

The complaint

Mr and Mrs J are unhappy with the way St Andrew's Insurance Plc (SAI) handled their claim following an escape of water which damaged much of the lower floor of their home.

The buildings and contents insurance was underwritten by SAI and branded under a different company name. Any reference to SAI's actions includes those of its agents. The policy was in joint names but, for ease, I'll refer only to Mr J throughout my decision.

What happened

The circumstances of this complaint are well known to both parties, so I won't repeat all the detail again here. Instead I'll provide a summary to give some context.

When Mr J first made his claim, SAI appointed a loss adjuster (LA) and then declined the claim. After he complained and provided further evidence, SAI acknowledged its mistake and paid Mr J £125 compensation by way of apology. I won't be addressing this issue further in my consideration of the complaint.

SAI accepted Mr J's claim and explained to him that it wouldn't be completing the reinstatement work. In line with SAI's instructions, Mr J obtained a quote for the repairs, coming in at over £50,000 and consistent with the earlier LA report. However, SAI challenged the accuracy of the quote and, from there, disagreement between the two parties followed. SAI thought the work could be done for £20,000 plus VAT (originally stated as £10,000 in error), whereas Mr J thought his quote was the minimum needed, given that additional, unseen work might be required.

Because of the delay and inconvenience Mr J and his family experienced while he disputed the repair cost with SAI, he went ahead with the repairs and paid for the work himself. SAI sent Mr J a cheque for £20,000 and asked for evidence of any additional costs he thought it should pay, along with completion invoices so it could pay him the correct amount of VAT. Although Mr J sent some quotes, invoices and photos to SAI, it didn't think he'd provided enough to show that the work was all related to the water damage, and there was no evidence of VAT payments.

While SAI and Mr J couldn't reach agreement about the cost of repairs, SAI did acknowledge its service shortfalls. It confirmed there'd been some avoidable delays, and staff changes meant his claim had become confused. In recognition of the shortfalls, SAI offered Mr J £300 by way of apology. However, he remained unhappy that SAI hadn't fully settled his claim.

Our investigator didn't think SAI had treated Mr J fairly. She didn't think the compensation SAI offered was enough in the circumstances of his claim which had been ongoing for over two years. While she didn't think SAI was completely responsible for the delays, our investigator proposed that SAI pay Mr J £500 by way of apology.

Our investigator also thought SAI hadn't treated Mr J fairly when it offered him significantly less as a cash settlement than its LA's earlier estimate and the quote he provided. That's because the parties hadn't reached an agreement about what was covered or whether the

quotes were an accurate reflection of the cost to Mr J. Our investigator proposed that SAI increase its settlement offer to more accurately reflect Mr J's completion costs of repairs to the damage caused by the escape of water.

SAI accepted the outcome in principle, but it wanted to see further evidence of the work done to ensure the repairs were all necessary.

Mr J also accepted the outcome in principle, although he later asked for further consideration by an ombudsman, explaining that he was seeking the maximum compensation available under our service.

I issued a provisional decision in February 2022 explaining that I was intending to uphold Mr J's complaint. Here's what I said:

provisional findings

I've provisionally decided to uphold Mr J's complaint. However, I realise he may be disappointed that my decision doesn't go further, so I'll explain my reasons now.

Firstly, I think it's important to set out my remit. My role is to decide whether SAI treated Mr J fairly when it responded to his claim for an escape of water. To do that, I've looked at the documents each party provided, listened to the phone calls, and taken into consideration the position at the point Mr J raised his complaint. What I won't be doing is deciding the amount that SAI must pay Mr J towards the cost of the work he's done. That's because I'm not an expert in building costs - nor am I expected to be - so I must rely on the evidence available to determine a fair and reasonable outcome.

Cash settlement

The overriding issue is that Mr J doesn't think SAI's payment of £20,000 is enough to cover the work he's done to repair the full insured event. SAI agrees, but in the absence of any evidence to demonstrate the actual costs it hasn't agreed a settlement figure with Mr J.

The policy allows SAI to offer a cash settlement rather than completing the repairs itself. But the payment must be enough to cover the cost to Mr J to put his home back in the position it was in before the insured event. The terms and conditions of the policy aren't disputed.

The only issue I can see here is that SAI and Mr J can't agree how much of the work was necessary to meet the policy terms and how much of it might constitute betterment. To determine this, SAI asked Mr J to provide detailed quotes showing the work to be done and this was explained in its May 2019 letter to him:

When contacting a contractor, please explain that the contract of work is between you and the contractor and that their estimate must provide a breakdown of work and costs in each room. This will allow for an easier validation process in terms of checking costs.

I've looked at the quotes Mr J provided. One was for £42,775, which SAI thought was excessive, and the second was for £19,700. The second of the quotes was less detailed than the first. Mr J went on to use the second builder and provided a copy of the paid invoice. That invoice included an additional £4,004 for work which became apparent after the kitchen and utility had been removed. The invoice totalled £23,704.

From what I can see, this is the only paid invoice Mr J has presented to SAI for the work done. While he's provided his own breakdown of additional costs bringing the total to over £50,000, Mr J hasn't provided any evidence of that spend.

Given that SAI said it would need a detailed quote, and so far Mr J has provided evidence of payment in line with the quote from the builder he used, I think it's reasonable that he could expect SAI to settle that invoice. So, at this point, it seems SAI has underpaid him £3,704 and my provisional decision is that it should make a further cash payment to that value.

I realise Mr J is still looking for upwards of £50,000. My provisional decision doesn't mean that SAI shouldn't pay any more than I've described here. It's simply that it should only pay what Mr J can evidence. I don't think it's unreasonable for SAI to expect Mr J to produce invoices for spending £30,000 over and above the £20,000 he has already received. To resolve this part of the complaint, Mr J would need to obtain from his builder copy invoices for any additional work completed. Or, if Mr J bought materials himself, provide copy receipts to allow SAI to assess his claim further. SAI has already offered to do this, so I won't be making a requirement of it here.

Mr J hasn't provided any of this evidence when asked by our service, so I think it's reasonable to propose an alternative. SAI has agreed that the most practical way forward is to arrange for one of its contractors to visit Mr J's home to complete a costing exercise based on its and Mr J's builder's scope of work. I think that's fair in the circumstances and will form part of my provisional decision.

Fraud accusation

I'll comment briefly on Mr J's view that SAI accused him of fraud. My understanding is that some of the work in his original quote included work which he knew wasn't covered under the claim, but nor did he expect SAI to pay for that part. It seems to me that this issue of fraud arose out of a simple misunderstanding about what Mr J was claiming for because SAI didn't take the matter further. I've considered this when deciding whether compensation is warranted.

GDPR

Mr J asked for a copy of the LA reports. SAI provided some of the reports, but it asked for additional identification before it would provide one of them. I can understand why that would seem strange to Mr J and I can't see any obvious reason for the difference in process. Nevertheless, SAI said it would provide the report, if it hasn't already, and I've taken this customer service shortfall into consideration when deciding whether compensation is warranted.

I've noted Mr J's allegation that SAI claimed to be the insurer to minimise any potential claims under GDPR. For clarity, the policy documents confirm that SAI is the underwriter – the insurer - of the branded policy. When this service considers complaints about how a claim is handled, we must record it as a claim against the underwriter.

VAT

Mr J is unhappy that SAI didn't include VAT in its cash settlement payment. SAI confirmed that it would need a completion invoice showing the VAT registration number, but Mr J says it didn't specify that he'd need to use a VAT registered builder.

I agree that SAI didn't specify that, but that's because it isn't a requirement to use a VAT registered builder. But SAI can't be expected to include a VAT payment in its cash settlement if Mr J hasn't actually paid VAT. Mr J would be profiting from that. If he paid VAT on any of the work done, he'd need to provide SAI with evidence, in which case it would reimburse him. I won't be asking SAI to do anything further here.

Compensation

Mr J asked for the maximum compensation our service can award. I've considered the overall progress of his claim and it's clear that there have been times when the claim didn't

move forward as it should've done. SAI has acknowledged this and offered Mr J £300 for the service shortfalls. The nature of the damage meant that a large area of Mr J's ground floor needed to be uplifted and replaced, along with the kitchen and other units. This would undoubtedly have caused Mr J and his family distress and inconvenience. But I must separate that from what I consider to be additional distress and inconvenience caused by SAI's avoidable delays or service shortfalls. Our investigator proposed total compensation of £500 and, in the circumstances, I think that's reasonable. That's because, while SAI caused some delays, I think progress has also been hindered by the lack of evidence to support Mr J's claim for an increased cash settlement. I haven't seen anything about Mr J's overall claim that would warrant a significantly higher payment, and I'm satisfied that compensation of £500 is fair and reasonable.

In summary, SAI accepted Mr J's claim and agreed to cash settle. As it stands, SAI has paid Mr J £20,000 but it should pay more if he can evidence his costs or if his builder and its contractor agree the scope of work. In addition to this, SAI should pay compensation of £500 for the service shortfalls and a further £3,704 to settle Mr J's costs as evidenced by his invoice.

I said I was intending to uphold the complaint and I was minded to require St Andrew's Insurance Plc to:

- *appoint a contractor to visit Mr and Mrs J's home to work out a fair schedule of work based on Mr J's and its contractors estimate;*
- *pay Mr and Mrs J £500 compensation by way of apology for the shortfalls in service which caused avoidable delays and inconvenience, and*
- *pay Mr and Mrs J £3,704 to fully settle the invoice they provided.*

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

SAI accepted my provisional decision.

Mr J clarified some points in the content of my provisional decision; provided evidence of some of the costs he incurred, and said he'd accept only an independent contractor to assess the work done.

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 decided to uphold Mr J's complaint for the same reasons I gave in my provisional decision. I'll explain further.

Mr J made several comments about my provisional decision, either to clarify points or to express dissatisfaction with the content. I won't respond to each point individually: instead I'll focus on the main points he raised and any which I think warrant clarification.

The background to Mr J's complaint is a summary of what happened. I understand there are some points which he didn't think were completely accurate but as they don't affect the outcome of the complaint I won't comment further.

Mr J said he'd happily accept a visit from an independent contractor to assess the costs he incurred when repairing his kitchen, but he won't have SAI's contractor back in his home. SAI hasn't agreed to his request.

I understand why Mr J would want someone independent, but as his contractor did the work, I think it's reasonable that SAI wants to clarify what was done before it considers any more payments towards the additional £30,000 Mr J spent. I see no reason to change my requirement in respect of this point.

I've noted Mr J's comment that he doesn't recall providing a copy of a paid invoice to SAI, and that it paid him £20,000 before he'd had the work done. While the clarification is helpful, it doesn't change the outcome of the complaint.

Mr J clarified his view of what happened regarding the issue of fraud. I can understand Mr J is upset about any hint of a fraud allegation, and I see no reason to doubt his explanation of what happened. However, SAI accepted his claim and there's no indication that it progressed a fraud investigation. I considered this point when deciding whether compensation is warranted and as I'm requiring SAI to make a payment, I don't think there's anything further to address here.

Mr J disagreed with my comments about SAI's release of the report and he believes it breached GDPR. It refused to release one report without additional identification from Mr J. As SAI is responsible for access to the data it holds, I can't reasonably say it did something wrong by taking precautions. It's not within my remit to decide whether it breached GDPR, so I can't reasonably say it's done anything wrong. I understand Mr J is aware how to raise a complaint about possible GDPR breach should he wish to.

Finally, Mr J provided some receipts for the work done so that SAI could pay his claim. However, as SAI will be assessing the costs claimed for, he'd need to send any evidence he has directly to SAI. It has already said it would settle evidenced costs, so our service doesn't need to see that evidence unless further issues of complaint arise.

Overall, I've considered the additional comments Mr J made about the content of my provisional decision, but I don't think there's any new information which warrants a change in outcome. Therefore, my provisional decision becomes my final decision.

My final decision

For the reasons I've explained above, and in my provisional decision, my final decision is that I uphold Mr J's complaint and St Andrew's Insurance Plc must:

- appoint a contractor to visit Mr and Mrs J's home to work out a fair schedule of work based on Mr J's and its contractor's estimate;
- pay Mr and Mrs J £500 compensation by way of apology for the shortfalls in service which caused avoidable delays and inconvenience, and
- pay Mr and Mrs J £3,704 to fully settle the invoice they provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 13 April 2022.

Debra Vaughan
Ombudsman