

The complaint

W complains about the way UK Insurance Limited (trading as Direct Line) has proposed to settle a claim it made on his commercial property insurance policy.

W is being represented in bringing this complaint by Mr S, on behalf of the director of W. But for ease I've only referred to W in this decision.

What happened

In February 2021, there was an escape of water at a property owned by W. It made a claim to UKI, which it accepted. But when assessing the claim, it found the property was underinsured.

UKI asked W to provide two quotes for the reinstatement works. It provided one from a company 'A', another from 'C'. Having received them, UKI thought the quotes (of around £120,000 each) had been overstated. It instructed its own surveyor ('S') who said it would cost around £54,000 to repair the damage caused. But due to the underinsurance issue, UKI said it would settle this proportionately. And it offered around £25,600.

W complained to UKI, it thought the settlement was too low. But UKI didn't agree to change its position so a complaint was brought to this service.

Our investigator didn't uphold the complaint. She was satisfied the offer made by UKI was fair. W didn't accept that. It said it wasn't looking for the £120,000 to be paid, but the complaint was about the difference between W's quotes and the one provided by UKI. W felt the work couldn't be carried out by UKI for the amount it quoted.

As W didn't agree, it asked for an ombudsman to consider the case.

I've already set out some of my findings to both W and UKI. I said looking at the schedule of works provided by W, and the one from UKI. I could only see one key difference. In some of the rooms, C has quoted for not only removing the flooring, but also the underlay and replacing the sub-flooring. This was based on UKI's loss adjuster report, which allowed for this work.

But there is no mention of the cost of removing underlay and subflooring in UKI's costings from S. So I asked UKI for more detail on this.

UKI has said this is because its surveyor, when assessing the damage, didn't think this extra work was necessary. UKI has said it places more weight on the surveyor's opinion than that of the loss adjuster – as it is the surveyor's area of expertise. I said it would have been helpful if UKI had explained this to W, as I can't see that it's ever given any reason for why the costings of the two parties differ so much. But having considered UKI's comments, I told W I was minded to say it's reasonable that the surveyor would be able to give a more accurate account of the damage, so I think the position reached by UKI on the flooring is a fair and reasonable one.

W's response was that it never asked for the full £120,000 settlement. And W was told by UKI's loss adjuster not to carry out any work to the property, including drying it. It said this had made the damage worse. It also said it had never received the policy documents from UKI which set out its ability to reduce the claim in the event of underinsurance.

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.

Was the property underinsured?

In order to assess whether the offer is fair, I first need to consider whether I'm satisfied the property was underinsured.

At the time of the escape of water, the sum insured on the policy was around £159,000. But when UKI attended the property shortly after the leak, it thought it had been underinsured. It said correct sum insured should be over £415,000. W seems to accept there is an issue with underinsurance but has said UKI didn't carry out a duty of care to ensure it was properly insured.

The relevant law here is the Insurance Act 2015, which places responsibility on W to make a fair presentation of the risk. And having considered everything, I'm satisfied there was a qualifying breach of the Insurance Act, as W didn't make a fair presentation of the risk. And UKI has shown it would have offered the policy at a higher premium had W given an accurate sum insured amount.

So because UKI has shown it would have charged a higher premium, it is allowed to proportionately reduce the amount to be paid on the claim. UKI has shown it would have charged W more than double of the premium it paid for the policy. So in this case it's proposed to pay 46% of the claim. In relation to the 46%, I'm satisfied UKI has acted fairly in reducing the claim settlement by this amount, due to the underinsurance.

Has UKI shown the works can be carried out for the figure it's quoted?

W has argued that the offer from is too low, as the quotes it received said it would cost in the region of £120,000 to repair the damage caused. So a proportionate settlement would be around £55,000. Whereas UKI's offer (taking into account the proportionate settlement) is around £25,600. So I've next considered if the total claim amount calculated by UKI has been done so fairly and reasonably.

When UKI attended the property in March 2021, its loss adjuster provided a scope of works of the repairs needed for the property. Due to the underinsurance issue, it asked W to provide two quotes.

As far as I'm aware, these quotes were provided on the basis of the loss adjuster report, rather than the contractors attending the property and assessing the damage. The first quote from A, is a one page quote that says '*strip out and re fit as per loss adjuster's specification*' and lists a price of just over £126,000 exclusive of VAT.

The other quote obtained by W, provided by C, does include much more detail on the repairs and costs. This came to £119,000 exclusive of VAT. But when UKI received these quotes, it thought they were too high and so instructed a surveyor to provide its own costings. The company used by UKI, who I'll refer to as 'S', provided a quote for around £54,500, inclusive of VAT.

As there is little detail of the costs involved in A's quote, I haven't placed much weight on this. So I've compared the quotes from C and S to determine whether UKI has made a fair offer to settle the claim. Having done so, I consider the schedules to be largely similar, UKI's seems to include a few more areas of damage not noted on C's schedule such as the rear entrance hall and reception, but they broadly agree on the main areas of damage in the building and the repair works needed.

As set out above, the only difference I can note is in relation to the flooring. Having considered this again, with W's comments, my findings on this are the same in that I'm more persuaded by UKI's surveyor, S', comments that a repair to those areas was not necessary. And I find it likely that this is one of the reasons why S' quote for the repair was lower than those provided by W.

Aside from that, it's difficult to see why there is such a difference in what the parties think the work can be done for. UKI's estimate includes more detail as to what work needs doing, and it has been done by a party who visited the property, so I find this more persuasive than the quotes provided by W. Having reviewed the work needed in each room, it seems to me this is mostly plastering and redecoration needed, as well as fitting new flooring in various areas. So whilst I accept this is a large building with lots of rooms, an estimate of around £120,000 for this work does seem too high to me.

W has said it never asked for the full £120,000 to be paid. I accept it hasn't, but in order for me to say UKI should pay more, I'd have to be satisfied its quote is too low. And from everything I've seen, I'm not persuaded that's the case.

Having reviewed UKI's quote from S, it has accounted for VAT and it has also confirmed its costings are based on the market rate (i.e. what it would cost W to have the works done) as opposed to any discounted rate UKI might be able to benefit from. So on balance, I'm persuaded UKI has made a fair and reasonable offer to settle the claim, and so it doesn't need to increase the amount offered.

W has said it was told by UKI not to carry out any work to dry the property, which has made the damage worse. I haven't seen any record of that. But even if I were to accept that was the case, I don't think it's been shown that UKI's offer is too low. I haven't been provided with any evidence from W – other than what it has said – about the damage now being worse. And UKI's surveyor attended the property and reviewed the damage in order to come up with its costs for repair. I also find that UKI told W from early on that there would be an issue with a settlement amount, given the underinsurance issue. And W does have a duty to mitigate its loss and not let the damage get worse. So overall I don't think UKI's actions mean it needs to increase the settlement amount in the circumstances of this case.

My final decision

My final decision is that I'm not going to ask UK Insurance Limited (trading as Direct Line) to do anything differently.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 28 June 2022.

Michelle Henderson
Ombudsman