

The complaint

Mr and Mrs C complain about the way UK Insurance Limited trading as Direct Line (“UKI”) has handled their claim for subsidence under their landlord insurance policy.

What happened

Mr and Mrs C first became aware of the subsidence when internal cracks were discovered at their rental property in November 2018. They contacted UKI and a loss adjuster was sent to the property to assess the damage and manage the claim.

A report was issued identifying defective drains at the neighbouring property as the cause of the subsidence. The loss adjuster contacted the neighbours asking them to repair the drains, but those repairs were not ultimately carried out until March 2021.

Mr and Mrs C were unhappy with the delays and lack of progress with their claim and so they raised a complaint. They said they’d needed to remortgage their property in 2019, but because the claim was still ongoing, their mortgage broker was unable to secure them the best available deal at that time. So they’d lost out financially. They were also unhappy they were being held liable for 38% of their reinstatement costs, because their policy had a clause saying this would happen if they were underinsured.

UKI said it acknowledged the distress and inconvenience caused as a result of the delays, and offered Mr and Mrs C £150 in recognition of this. But it said it wouldn’t pay the difference in mortgage rates as it had asked for evidence of this, so it could review the matter further, but hadn’t received any. It also said Mr and Mrs C had misrepresented the buildings sum insured, which was therefore inadequate at the time of the claim, so UKI would only be liable for 62% of the reinstatement costs.

Mr and Mrs C remained unhappy with UKI’s response and referred their complaint to this service. They said it wasn’t fair to hold them liable for 38% of the reinstatement costs, that UKI hadn’t explained why their premiums had gone up, and that the £150 goodwill payment didn’t address the fact the claim had been ongoing for around three years.

Our investigator considered the issues and thought the complaint should be upheld. UKI disagreed with our investigator’s recommendations and so the complaint has now come to me to decide.

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.

Having done so, I’ve decided to partially uphold this complaint. I’ll explain why.

Looking first at UKI’s decision that Mr and Mrs C misrepresented the building sums insured which left them underinsured at the time of their claim, I’ve considered what the Insurance Act 2015 says about a commercial customer’s obligation to make a fair presentation of risk to their insurer. The Act says a commercial customer must make the following disclosure:

- (a) disclosure of every material circumstance which the insured knows or ought to know*
- (b) failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances*

But I also need to consider what questions were asked of Mr and Mrs C at the inception of the policy and at each renewal, to which they had to respond. There's little information available from the initial sale of the policy. But the relevant renewal for the purposes of this claim was the March 2018 renewal, so I've looked for evidence of any questions that might have been asked at this point. I've also looked for any information which might suggest UKI provided clear guidance to Mr and Mrs C, to help them provide the correct buildings sum insured figure.

From what I've seen, there's no indication of a clear question being asked of Mr and Mrs C. And I'd need to be satisfied that UKI asked such a question during the sales process, and that Mr and Mrs C carelessly, deliberately or recklessly misrepresented the risk, in order to find it fair for UKI to settle the claim proportionately.

And based on the information available to me, I can't see that a clear question was asked. For example, I haven't seen evidence that UKI asked Mr and Mrs C to state the value to replace all their contents, or how much it would cost them to rebuild the property. Nor have I seen evidence that UKI provided guidance on how to calculate such figures.

It follows therefore that, even though Mr and Mrs C were underinsured, and their policy contains an "average clause" specifying what would happen in the event of underinsurance, I don't think Mr and Mrs C made a qualifying misrepresentation and so UKI can't fairly reduce any claim settlement and hold Mr and Mrs C liable for 38% of their reinstatement costs.

I won't be requiring UKI to cover the cost of the increased mortgage payments, however. This is because I can't say for certain that more proactive management of the claim by UKI would've led to it being resolved sooner. The neighbour responsible for the drain repairs was ultimately holding things up and this meant the property was still damaged when it was time for Mr and Mrs C to apply to remortgage. From the evidence Mr and Mrs C have submitted, I can see the lender wanted confirmation that the work was being carried out or had been completed. But even if UKI had tried to progress the claim as we would've expected it to, there's still no guarantee that the neighbour would've repaired the drains in time for the mortgage renewal or that work would have started by then.

I've also considered whether the £150 offered to Mr and Mrs C for the distress and inconvenience caused to them as a result of UKI's handling of this claim is a fair amount. When considering awards for distress and inconvenience this service looks at the impact of any errors made by a financial business on a particular customer. This is because, poor handling of a claim, for example, could affect different people in different ways.

In this case, I agree with our investigator that there were numerous instances of lengthy and unexplained delays which caused frustration to Mr and Mrs C. Looking at the timeline of events, and whilst I appreciate that the neighbour responsible for the drain repairs showed an absence of engagement in the process, I also consider UKI could've done more to chase the neighbour during some of the longer periods where there was a lack of progress. I also consider it relevant that Mr and Mrs C were working very long hours in stressful jobs as nurses throughout the pandemic, and the additional stress of how this claim was handled and the ongoing delays, as well as being told they wouldn't receive full settlement, would've caused them significant worry and upset. And I think that as they were often having to take time out of their already busy and stressful schedules to chase up the claim, this heightened

the inconvenience they experienced overall. So I think our investigator's suggested award of £600 in total for the distress and inconvenience caused is fair and reasonable in all the circumstances of this case.

Putting things right

In order to put things right for Mr and Mrs C, UKI must now:

- Reverse its decision that Mr and Mrs C misrepresented the buildings sum insured and cover Mr and Mrs C's claim costs in full. If Mr and Mrs C have made any payments towards these costs (not including their policy excess) these should be reimbursed, with the addition of 8% simple interest per annum from the date Mr and Mrs C made the payment to the date of settlement.
- Pay Mr and Mrs C a total of £600 for distress and inconvenience (including the £150 already offered).
- If there is future movement at the property and this is thought to be linked to the cause of the earlier subsidence, UKI must arrange for an adequate period of monitoring to occur as part of any future investigation.

My final decision

My final decision is that I uphold this complaint and I require UK Insurance Limited trading as Direct Line to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 28 January 2022.

Ifrah Malik
Ombudsman