

The complaint

Mrs H complains U K Insurance Limited handled her residential buildings insurance claim poorly.

Mrs H's been represented by a loss assessor (LA) for her claim. For ease, in places I have referred to its actions as being her own.

UKI's had various agents involved in the claim – including a claim managing agent, a surveyor and a construction contractor. Again for simplicity, in places I've referred to the actions of those agents as being UKI's.

What happened

In March 2020 there was a fire at Mrs H's property. There was extensive damage. She claimed for the ground floor commercial unit against a policy held with 'Insurer B' - Mrs H operated her business from the premises. She claimed for the upper floor residential part of the building against her UKI policy.

Reinstalment works began with UKI's appointed agents leading (with the agreement of Insurer B) on the full building. Around late summer 2020 Mrs H became concerned with how the claims and works were progressing. She appointed the LA to represent her. Around the end of 2020 she stopped contractors undertaking any further work – citing concerns about quality. In early 2021 she made a couple of complaints to UKI and commissioned her own survey. This highlighted a range of serious concerns with the reinstatement work.

Little more happened on the site by the time of UKI's complaint response in September 2021. Within UKI's response it said Mrs H had delayed progress by restricting access to the site. It said the criticised work was satisfactory or only intended to be temporary. It said work would have been completed if Mrs H's LA hadn't barred the contractors from site.

Mrs H wasn't satisfied, so in May 2021 she came to this service. In February 2022 UKI issued a further complaint response. It said it had intended to address most of the issues raised by Mrs H's report but she - by not allowing it to continue work - had stopped it from doing so. UKI added that it had initially been considered appropriate to repair the roof, but as works progressed more damage came to light. It accepted it now appeared likely the full roof would need to be replaced.

In April 2022 Mrs H sent the results of a tender process - based on a schedule of works (SoW) drawn up by her own surveyor - to UKI. It considered the bids but is concerned about the adequacy of the tender process and costs submitted. It recently said it intends to cash settle the claim. Insurer B, having shared the concerns, has already cash settled the commercial element of the claim at the policy sum insured limit.

Mrs H's still unhappy with the lack of progress of the claim. She provided a detailed outline of the impact of UKI's handling of the claim on her. These include a negative impact on her business due to it having to use unsuitable alternative premises for longer than necessary; legal costs and distress of her involvement in a court case with the construction contractors;

and the bill for LA. Mrs H wants her losses covered and for reinstatement work to be completed.

In June 2022 our investigator considered the complaint. She felt UKI's general handling of the claim and poor quality of works had resulted in avoidable delay. She recommended it pay Mrs H £1,000 compensation to recognise the impact of the distress and inconvenience this had caused her.

Neither Mrs H nor UKI accepted the assessment. She felt the compensation didn't align with her experience. She wants UKI to cover losses, including those set out above. So the complaint was passed to me to decide.

In January 2023 I issued a provisional decision. My reasoning forms part of this final decision, so I've copied it in below. In it I explained why I intended to require UKI to reimburse Mrs H 50% of the cost of her surveyor and engineer fees. I also said why I planned to ask it to pay her £4,000.

I also invited UKI and Mrs H to provide anything they would like me to consider before issuing a final decision. Mrs H didn't respond. UKI objected to my proposed redress. It provided several questions and statements. I've addressed those, that I feel it necessary to, below.

what I've provisionally 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.

There is a significant amount of information and detail involved with this complaint. As this is an informal service I'm not going to address or respond here to everything. Instead I've focused on the key issues. But I would like to reassure both that I have considered everything provided for the complaint by Mrs H and UKI.

In the first five or so months the claim seems to have been progressed by UKI and its contractors reasonably – particularly when the impact of the pandemic is considered. A SoW was produced with reinstatement works beginning in reasonable time. Unfortunately it seems the SoW was ineffective.

It seems clear the poor planning and workmanship of the contractors has delayed the final reinstatement of the building. More recent reports, commissioned by both Mrs H and UKI, persuade me a significant portion of the initial repairs were poorly planned and/or executed.

UKI's made the case that much of the work complained about, including roof reinstatement, was only intended to be temporary. That isn't supported by any records I've seen. There's no reference to that work being temporary until UKI responded to Mrs H's concerns about the use of inadequate materials. A UKI file note, from September 2020 (a few months before Mrs H barred access to the site), states the roof will be completed in four weeks. That doesn't indicate the repairs being temporary.

It seems to be accepted, by both UKI and Mrs H, that the building now requires a full roof replacement. And it seems from that UKI's own October 2001 survey that this should have been recognised from the outset. I'm not going to get into the details here, but I'm also persuaded by the various reports provided by Mrs H that there were other issues with the planning and quality of the work.

So I'm currently satisfied the poor workmanship involved in this claim has resulted in the repairs taking considerably longer than they should. Mrs H feels it will be a further 18 months until it's back in use. This will inevitably mean the building, both residential and commercial facilities, being out of use for longer than necessary.

So her business will need to use the current, less suitable, alternative premises for months longer than should have been necessary. This premises seems likely to involve additional expense for the business – through additional rent or mortgage payments. And Mrs H says it also results in a reduced income. The residential part of the property will be unavailable to Mrs H and her family for longer than should have been the case.

I can see the matter has already involved inconvenience for Mrs H – through the need to instruct various professionals to demonstrate the problems with the repairs. It's clearly caused her distress in both her personal and professional life.

So I intend to require UKI to take steps to put things right. The difficulty I have here is apportioning it fair responsibility for mistakes and their impact. It's also a challenge to understand the likely impact on Mrs H's business.

There's a variety of factors at play. I've outlined some here. UKI shares liability for the repairs with Insurer B – the commercial buildings insurer. The same surveyor and construction firm was used by for both the residential and commercial parts of the claim. To add to the complexity there's a dispute between Mrs H and Insurer B about which of them instructed the construction firm for the commercial element. Either way UKI's only responsible for a proportion of the poor workmanship, and in turn, the impact of it on Mrs H.

UKI appears to now accept mistakes were made with the repairs. But it feels Mrs H's LA exacerbated matters by restricting access to the site - not allowing its agents to assess the work and respond to the Mrs H concerns. Having considered this I think it's reasonable for UKI to say the LA was, as a result, responsible for some of the lack of progress in the claim.

Furthermore I can't fairly say UKI's responsible for the claim's lack of progress in the last nine months or so. Things stalled as result of its reasonable concerns (shared by Insurer B) about a recent tender process undertaken by the LA.

As an added factor, Insurer B settled Mrs H's claim with a significant cash payment - at her policy's limit. UKI's indicated it also intends to cash settle Mrs H's claim. In principle that seems a reasonable way to settle this entrenched dispute. With Insurer B's payment, it should hopefully allow Mrs H to use her own contractors to reinstate the property. But at this point I don't know how much she would receive in total. This means it's not clear if those total payments will be in excess of that required for reinstatement – and so allow a surplus to cover typical business interruption costs or to provide an element of compensation.

Mrs H provided a list of losses and the impact on her she's feels UKI's responsible for. I've considered them all. I'm not going to address each in detail here. Instead I'll focus on the key ones.

First of all, it wouldn't be fair to require UKI to pay for contents lost in the fire, as her policy doesn't cover contents. Neither am I going to require UKI to reimburse her flat mortgage payments for the last few years. It seems likely she would have been

required to pay these without any mistakes by the insurer. As far as I'm aware there isn't any loss of residential rent. It seems a family member used the residential part at times, but I haven't been told that rent was paid. And that family member, as a gesture of goodwill it seems, has had alternative accommodation funded by UKI.

I don't intend to require UKI to contribute towards Mrs H's legal costs for her dispute with the contractors. I'm not currently persuaded it's responsible for her involvement in that dispute.

Mrs H's commissioned various surveys and reports. I'm satisfied these have highlighted reasonable concerns with the standard of repairs. So it's fair for UKI to contribute towards these costs. I invite her to provide detail and evidence of her expenditure on buildings professional fees. I'll then require UKI to reimburse her 50% of those costs (a proportion based roughly on the split of responsibility between residential and commercial elements of the repairs). As she's been without the use of those funds UKI will need to add simple interest at 8% - from the date of payment to date of reimbursement.

However, I don't intend to require UKI to make any contribution towards the cost of Mrs H's LA. I'm not persuaded its involvement was necessary. I think it's likely she could have instructed engineers or surveyors to highlight issues with the work without its support.

As I set out above, it's difficult to say how much of the unnecessary delay, loss and distress is the responsibility of UKI. But it's fair to say it is responsible for a reasonable amount of it. So in the absence of anything exact, I feel £4,000 (in addition to the professional fees contribution) would be a fair amount for UKI to pay her to recognise the impact of its mistakes.

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.

UKI says Mrs H didn't previously raise the engineer and surveyor fees with it – and if she had it could have reimbursed her interest being applied. It says it's never been provided with invoices and feels the fees were paid by her LA.

It may be correct that Mrs H has never specifically requested to UKI that she be reimbursed for these individual items – although she's certainly raised the LA charges. But UKI was aware of the reports. It knew they highlighted genuine issues with the planning and quality of its contractor's work. It could have, with this knowledge and this service's position, proactively offered to contribute toward the costs.

It may also be correct that the LA paid for the reports, I'm not certain either way. But it seems likely Mrs H will be required to pay the LA's overall charge – with the report fees within that. I'm not requiring UKI to pay the full LA fees, so there's no issue of double payment. So if Mrs H can provide evidence of payment of the surveyor and engineer fees (either directly or via the LA) then UKI will need to reimburse her the cost – plus simple interest from the date she paid the fees to the date of settlement.

UKI's final point on the fees is in relation to concerns, referred to above, about the tender process. As far as I'm aware those concerns are limited to that process, not the professional reports that highlighted issues with the quality of UKI's contractor's work.

UKI objected to my intention to require it to pay £4,000 to recognise an element of financial loss and compensation or distress and inconvenience. Its response focused on the 'financial loss' element of the intended award. In summary it said it wasn't aware of, or provided any evidence of, any domestic insurance policy related financial losses. It said any financial loss is related to the Insurer B – the commercial insurer. Lastly it asks for explanation as to how I arrived at my award figure.

I explained in my provisional decision the difficulty in coming to specific figure for financial loss, particularly in determining exact responsibility. I'll try not to repeat that in detail here. I haven't requested documentary evidence of loss - beyond a statement and breakdown Mrs H provided for this service and UKI.

However, I'm persuaded Mrs H's business is, and will continue to be, operating from alternative, smaller and less suitable premises for significantly longer than was necessary. I think it's likely, without having to see detailed evidence, this will result in some additional costs (including rent) and/or loss of income (including reduced income). And as I explained in my provisional decision, I'm satisfied UKI (through the failures of its contractors) is responsible for a significant amount of the unnecessary extended occupation of the alternative premises.

For clarity I'm not saying UKI should pay this element of financial loss under the cover provided by Mrs H's domestic policy – but because its poor handling of the domestic claim has contributed to the likely loss experienced by Mrs H's business. As an example, it's at least partly responsible for the contractor that mishandled the roof repair/rebuild – and that mishandling means Mrs H's business will be in its alternative premises for longer than necessary.

UKI says business interruption cover, provided by Insurer B, should cover financial loss. However, as has been explained to it previously, that provided only 24 months' benefit – up to early 2022. As is clear, Mrs H's business is continuing to occupy the alternative premises well beyond that date. Again something that I feel UKI's at least partly responsible for. So it should contribute towards the related financial loss.

I'd like to make it clear the award also includes compensation for distress and inconvenience. UKI's previously been provided with Mrs H's account of the impact of what's happened with this claim on her. So I'm not going to cover that in detail here.

A certain amount is to be expected with a claim of this nature – but UKI (again through the mistakes of its contractors) is responsible, for a portion at least, of the additional and prolonged distress and inconvenience. That includes distress caused by concern at the poor-quality construction work, the impact on her financial situation and her personal life. There's been significant inconvenience caused by the contractor's mistakes – for example having to instruct professionals to highlight the problems, continued lack of availability of the residential property for childcare and so on.

So I'm satisfied UKI's responsible for an element of financial loss and unnecessary distress and inconvenience. I need to come up with an amount to recognise that. For the reasons already given that's a difficult thing to do. With all the factors involved it wouldn't be a proportionate task.

I'd firstly perform a line-by-line breakdown of exact losses, distress, inconvenience. I'd then need to compare that to all payments made by the two insurers (including one proposed but unknown cash settlement). I'd further need to factor in any financial implications of the legal dispute with the contractor. Finally I would have to apportion reasonability, mistake by mistake, to each of those parties potentially responsible. So in line with the informal nature of

this service I instead proposed a figure that seems broadly fair and reasonable to me. I still feel £4,000 would be a fair amount – so that's what I require UKI pay Mrs H.

My final decision

For the reasons given above, I require U K Insurance Limited to:

- (on receipt of evidence payment) reimburse Mrs H 50% of the cost of her surveyor and engineer fees (adding simple interest at 8% from the date of payment to date of settlement) and
- pay her £4,000 to cover financial loss and compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 6 March 2023.

Daniel Martin
Ombudsman