement for smaller contents items. It isn't my job to assess the claim – and the spreadsheet sent by the loss assessor, which contains various links to show proof of costs, effectively needs assessing in order for the overall cost to be verified. And that would also involve assessment of the damaged items. I note Elite was willing to assess these previously but Mr T wasn't prepared to allow that. There was extensive humidity in the home but I have no way to know for sure what condition items were in before the leak, and, for that matter, I don't know in which rooms items were or how they were kept. I can't reasonably expect Elite to pay for the whole sum when there's been no assessment to take into account all of this. Our investigator suggested further assessment but in the circumstances here I didn't think that was appropriate and Mr T indicated his acceptance of my provisional findings, via his representative, before his loss assessor made a further response requesting further contents items be paid. So I think Mr T understood and accepted the nature of my suggested settlement. I'm still satisfied that is fair and reasonable.

how to long reinstate?

The answer to this question has an impact on what I said about storage and the family moving out to live elsewhere. For storage I suggested Elite pay £2,000 to cover what was owed from October 2016 and likely would be incurred until work was completed – but I said that may change if I received detail as to how long the work would likely take. I also said Elite should pay an amount for the family to live elsewhere but I'd only be able to set a period for the payment to relate to if proof were provided regarding how long all of the work was likely to take.

In response Mr T's loss assessor said the indications were that the drying and reinstatement would take around 20 weeks with a 4 weeks lead time. Elite said it disagreed all the work on the quotes was necessary; it said the work it believed was necessary as a result of the flood would take only 2 – 3 weeks. It also suggested that each room should be done individually, meaning the family wouldn't need to move out at all.

I'm not persuaded by what Elite says. I'm still satisfied that the evidence shows water from the flood was trapped under floor tiling that wasn't removed – that stripping the floor only consisted of lifting the ply boarding, that old thermo-plastic tiles underneath were left in place. This likely caused high levels of humidity in the home which resulted in further damage. So I'm not persuaded by what Elite say about the extent of the work. Nor do I think it's reasonable to say each room should be done one at a time – that would take longer and cost more. And whilst sealing each room being worked on would mitigate some of the dust migrating into the rest of the home, it wouldn't prevent that.

Mr T's loss assessor hasn't provided any strong evidence to support his claim that the work will take 24 weeks either. He says this is just what Mr T has gleaned from talking to the contractors that provided quotes. Mr T had used a surveyor previously and it would be more normal for a surveyor to decide how long work will likely take, rather than adding together what individual contractors say.

That being said, whilst initially being set as a pragmatic sum the £2,000 I suggested paying for storage effectively equates to payment for storage facilities up until the end of September 2019. If my final decision is issued this week that will give around 20 weeks for the property to be cleared, dried and reinstated. Given I'm not fully persuaded by what either party has said about repair period and as I accept that there is extensive work to be done, I think that is a reasonable starting point. Mr T's belongings need to be cleared first, and drying companies can usually start with minimal delay anyway. Clearing and drying then can be done during any lead time required by the reinstatement contractors. Once dry the period for reinstatement can be better gauged. For the time being I'll say the initial period to be paid for by Elite will mirror my finding for storage, ie until the end of September 2019. If, once the reinstatement period is more fully assessed Mr T feels work will take longer then he can send that evidence to Elite for it to consider.

disturbance allowance

I said that as Mr T had been left without his white goods (damaged during the flood), Elite should pay a disturbance allowance for extra costs likely incurred.

Elite has shown me that it made a payment to Mr T regarding the white goods in December 2016 between Christmas and New Year. I think Mr T could have used these funds to provide reasonable replacement items by 15 January 2017 so I'm going to limit Elite's payment for disturbance allowance to the period from 23 June 2016 to 15 January 2017.

fees

I said provisionally that I'd likely make Elite reimburse the surveyor's fee and indicated that I might be minded to make Elite cover the loss assessor's fees but I hadn't seen that any had been charged. Mr T's loss assessor confirmed and showed he had an agreement with Mr T regarding taking payment based on a percentage of the settlement received from the insurer for reinstatement/replacement costs. He said it was 9% on any amount above £13,392 paid to Mr T. Elite said charges like this aren't covered by the policy.

I accept the policy doesn't offer cover for this. But I also accept that Mr T, in this instance, reasonably turned to the services of the loss assessor because Elite wasn't handling his claim adequately. In the circumstances I don't think he should be left out of pocket in respect of charges reasonably levied by the loss assessor. As there is no flat fee though I need to decide what Elite reasonably has to pay.

The suggestion from the email evidence provided by the loss assessor is that his percentage fee relates to sums paid by the insurer in respect of reinstatement/replacement costs only – not to any other sums received, such as payment for alternative accommodation and compensation. Tracking the property and contents reinstatement/replacement sums I've suggested, along with the payments made already for property repairs and white goods gives a total reinstatement/replacement settlement of just over £69,000, deducting the payment level amount set by the loss assessor and applying the percentage amount gives a fee sum of just over £5,000. I'm satisfied that it's fair and reasonable to require Elite to pay Mr T £5,000 to cover reasonable costs likely to be charged by his loss assessor."

And I clarified how my provisionally suggested award had changed:

Provisionally suggested	Revised award
£21,000 to clear, dry, repair and reinstate the home.	£34,371 (the total of three reinstatement quotes @ £37,638, less what's already been paid - £3,267.36)
£30,000 to repair or replace contents items	Remains the same
£200 as compensation for extra utility usage.	Remains the same
£2,000 as reimbursement and advance payment of storage costs.	Payment remains to be paid but now applies to a specific period ie until the end of September 2019 with an option to request an extension/further payment at a later date once the actual time likely necessary for repairs is determined
£200 as payment of interest owed on any storage costs Mr T has paid and will pay out of his own pocket prior to settlement being made.	Remains the same
An amount equivalent to £10 per person living in the house per day from 23 June 2016 until they move out of their home for repairs to begin.	The period for this has changed, so still £10 per person per day and from June 2016 but now only until 15 January 2017 as this is when replacement items could reasonably have been purchased and installed by.
An amount to cover Mr T's cost for the family to live elsewhere while the property is stripped, dried and reinstated.	Now has a provisional period set which mirrors that for storage, Elite to pay until the end of September 2019 but with an option to

	review once the actual time likely necessary for repairs is determined
£2,500 compensation for distress and inconvenience.	Remains the same
£360 as reimbursement of the surveyor's fee, plus interest* from 31 January 2017 and until settlement is made.	Remains the same but there is also now a suggestion that Elite should pay an additional £5,000 to cover charges that Mr T will likely have to pay his loss assessor.

responses to my further findings

Elite sent evidence to support its claim that the flood water was only a few inches deep and that it subsided quite quickly. It sent photos of the property taken only a month after the claim to support its argument that much of the work set out in the repair estimates wasn't required as a result of the flood. It provided comment from a drying specialist and referred to the policy terms and conditions requiring the policyholder to maintain the property and keep it in a good state of repair. It said it would pay £30,000 in full and final settlement of the claim plus £3,000 towards fees but if that wasn't felt to be reasonable it should be allowed to carry out further assessments and investigations.

Mr T's loss assessor said he had concerns about the items I was suggesting should be left for later consideration as he was unsure that Elite would undertake this consideration in a timely manner. Regarding drying he felt I could reasonably use some estimated hire costs that had been provided and apply those over an estimated period for drying to create a nominal award in this respect and that a further £1,000 should be paid to allow for electrical testing and repairs to be carried out. Regarding contents items he said his word that items were all damaged by the moisture left in the property following the flood, and his assessment as to replacement costs, should be accepted. The loss assessor also requested that I reinstate the original period set for the disturbance allowance. He said Mr T hadn't realised he'd been paid and the family had been living in uncomfortable conditions for a long time.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Elite's photos were taken in July 2016 a month after the flood – whereas Mr T's estimates were completed in November 2016. Given what I've said about damage likely occurring as a result of the property not being dried properly, I'm not persuaded that Elite's photos show repair wasn't required as a result of a lack of drying.

Elite did attempt to dry the property but the evidence from its drying contractor was that it couldn't reduce the moisture levels further. Meaning moisture was left. I know Elite believes this was likely the level the property was at before the flood but it hasn't shown me that it clearly explained that to Mr T at that time.

From what I've seen Elite's drying specialist may have attended a meeting at the property in March 2017. And I referred in my initial findings to salts having been found around that time that were indicative of rising damp. I've never doubted that there may have been other water/damp issues at the property but I remain of the view that Elite didn't handle the claim well at the outset and this has, effectively, prejudiced its own position such that I'm not

persuaded that the state of the house and other damp issues likely mean that Mr T's repair estimates include work not related to the claim and Elite's failures in that respect.

The policy does allow Elite to reduce or refuse to make claim settlements where a building hasn't been maintained. But within that there is a clear link made between the lack of maintenance issue and the damage or loss which has occurred. Whilst the photos Elite provided dated July 2016 show that the décor, including woodwork, and the kitchen are showing signs of wear, their condition didn't allow the flood to occur or cause claim costs to increase in anyway. They increased, to include replacement of these items in my view, because Elite didn't handle the claim properly. It's not reasonable to leave Mr T out of pocket because of that.

Elite said it would pay towards the fees Mr T would likely incur although it didn't really feel it should have to. It said it had tried to assist Mr T and it had been his choice to get the loss assessor involved. I remain of the view that Elite's handling of this matter left Mr T with little choice but to seek professional assistance. And prior to his involvement I note there was little meaningful communication from Elite in respect of the claim. But that following his involvement greater assessment was given to some of the issues, further meetings were organised and increased settlements were offered by Elite. I'm not persuaded that any of that would have happened if Mr T hadn't sought assistance.

I absolutely understand that Mr T wants everything resolving here and now and, as far as I've felt reasonably able to do so, I've made awards that don't require further assessment to take place. But in those respects there've been fairly clear quantifications of costs submitted, meaning I can be satisfied as to the costs Mr T will likely incur in carrying out that work. And I gave the parties chance to provide more substantial evidence of the costs and/or time periods that were previously unquantified and/or unknown. Whilst I truly don't want Mr T to suffer any further as a result of this claim I can't reasonably make any additional awards at this time.

The costs we are talking about aren't yet quantified and Elite hasn't considered them. Therefore, if I give it leave to consider them later, Mr T, if he's unhappy with its response, will be able to make a further complaint. I know that is not ideal but where I've allowed for further consideration to occur, I think it's fair and reasonable in the circumstances here.

I know Mr T's loss assessor assessed the damaged contents items. But it would be unfair for me to take his word alone in this respect. For me to make any additional award in respect of contents (beyond what I've already suggested) would require full assessment of the damaged items to be allowed. I remain of the view that isn't a fair, reasonable or workable option in the circumstances here – and I note again that Mr T himself hasn't objected to the settlement I suggested regarding contents.

I felt Elite should pay a disturbance allowance to Mr T as it's inspector had condemned his white goods but it hadn't paid for them to be replaced. Therefore, I was satisfied that Mr T had likely had to spend more than he would have if he'd been able to replace them. The property being in a poor state and Mr T living there was dealt with by my compensation award.

Whilst I appreciate that Mr T is disappointed by my revision of the disturbance allowance period, Elite had placed him in funds to replace the items. I realise that Mr T was having difficulty dealing with the claim but the amount paid to him by Elite for these items was not an insignificant sum and it was paid entirely in respect of the white goods. If Mr T didn't use

the funds to replace the white goods at that time, I'm not persuaded that was due to any fault on Elite's part. And that means I reasonably need to amend the disturbance allowance period to take account of the payment Elite made and that Mr T could reasonably have used to replace the white goods. So, with regret for any upset this may cause Mr T, I'm not going to amend my revised award – I'm going to require Elite to pay a disturbance allowance to Mr T of £10 per person living in the house, per day for the period 23 June 2016 until 15 January 2017.

Neither party has made any objection to my finding that £2,500 compensation should be paid. But I note Elite thinks it has tried to assist Mr T during this claim, that it was always going to be a difficult claim due to the amount of Mr T's belongings and that he and the loss assessor haven't always assisted it in furthering the claim. I'm not persuaded by what Elite has said in this respect. I can see that Mr T did become frustrated at times and, on occasion, he clearly wasn't minded to cooperate with Elite. But I remain satisfied that his reaction wasn't unreasonable in the circumstances Elite had left him in. And I note that when he explained his reasons to Elite for being reluctant to allow further assessment (before the loss assessor became involved), Elite didn't respond to those concerns or provide an explanation to Mr T as to why this was necessary. I remain of the view that Mr T has suffered greatly because of Elite's failure to handle the claim appropriately and that, as a result £2,500 compensation is fairly and reasonably due.

my final decision

I uphold this complaint. I require Elite Insurance Company Limited (has ceased writing new business but continues to fulfil existing contracts of insurance) to pay Mr T:

- £34,371; being the total of three reinstatement quotes provided by Mr T (£37,638), less the amount already paid for this work (£3,267.36).
- £30,000 to repair or replace contents items.
- £200 as compensation for extra utility usage.
- £2,000 as reimbursement and advance payment of storage costs that have been and will likely be incurred up until the end of September 2019.
- £200 as payment of interest owed on any storage costs Mr T has paid and will pay out of his own pocket prior to settlement being made.
- An amount equivalent to £10 per person living in the house per day from 23 June 2016 until 15 January 2017.
- An amount to cover Mr T's cost for the family to live elsewhere until the end of September 2019, while the property is stripped, dried and reinstated.
- £2,500 compensation for distress and inconvenience.
- £360 as reimbursement of the surveyor's fee, plus interest* from 31 January 2017 and until settlement is made.
- £5,000 to cover the likely reasonable fees Mr T will have to pay the loss assessor.

I also require Elite Insurance Company Limited (has ceased writing new business but continues to fulfil existing contracts of insurance), if Mr T asks it to, to consider any costs he wants it to meet regarding:

- clearing and drying the property;
- electrical testing and repair;
- storage and living elsewhere beyond the end of September 2019.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 10 June 2019.

Fiona Robinson
ombudsman

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. If Elite Insurance Company Limited (has ceased writing new business but continues to fulfil existing contracts of insurance) considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr T, it should tell him how much it's taken off. It should also give Mr T a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.