DRN-3366724

The complaint

Mr H complains about the settlement offered by Tokio Marine Kiln Insurance Limited (TMK) on a claim he made on a business protection insurance policy.

Mr H's claim and policy is administered by agents and representatives acting on behalf of TMK. Where I refer to TMK within this decision, this includes these agents and representatives.

What happened

Mr H is a self-employed building contractor. He was carrying out works at a property and during the course of these works, damaged was caused to a ceiling. A few days later, a temporary cover on a roof was blown away and an ingress of water into the property caused further damage. It was agreed that Mr H was liable for the damage and so he claimed on an insurance policy provided by TMK.

As part of the claims process, TMK assessed that there were two incidents and so two policy excesses of £500 would be applied. Mr H complained about this and also the amounts offered in settlement of the claim. There were various elements of the offer that Mr H was unhappy about which I'll address in turn.

Mr H referred his complaint to our service as he was unhappy with TMK's response. Our investigator thought that some parts of the settlement offer hadn't been reasonable. In response to this, Mr H said he believed that additional costs should also be covered. As no agreement could be reached, the complaint has come to me for a final decision.

My provisional decision

I previously issued a provisional decision following my initial review of this complaint. In that provisional decision, I identified that while TMK wasn't disputing cover for the claims made by Mr H, the number of excesses being deducted and what was included in the settlement offer was the subject of the complaint. I commented on each of these areas separately, as below:

The policy excess

The terms and conditions of Mr H's policy state that the excess is "*The amount or amounts shown in your policy or the schedule which you must pay for each and every claim and you will reimburse any such amount paid by us.*" The relevant excess for Mr H is £500 per claim.

TMK's position is that Mr H has made two claims here. The first is for damage caused to a ceiling when Mr H put his foot through it, and the second is for damage caused by water ingress when a temporary covering came away from a roof. The water ingress occurred five days after the ceiling damage.

Given the time between the two incidents, the differing locations within the property and the lack of a link between the circumstances giving rise to the damage, I think it was fair for TMK to conclude that these should be considered two separate claims. As two claims have been made, then two policy excesses of £500 would reasonably apply.

The hourly rate and hours worked

Mr H submitted the hours he'd worked to carry out the repairs along with his hourly rate to TMK. It disputed both the number of hours claimed, saying that the works could have been done in less time than Mr H had claimed for, and also the rate, as it said the nature of the works could have been carried out by a general labourer at a lower rate.

After our investigator proposed that an independent expert be appointed to assess how long the works would reasonably have taken, TMK agreed to not only cover the full hours claimed by Mr H but also at his rate.

As TMK has now agreed to cover Mr H's hourly rate for the full number of hours he's claimed, I'm no longer required to assess whether his claim for this is reasonable. This point is now agreed and I endorse TMK's position. It should pay the hours claimed by Mr H at the rate claimed.

I'm also minded to require TMK to pay simple interest on this amount at a rate of 8% per year. This is because even though it has now agreed to pay the full amount, it could have done so at the time the claim was made, in which case Mr H would have been in receipt of these funds and potentially able to earn interest on them. Paying interest in this way, and for this reason is in line with our service's general approach to such matters.

Photographs of the damaged areas

As part of his claim, Mr H submitted photographs of the damaged areas to TMK at their request. He's asked for the costs of this to be reimbursed. He says that TMK could have attended the scene and viewed the damage but chose not to, asking instead for photographs to substantiate the claim. He says that as it was TMK's decision not to attend, it should cover the costs he incurred in supplying the information it required.

I'm not minded to require TMK to cover these costs. It's a common principle of insurance contracts that it is a policyholder's duty to prove their claim, and meet reasonable costs in doing so. In addition, the terms and conditions of Mr H's policy say that when a claim is made, he needs to "*At your expense, provide us with a written claim containing as much information as possible of the loss, liability, destruction, damage, accident or injury including the amount of the claim.*"

I understand Mr H's position that as TMK asked for the photographs, and chose not to attend the property to view the damage, it should be liable for the costs he incurred in providing this information. I don't agree. It seems to me that asking Mr H to provide this information was a normal and reasonable request from TMK in order to confirm a valid claim had been made. In the circumstances, I think it was fair for it to rely on the policy condition which said that Mr H would have to pay any costs incurred in doing so.

Fuel costs and mileage

Mr H provided a number of receipts to TMK for fuel purchased in the period when the works were being carried out. TMK said the amount of fuel being purchased appeared

excessive when looking at the distances he had to travel. It said it thought that the additional mileage he'd have travelled in driving to the property and also purchasing items was 127 miles. It hasn't made any offer of fuel costs or a mileage rate for this. In communications with Mr H, it had said it hadn't been clear why Mr H needed to attend the property to carry out the works.

The reasoning for this no longer seems to me to be supported by TMK's position. If it now accepts it should pay Mr H's rate for the hours he's claimed, it seems it accepts he would need to attend the property to carry out the repair works. So the costs he incurred in attending the property should also be covered.

Mr H has asked for the mileage calculated by TMK, 127 miles, to be reimbursed at a rate of 45p per mile. This is a common rate, and in line with HMRC guidance for business mile rates. It takes into account not only fuel costs but insurance, depreciation, road tax and wear and tear on the vehicle.

I accept that TMK should cover Mr H's additional mileage to attend the property to carry out the repairs. I'm satisfied that it should pay 127 miles at a rate of 45p per mile. It should also add 8% simple interest per year from the dates of travel to the date of settlement, for the same reasons I explained previously.

Tarpaulin

Mr H purchased and installed a tarpaulin to temporarily protect the property and prevent further damage. He's claimed the cost of this but TMK declined to include the cost in its settlement offer. It said the tarpaulin could have been re-used on future works. Mr H says he prefers to purchase new tarpaulins rather than re-use them, as they could be damaged when used and it's not a good use of time to check them for damage before deciding whether to re-use or dispose of them.

I'm not persuaded that TMK needs to make any settlement for the tarpaulin. Mr H doesn't seem to suggest that he couldn't re-use the tarpaulin in question (or re-use one he'd purchased previously rather than purchase a new one), but chose to use it once and dispose of it as that's his standard practice. He hasn't said (or provided any evidence to show) that the tarpaulin he purchased was damaged and couldn't be re-used. TMK should only be liable for costs that Mr H would otherwise not have incurred, and he has a duty to mitigate his losses.

I think it's fair to say that the tarpaulin, in the absence of any evidence to the contrary, could have been re-used, and so its cost wouldn't be solely linked to the claim. In disposing of it rather than confirming whether it could be re-used, I don't think Mr H has mitigated his losses. TMK doesn't need to include the tarpaulin in its settlement.

Underlay, cable ties and dust sheets

Mr H claimed the costs of a roll of underlay, cable ties and dust sheets from TMK. No settlement offer was made for these items. TMK said that it didn't understand why these items had been purchased given the nature of the works and the items being claimed.

Mr H has explained to us that he'd purchased these items in order to prevent further damage to the property. He observes that TMK didn't attend the property to review the damage or the steps he was taking to effect repairs and prevent further damage.

I think Mr H raises a good point here. He was liable for the damage which had occurred

and has explained what he did, why and the reason these items were purchased, in order to prevent further damage, for which he'd potentially be liable. Such a liability would extend to TMK as his insurer and so I think by purchasing and using these items, he's acted in order to seek to mitigate his loss (and the potentially liability of TMK). I haven't been made aware of anything from TMK to suggest that Mr H took unnecessary precautions or that the items he's claimed for weren't used for the purpose outlined by Mr H.

I do want to note there's a difference here between these items and the photographs I've discussed previously. While I said that TMK's lack of attendance at the site wasn't a reason to ask it to pay the costs of the photographs, I do conclude here that the lack of attendance at the site is a reason to pay these items. The photographs were required by TMK in order to validate the claim. With these items, Mr H acted in what he considered to the most appropriate way to protect the property from further damage. These items were part of that.

If TMK wanted to dispute how he'd done so, or question why he'd purchased these items, then it could have arranged for the property to be visited and the steps taken by Mr H to be reviewed. It didn't do so, and if it accepts he acted reasonably in carrying out the works (which by accepting his hours and rate, it should be assumed it has done), then it should also be liable for the costs he incurred in protecting the property from further damage.

I conclude that TMK should make a settlement for these items. It should also pay simple interest at a rate of 8% per year from the dates of purchase to the date of settlement. I've previously outlined the reasons why this should be paid.

The responses to my provisional decision

On receipt of my provisional decision, Mr H queried an administrative point in relation to TMK's role as the insurer of the policy, but has made no comments on my provisional findings or recommendations for what should be included in the settlement.

TMK indicated it accepted the provisional findings and proposed that rather than calculate interest on every item, it pay the equivalent of 3½ years of interest, given the incident dates in October 2018 and anticipated settlement by April 2022.

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.

No further points have been made by either party about what I considered to be a fair settlement to Mr H, and which items should be included in the settlement. I've reviewed my findings on these points and don't see any reason for me to change any of them.

I also think that TMK's offer with regards to the addition of interest to be practical and reasonable. It seems to me that doing this will enable the settlement figure to be reached more quickly than working out how much interest should be paid on each individual item. It also won't be to Mr H's detriment as the interest is being back-dated to the date of the incidents, not the date that the costs were incurred which would have been later.

On reviewing all of the information available to me, I've noted that in my provisional decision, I omitted to address a claim Mr H had made for cleaning costs. He'd claimed £200 for this, having contracted cleaners to carry out the works and paid them in cash. TMK offered £100

as Mr H hadn't provided a receipt for these costs or any details in order to validate the amount claimed. Mr H said this was unfair, as he'd needed to source the cleaner at short notice and so paid cash. Our investigator had considered TMK's offer to be fair.

I agree that this was a fair offer by TMK. It was reasonable for it to expect that if Mr H contracted cleaners in the course of his professional duties, and incur costs which were known to likely form part of an insurance claim, he'd obtain a receipt for the services rendered. I think it was reasonable to offer half the amount claimed in the absence of any confirmation of the amount claimed having been paid. I'm not minded to ask TMK to include any further amount in the settlement.

My final decision

It's my final decision to uphold this complaint in part. In order to put things right, Tokio Marine Kiln Insurance Limited must:

- Cover Mr H's hourly rate at the number of hours he'd claimed for to carry out the remedial works.

- Cover 127 miles of additional travel at a rate of 45p per mile.

- Cover the purchase costs of underlay, cable ties and dust sheets purchased by Mr H to protect the property from further damage.

TMK must also pay 8% simple interest per year for a total of 3½ years on these amounts. Any settlement made will need to take into account the two £500 policy excesses which are applicable to the claims made by Mr H.

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

Ben Williams
Ombudsman