

The complaint

Mr and Mrs F complain that they didn't receive an adequate settlement from China Taiping Insurance (UK) Co Ltd in respect of their home insurance claim for water damage. The claim was dealt with throughout by the loss adjusters (C) on behalf of China Taiping.

What happened

In April 2019 Mr F arrived home to find most of the downstairs of their property under water. The water was escaping from a flexible pipe connected to a downstairs WC, and a plumber came out to fix the pipe. Considerable damage was done to the floor screed, parquet flooring, skirting boards, door linings, wall plaster and decorations in the hall, living room and dining room.

C, whilst accepting the claim in principle, advised that the buildings were underinsured. They estimated that the sum insured was only 78% of the rebuild cost. Mr and Mrs F believe that they were mis-sold the policy but subject to that sought a cash settlement from China Taiping. After considering estimates and costings, C put forward a proposal to Mr and Mrs F. They reluctantly agreed to receive 78% of the proposed settlement concerning the buildings. In their counter proposal they advised that due to family issues they needed to stay in their home for the duration of the repairs. They estimated that these would take 12 months and so claimed a disturbance allowance (DA) for two adults and one child for the period.

C didn't appear to dispute the figures, but after review by the underwriters said that it would only accept repairs on a reinstatement basis i.e. that the property would need to be repaired rather than a cash settlement released to Mr and Mrs F.

Mr and Mrs F were reluctant to proceed on that basis as they would then have difficulty in paying the underinsured amount towards the claim. They indicated however that it was their intention to reinstate the property.

C considered the proposed settlement with the underwriters and said that the estimate for the renewal of the flooring (which formed the bulk of the claim) would be subject to a deduction of 5% which it would usually expect to receive from the supplier. It then proposed to pay 50% of the cost of renewing the floor, to reflect the age/pre incident condition of the floor and its life expectancy. In respect of the DA, C said that the property wouldn't be uninhabitable for the duration of the repairs so Mr and Mrs F weren't entitled to receive a payment for this. As a gesture of goodwill it agreed to pay them £1,500. Mr and Mrs F reluctantly accepted the proposed settlement.

On review by this service our investigator thought that China Taiping had acted unfairly by insisting on the reinstatement basis for settlement. She noted that the DA had been set out in the proposed cash settlement which the loss adjusters had accepted. So she said that China Taiping should pay 12 months DA at £25 per day. She further said that China Taiping should pay £600 compensation.

C didn't agree and said:

- Even before the claim was submitted the Insured were fully aware that the decisions it

took [regarding level of insurance] in taking out the policy would have implications.

- It doesn't agree that it, or insurers, have caused any undue delays.
- Had Mr and Mrs F opted for reinstatement this would have meant that they would have needed to pay towards the building repairs hence why an offer to settle this claim on a 'cash basis' was made to them back in June 2019.
- The delay was down to the fact that the Insured wouldn't commit to the repairs nor would they accept a cash settlement offer.
- It explained to the Insured that technically they were not entitled to DA as they remained in their house. However it accepted the surroundings were not ideal so paid £1,500. As they weren't entitled to this it should be regarded as compensation.
- The claim was settled/agreed with the Insured on a 'cash basis' so reinstatement has, to the best of their knowledge, not been undertaken.

Our investigator responded to say that reinstatement had been undertaken, and completed in May 2021.

I issued a provisional decision. In it I said that it was unfair of China Taiping to make the deductions proposed for a cash settlement. So it should pay the full settlement originally proposed by Mr and Mrs F, including a DA payment, less any payments already made. I said it should also add interest.

In response C said:

It maintains that it didn't agree a year's DA payment. In any event the amount of £80,583 that was proposed by the Insured included alternative accommodation (AA) /DA of £15,879, therefore, if we factor in the 1 year AA/DA that I recommend (£9,125), the overall figure reduces to £73,829.

Mr and Mrs F have at no stage ever evidenced that the repairs had been carried out to the flooring. Had they done this it may have been able to review the settlement figure. It would be unfair to add interest as it hasn't received any invoice and required to see that.

Mr and Mrs F had no further comments to make on my provisional 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.

My provisional findings were as follows:

“underinsurance

Mr and Mrs F were clearly underinsured. C assessed that the building was insured for only 78% of its rebuild cost, at £389,350, which I don't disagree with. From China Taiping's point of view, I think the questions on the price comparison website are clear. Mr and Mrs F chose to proceed with the lowest value produced by the BCIS calculator linked to on the price comparison website. And a pre-mortgage valuation obtained by Mr and Mrs F shortly before purchasing the property estimated the rebuilding cost at in the region of £500,000. This correlates with the cost assessed by C.

After going through the price comparison website Mr and Mrs F then had to proceed through an independent broker. I can't make any findings here about their dealings with the broker. It's an independently regulated company so if Mr and Mrs F have any complaint about the advice given by the broker that would have to be addressed separately. On C's point about Mr and Mrs F's knowledge of their underinsurance, it hasn't been suggested in this case that the underinsurance was deliberate so I don't think it's fair to say that Mr and Mrs F were aware of the implications before making the claim.

settlement

After liability was accepted on 2 May 2019, Mr and Mrs F sought a cash settlement. In June 2019, following several estimates being obtained in respect of the flooring (which was the bulk of the work), C put forward a proposal based on the most reasonable estimate. This was for cash settlement. taking into account the underinsurance. Mr and Mrs F agreed the figure put forward for both buildings and contents. In respect of alternative accommodation (AA), as I've set out above, they wanted a DA payment. C proposed that this be for nine months – Mr and Mrs F wanted 12 months, an extra £2,275. The proposal was put forward on 21 June 2019. On 2 August C reverted to Mr and Mrs F following consideration by the underwriters. The cash settlement wasn't approved, the underwriters having decided the matter must proceed on a reinstatement basis.

This was an unusual approach to take so I should clarify here what C appeared to mean by reinstatement rather than a cash settlement. Normally that would mean that the insurer has decided that its contractors will carry out the repairs. But I don't think that was what was meant here – C didn't say that its contractors would carry out the work. I have assumed that China Taiping was willing to pay a full cash settlement as long as the repairs were undertaken. This could have been done by paying the contractors direct or by carrying out periodic inspections. From the correspondence I note that despite their misgivings about having to pay towards the repairs themselves, Mr and Mrs F's immediate response was "We agree entirely that the repair and reinstatement absolutely needs to be carried out to ensure that our much loved home and family is as safe and sound as we intend."

However after that Mr and Mrs F did say that they couldn't afford to contribute 22% of the cost, so felt forced into asking for a cash settlement. So I think it fair to look at the policy to see exactly what they should have been entitled to from such a settlement. Regarding settlement the policy says:

*"If **your** claim for loss or damage is covered under Section one, **we** will pay the full cost of repair as long as:*

- the **buildings** were in a good state of repair immediately prior to the loss or damage and*
- the sum insured is enough to pay for full cost of rebuilding the **buildings** in their present form and*
- the damage has been repaired or loss has been reinstated.*

*If the **buildings** were not in a good state of repair **we** will deduct an amount from **your** claim."*

C proposed to pay £22,659.83 in respect of the flooring. This was after deduction of 5% which is the discount it normally expects from contractors and a reduction of 50% to reflect the age/pre incident condition of the floor and its life expectancy.

Put simply, I don't think the policy allowed C to do this. I've seen no indication that the property wasn't in a good state of repair. And the underinsurance was dealt with by reducing the amount paid on the claim. I understand that the property has been fully repaired. As I've said that could have been dealt with by periodic inspections or by paying the contractors. The policy contains no method of calculating any deduction (save for underinsurance) and no term requiring any cash payment to be limited to what the insurer would pay its contractor. And the deduction goes against the basic principle of "new for old" in home insurance. I think China Taiping should pay the full cost of repair.

As regards a DA payment, I've seen various figures put forward for this. The estimate for the length of time the repairs should be taking place varied from 6 to 12 months. And, up until the time China Taiping rejected the cash settlement basis, C accepted that Mr and Mrs F would need to either move into AA or accept a DA payment. This was also set out in its reports to China Taping. Even after the revised settlement was proposed C was still arguing to the underwriters that a payment for DA should be made. As C had done the site visits and assessed the repairs it would have been upsetting to Mr and Mrs F to find that instead of offering them a DA payment it decided that they weren't eligible for it and instead paid them £1,500 (about two months) as a goodwill gesture.

I think that as C had considered the reasons why a DA payment was necessary, and having initially proposed that it be for 12 months, China Taiping should pay what was originally agreed, less the £1,500 already paid. If the repairs took longer than 12 months, I would invite Mr and Mrs F, in response to this provisional decision, to explain why this was the case.

compensation

I think Mr and Mrs F were badly let down by C's complete turnaround on the settlement. I think this was an unfair way to approach the claim, especially when the full claim wasn't going to be paid any way. Any delay in resolving the matter was caused by this, not by Mr and Mrs F's indecision. A figure of £600 was proposed by our investigator and I think that was fair and reasonable."

I still think, for the reasons I've explained above, that it's fair to pay 12 months' DA. With regard to the settlement figure, I refer to C's preliminary report to China Taiping of 15 July 2019. The figure of £15,879 included the 12 months DA *and* the cost of removals and storage (based on the quotation from its contractors). Whilst I note that C later advised that the removal and storage costs wouldn't be paid, I think the same principle applies to this as to the DA. Mr and Mrs F were having the repairs carried out, and as most of the downstairs flooring was to be replaced, I can't see that it would have been possible to do this with the furniture still in place. So the cash settlement figure of £80,583 is right.

I note C's assertion that it would have reviewed the settlement figure, had Mr and Mrs F told it the repairs had been undertaken. I can find no evidence that this was the case, even after our investigator clarified that the repairs had been completed. I think it's fair to add interest, as I would normally do be in any case where such a payment had been made. I should advise Mr and Mrs F that they will need to show evidence to C as to when they paid the builders' invoice in order to enable C to calculate the interest due.

In all other respects I confirm my provisional decision. My provisional findings are now final and form part of this final decision.

Putting things right

China Taiping should pay to Mr and Mrs F the original cash settlement proposed by them. This is to include the full cost of repair of the buildings and the full 12 months' DA. This is £80,583, net of the buildings and contents excesses. It may deduct any payments made so far. It should add simple interest of 8% to the payment for the building work from the date Mr and Mrs F made a final payment to their contractors to the date of payment.

It should further pay Mr and Mrs F £600 compensation.

China Taiping is required by HM Revenue and Customs to deduct tax from any interest paid. Should Mr and Mrs F request it, it should provide them with a certificate showing how much tax has been taken off so that, if appropriate, they can reclaim it.

My final decision

I uphold the complaint and require China Taiping Insurance (UK) Co Ltd to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 25 October 2021.

Ray Lawley
Ombudsman