

## The complaint

Mr K complains that U K Insurance Limited (UKI) has not fairly settled a claim under his landlord insurance policy.

## What happened

I issued a provisional decision explaining why I wasn't minded to uphold Mr K's complaint. In that decision I set out the background as follows:

*In March 2019, burglars broke in to Mr K's property, causing damage in doing so. They also left taps within the property running, causing water damage. Mr K made a claim and UKI said it would pay a total of £1,646.65, which represented 39% of the cost of insured repairs (minus £200 excess).*

*UKI took this approach because it said Mr K was underinsured. The building sum insured at the time of the claim was £281,377 but UKI felt that the correct sum insured was £753,000 based on the property's true rebuild cost.*

*Mr K felt UKI had acted unfairly in only paying a proportion of the full cost of insured repairs. He felt that UKI had a duty to make sure he was not underinsured and didn't give him the advice it should have.*

*Our investigator upheld this complaint. He felt that Mr K failed to make a fair representation of the risk to UKI, so a proportionate settlement was fair. But instead of a proportionate settlement based on the percentage of the sum insured compared to the true rebuild cost (39%), he felt UKI should pay a proportionate settlement based on the percentage of the premium paid in 2018 compared to the likely premium had the sum insured been adequate. This was estimated to be 51%.*

I explained my reason for not being minded to uphold the complaint as follows:

*UKI says Mr K is underinsured and has calculated its proportionate settlement on this basis. To begin with, I am persuaded that the original sale of the policy over the phone in 2014 was on a non-advised basis. The same applied for each subsequent renewal including the renewal in 2018. This is supported by the information on the sales script at the time and the renewal documents.*

*Businesses can conduct sales on a non-advised basis. In such cases, they do need to provide information in a clear, fair and not misleading way to allow the customer to make an informed decision. A firm should take reasonable steps to ensure a customer only buys a policy under which they're eligible to claim benefits. Other relevant duties include UKI explaining the duty to disclose all circumstances material to the policy and the consequences of failing to do so. And UKI needs to ensure that it asked Mr K clear questions about any matter material to the insurance undertaking.*

*UKI no longer has a copy of the call recording from 2014. But it has provided a copy of the sales script that applied at the time and in the absence of a recording, I consider this to be*

*the most reliable representation of what would've been discussed.*

*The sales script shows the adviser would've been instructed to ask Mr K what the rebuild cost of the property was, with guidance to the adviser explaining this is different to the resale or market value and how Mr K could obtain such a figure. The script also prompts the adviser to explain the consequences of underinsurance can affect the amount of money received in the event of a claim. I am persuaded on balance, it was more likely than not the adviser asked Mr K what the rebuild cost of the property was and explained the negative consequences of underinsurance. Mr K gave a rebuild value of £250,000.*

*The policy renewed each year and policy documents highlighted the rebuild value, which was stated as £281,377 in 2018. The start of the 2018 'statement of fact' starts with 'important note' and states Mr K's duty to make a fair presentation of risk and that the information is based on what he'd already provided. It also contains a 'warning' in block capitals saying he must check the information in the schedule and statement and inform UKI if anything is incorrect, incomplete or omitted. And it warns that failure to do so may mean the policy isn't valid or a claim may not be paid in full.*

*So, the next issue is what was the appropriate rebuild value? UKI has provided information from an industry recognised building valuation tool, which states the rebuild value at £753,000. What's clear is that Mr K's value is far away from the likely rebuild value. He says he used the purchase value plus what he'd spent on it. But I'm satisfied from the sales script that UKI made it clear the basis on which an accurate rebuild value could be obtained. And indeed, Mr K was aware his property was grade 2 listed and so even more reason to ensure a more appropriate check on the likely rebuild value. So, at the 2018 renewal I'm satisfied Mr K didn't make a fair presentation of the complete risk UKI had asked him about.*

*In deciding what a fair outcome is, UKI has specifically relied on a condition in the policy that allows it to apply an 'average' settlement for the repair cost. The basis of this is the proportion of the sum insured declared to the actual sum representing the reinstatement of the whole property. So, in this case, the disclosed building value is 39% of the actual rebuild value and so UKI will pay 39% of the total repair cost.*

*Having considered this very carefully I'm satisfied that UKI gave enough information about how Mr K should assess the rebuild value of his property. And the policy documents clearly warn about checking the accuracy of the information and likely consequences where information is incorrect. I'm also mindful that Mr K's stated rebuild value for his grade 2 listed property is hugely under-represented. Taking that all into account I'm satisfied 39% is a fair amount to pay.*

### **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 haven't seen a reply from UKI but Mr K has responded saying:

- He hasn't seen the sales script I've referred to.
- The policy was through Direct Line not UKI.
- He doesn't recall being asked about the rebuild cost.
- He was asked about the value of the property.
- UKI had a duty to inform him that the rebuild cost would be higher.
- The most reliable evidence would be the call recording.

UKI's script is commercially sensitive and notwithstanding that, Mr K's case is that he wasn't asked about the rebuild value, but the value of the property. So, I can't see how it assists his case in seeing the script. All that being said, the script requires the representative to ask;

- *What is the rebuild cost of the property? (this is not the resale or market value it is the cost to rebuild in the event of a total loss)*
- *Rebuilding cost can be found through, mortgage advisor, letting agent, surveys, internet. The rebuild cost should include landlord's fixtures and fittings, walls, gates, fences, patios, terraces, underground pipes and cables belonging to you or for which you are responsible.*

Given the sales call was back in 2014 and the recording no longer exists after such a long period, I am satisfied that the script is the most reliable indicator of what was asked at the time, and it is for Direct Line sales as Direct Line insurance policies are underwritten by UKI.

Based on Mr K's reply I'm not persuaded to reach a different outcome to that in my provisional decision. UKI's payment based on 39% is fair and reasonable in all the circumstances.

### **My final decision**

I don't uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 30 September 2020.

Sean Hamilton  
**Ombudsman**