

## **The complaint**

Mr and Mrs K complain about how U K Insurance Limited ("UKI") settled their claim on their landlord's insurance policy.

## **What happened**

Mr and Mrs K owned a property that they rented out to tenants. They had landlord's insurance with UKI. In November 2020 there was a fire at the property after a firework hit the roof. Mr and Mrs K made a claim on their policy.

UKI sent a loss adjuster to assess the damage and subsequently accepted the claim. At this point, the loss adjuster said that the sum insured was adequate.

Due to the extent of the damage it was decided that the property would need to be demolished and rebuilt. UKI arranged for this to be carried out. Once the property was demolished UKI went out to tender for the work to rebuild the property. However on doing so found that the cost would far exceed the sum insured on the policy. The sum insured was around £180,000 whereas the tenders were around £270,000.

Due to this, UKI said it would cash settle up to the sum insured as that is all it was obliged to pay under the policy. It indexed linked the sum insured to increase it in line with inflation and deducted the costs that it had already incurred. After this the amount offered was around £160,000 which Mr and Mrs K accepted.

However shortly after this, Mr and Mrs K contacted this service to complain. They said they'd felt pressured into accepting the offer and didn't think UKI had settled their claim fairly. They said UKI had initially said the sum insured was adequate and had committed to reinstating the property. But had reversed this decision after the property was demolished.

Our investigator contacted UKI to raise a complaint. It responded and maintained its position. It said it was only obliged to pay up to the sum insured and it had paid more than this in settlement of the claim. It said when Mr and Mrs K had set the sum insured they hadn't accounted for the fact that the property was of unusual construction – made of a combination of a steel frame and cladding. And as that construction no longer meets building regulations it would need to be re-built as a brick construction which would be more expensive. So it said to pay for the full amount would be betterment which isn't covered under the policy. It also didn't agree it had pressured Mr and Mrs K into accepting the cash settlement.

Unhappy with this response, Mr and Mrs K asked this service to investigate.

Our investigator considered all the issues and recommended the complaint be upheld. She said as Mr K gave a fair presentation of the sum insured when he took out and renewed the policy it wasn't fair for UKI to say he was underinsured just because costs had increased while the claim was being dealt with. And UKI had confirmed that it was aware the property was of a non-standard construction when it accepted the claim, so this also wasn't a fair reason to decrease the settlement later. And she thought that as UKI had already agreed to

demolishing the property it had entered into a repair contract to complete the work on a reinstatement basis and it wasn't fair for it to pull out of this once costs are confirmed.

Mr and Mrs K accepted our investigator's outcome. However UKI didn't. It said that the work had been project managed by a third party who had instructed the demolishing of the property, and this had just been paid for by UKI. So it didn't agree that it had entered into a repair contract. It asked for the complaint to be reviewed by an ombudsman.

In February 2023 I issued a provisional decision which stated as follows:

*'UKI has said the reason it won't pay the full amount for the reinstatement is because the sum insured set for the policy was insufficient. I've therefore started by considering whether Mr and Mrs K provided a reasonable estimate when they set the sum insured at inception and renewal of the policy.'*

*Was the sum insured reasonable at the time?*

*When a commercial customer takes out an insurance policy, it is their responsibility to ensure they provide a fair presentation of the risk they are insuring, as laid out in the Insurance Act 2015. This includes providing a reasonable estimate for how much the property would cost to be rebuilt. This is then set as the 'sum insured' which is the total amount an insurer will pay in the event of a total loss claim.*

*Here, Mr and Mrs K used a specialist calculating tool that is suggested by UKI when insurance is applied for. And they used this each year at renewal to check the cover remained sufficient. As this is the measure that UKI suggest is used to calculate the cost, I think Mr K took reasonable steps to ensure he provided an estimate that was within a reasonable range.*

*UKI has said that this wouldn't provide an accurate rebuild cost due to the fact that the property wasn't of brick construction. However I don't think it's fair that UKI penalises Mr and Mrs K for this. As they've followed the instructions provided by UKI on how to accurately estimate this and UKI have provided no viable alternative for how they should have estimated the cost. And this is reflected in the internal emails UKI has provided in which it is reiterated by claims handlers that Mr and Mrs K couldn't have done more to ensure an accurate reflection of the sum insured.*

*Further, when UKI's loss adjuster attended the property when the claim was made he was aware of the non-standard construction and agreed that the sum insured was adequate.*

*Loss adjusters are experts in building construction and if they thought it adequate I don't think it would be fair to say that Mr and Mrs K provided an unreasonable estimate of the rebuild cost.*

*For these reasons, I'm persuaded that the sum insured for the property was likely a reasonable estimate at the time the claim was made.*

*I've therefore gone on to consider why the tenders exceeded the sum insured in order to determine if UKI has treated Mr and Mrs K fairly and reasonably.*

*Why were the tenders higher than the sum insured?*

*I can see that when the repair work was put for tender in 2022, the cost to rebuild the property were significantly higher than that. However this was nearly two years after the claim was first made. And UKI's experts have said in the case notes it's provided that*

*building costs have increased significantly in the two years the claim spanned for a number of reasons including Brexit and the covid pandemic. So from all the evidence, it seems that while the sum insured was sufficient when the claim was first made in 2020, price increases during the claim meant that it was no longer sufficient when tenders were sought.*

*Has UKI acted fairly and reasonably?*

*While the price increases are an unfortunate consequence of the timing of the claim, I can't see that Mr and Mrs K could have done anything differently in order to ensure they had adequate cover for their property. UKI agree that the estimate they provided at renewal was reasonable and it is through no fault of theirs that prices have increased during the claim. As Mr and Mrs K have done all they could to ensure the property was sufficiently insured, I don't think it fair or reasonable that UKI penalise them for cost increases that were out of their control.*

*Further, UKI initially accepted the claim and it confirmed the sum insured was sufficient. I think this would have given Mr and Mrs K the impression that it would cover the full cost of the claim. However it was only when it was part way through the work that it said the sum insured was insufficient and the full claim cost wouldn't be covered. I don't think it is fair or reasonable for UKI to withdraw cover when it has already started to settle the claim, especially given the reinstatement included demolishing the property.*

*UKI have provided a lot of detail about why it doesn't consider that it entered into a repair contract by paying for the demolition, but regardless of whether it did or didn't enter into a repair contract, I have to consider what's fair and reasonable.*

*Essentially UKI accepted Mr and Mrs K's claim, confirmed the sum insured was enough and proceeded to fund the demolition of the building. It wasn't until the property had been demolished that it said it wouldn't be able to fund the full extent of the rebuild. Regardless of whether it technically entered into a contract or not, I don't consider these actions to be fair or reasonable. UKI gave Mr and Mrs K the impression that it would cover the claim. And from everything I've seen, I am persuaded that at that stage it intended to cover the full cost of reinstatement. And it wasn't until it found out the cost of reinstatement that it said it would not cover it all. To renege on this once the property has been demolished isn't a fair or reasonable way for UKI to treat its customer. Especially as they could have done nothing more to ensure their property was sufficiently insured.*

*For these reasons I agree with our investigator that UKI should take over the claim and continue the repairs up to the full cost of reinstatement, in line with the remaining policy terms and conditions but without applying the limit for the sum insured.*

### *Compensation*

*I have also considered the impact the matter has had on Mr and Mrs K. I was really sorry to read about the difficult time they've been through during this claim. A fire claim will always be distressing, particularly one where the property is a total loss and needs to be rebuilt. And I can't ask UKI to compensate them for the impact of the claim itself, only for any additional distress and inconvenience that has been caused due to UKI's own actions.*

*However, by unfairly declining to pay the full amount of the claim UKI has caused Mr and Mrs K significant additional distress. As it has left them with a property that has been demolished, unexpectedly without the funds to be able to rebuild it. And due to this decision Mr and Mrs K have been unable to make progress on the situation since.*

*Further, while the property isn't their main residence currently Mr and Mrs K had previously*

*lived there for many years and had only moved out because Mr K was stationed elsewhere in the country for work. So it would likely have been more distressing because it was a property they intended to live in again.*

*Mr and Mrs K have also explained that during this time they were going through IVF and Mr K was in a serious road traffic accident. So I can see why the poor handling of the claim would have had a more significant impact on them during this time.*

*If UKI had handled this claim fairly it would have agreed to complete the reinstatement work when the tenders were received in early 2022. And this would mean the work would be well underway if not already complete. Instead Mr and Mrs K have been delayed in the process which has prolonged the distress felt in a claim that is already very distressing.*

*Mr and Mrs K have also said they felt they were put under pressure to accept the offer of settlement when it was made. And I can understand why they felt this way. They were told it was the final settlement offer, and for those unfamiliar with insurance claims this may feel like the only option.*

*For these reasons I intend to require UKI to pay Mr and Mrs K £1,000 compensation to make up for the unnecessary distress and inconvenience it caused by the poor handling of the claim.*

*Putting things right*

*For the reasons I've set out, I intend to require the complaint to be resolved as follows:*

- UKI should take on the reinstatement work for the property, covering the full cost of the work in line with the policy terms and conditions but without applying the limit for the sum insured. This should include any unexpected claim related costs that arise as the reinstatement work progresses.*
- Mr and Mrs K have already been paid a cash settlement, this should either be returned to UKI or paid directly to the contractor towards the outstanding work.*
- UKI should pay Mr and Mrs K £1,000 compensation to make up for the additional distress and inconvenience it's caused.'*

## **Response to my provisional decision**

Mr and Mrs K accepted my provisional findings. However UKI didn't, it responded raising a number of objections, including:

- It said I had considered the complaint based on matters that were different to those represented by Mr and Mrs K in their original complaint submission.
- The calculator Mr and Mrs K used wasn't suitable for properties not built from brick or stone and this was made clear in the sales journey.
- The calculator directs users to appoint a chartered surveyor to quote a rebuild cost where the calculator isn't suitable, so this is what Mr and Mrs K should have done when estimating the sum insured.
- I stated that the loss adjuster had confirmed the sum insured was adequate after their first visit, however the loss adjuster has confirmed this wasn't the case and the first report from the visit states the sum insured is 'under consideration' which is at odds with what I've said.
- I insinuated that the fact UKI paid for the demolition of the property implied it would also pay to reinstate it, which wasn't the case.

- I said that I thought UKI intended to reinstate the property, however it pointed out that the reinstatement is subject to the terms and conditions of the policy, including the limit for the sum insured.
- Should I still decide that UKI should cover the cost of the works, Mr and Mrs K should return the settlement already paid and UKI will pay costs for reinstating the property based on the originally agreed scope of works as invoices are presented.

### **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 has said that my review of this complaint has been on the basis of different matters than those presented by Mr And Mrs K when they first brought their complaint to this service.

When Mr and Mrs K informed UKI that they had brought their complaint to us, they said they wanted to check they had been treated fairly by their insurer as they felt the decision to not cover the full cost of reinstatement wasn't a fair one. In order to determine if UKI acted fairly, in my review I considered how the sum insured was originally estimated and why the tenders were higher than the amount initially predicted. I then determined whether UKI had acted fairly based on this.

As my reasoning was different to that of our investigator, I issued a provisional decision in order to give UKI the chance to comment on any new points or arguments. But as Mr and Mrs K's complaint was that they hadn't been treated fairly, and this is what I've considered in my review, I don't agree I've considered different matters to those presented when they brought their complaint to us.

UKI has also said that its loss adjuster didn't confirm that the sum insured was adequate and it's pointed to the initial report provided and further comments from the loss adjuster since my decision.

While the initial report from the loss adjuster referred to the sum insured being under consideration, there were a number of references to the sum insured being considered adequate in both external and internal emails that UKI has provided to this service.

For example, in UKI's letter to Mr and Mrs K in response to their complaint it stated:

*'...adjusters first visited your premises the value at risk of your sum insured was considered to be marginally adequate bearing in mind that this was a non standard construction property...'*

This shows that the loss adjuster described the sum insured as 'marginally adequate' rather than considering it inadequate and that it had been considered before the tenders and UKI and assessed it as enough to proceed, rather than to raise an issue of underinsurance.

Further, there are a number of references to the sum insured being sufficient at the time the claim was made in the emails and case notes that UKI provided as part of this complaint. I have included extracts from two of these emails provided by UKI, as examples of these references:

- *'...they [Mr and Mrs K] appear to have done all they can to ensure a correct sum insured but with price increases materials etc they find themselves underinsured'*

- *‘...under normal circumstances, the sum insured should have been enough to cover the rebuild even using standard materials...It was only when the tenders have come in that it was discovered that the costs were much higher than expected.’*

Additionally, Mr and Mrs K have maintained throughout their complaint both to us and to UKI that the loss adjuster had said to them that the sum insured was adequate from his first visit.

So considering this account, alongside the evidence provided in UKI's file, this is why I concluded in my provisional decision that UKI considered the sum insured adequate when the claim was first made. And UKI haven't provided anything new that persuades me otherwise.

UKI has also said that the calculator used by Mr and Mrs K when they took out the policy specifically states that it is only suitable for properties constructed of brick or stone, which Mr and Mrs K's property wasn't. It says that the website where the policy was sold directs customers to instruct a chartered surveyor to get an estimate where the calculator isn't suitable.

I've considered this but it doesn't change my position. While UKI has said the calculator is inaccurate, I've shown above that its loss adjuster considered the sum insured to be adequate. And when asked about the initial sum insured, UKI's loss adjuster stated as follows:

*'The 2nd attachment was provided by the project consultant appointed by the Insured to oversee the project. This is also taken from [online calculator's] calculations from August 2021. An extract of an email from the project consultant dated 5th August 2021 (pre tenders) as follows. Please note this excludes any allowance for demolition and fee's.*

*"We believe costs will be in the order of £140-150k per house based on the floor area and the new-build mean rate for Motherwell as obtained from [online calculator] (as attached). 100m2 @ £1,484.00/m2 = £148,400.00"*

This indicates that before tenders were sought, even the project manager of the rebuild considered a reasonable sum insured to be within the range of what was stated on the policy, even when considering the additional cost of the demolition. Which suggests that the estimate given by Mr and Mrs K in regards to the sum insured was a reasonable one at the time.

Further, the sum insured is the amount it will cost to re-build the property. And while Mr and Mrs K's property wasn't built of brick or stone, the construction no longer meets building regulations. This means when it is rebuilt it would need to be constructed differently, likely from brick. I therefore don't consider this to have had a big impact on the reliability of the estimate, as the rebuild of the property would likely be the same as a property built from brick.

So while I note the advice that the calculator shouldn't be used for non-standard constructions, as the sum insured it produced was considered a reasonable estimate, I don't find UKI's point about the calculator's suitability to be a persuasive one, when considering if it acted fairly. As regardless of its suitability, the estimate it provided for Mr and Mrs K's property was considered reasonable at the time of the claim.

And it is for the reasons I have stated above, that I consider it most likely that UKI's position on the claim changed at the point tenders were received.

Due to this, it gave no indication to Mr and Mrs K that it may not cover the entire cost of the rebuild of the property. And this led to further distress when this position was made clear once the property had already been demolished.

So having considered UKI's response to my provisional decision, I see no reason to depart from my initial findings.

I note UKI's comments that Mr and Mrs K should return the settlement already paid back to it and it will then make payments on receipt of invoices for the reinstatement work. I agree that UKI should not pay any more than the total cost of the reinstatement work, including the amount already paid. It will be for UKI and Mr and Mrs K to agree the most suitable way of ensuring this.

Finally UKI has said that reinstatement should be based on the original scope of works. As I've said UKI should pay the full cost of reinstatement in line with the policy terms. This would not include anything that falls outside of policy scope, however should reasonably include any unexpected claim related costs that weren't apparent until work begun.

### **My final decision**

For the reasons I've given, I uphold Mr and Mrs K's complaint. I direct U K Insurance Limited to:

- take on the reinstatement work for the property, covering the full cost of the work in line with the policy terms and conditions but without applying the limit for the sum insured. This should include any unexpected claim related costs that arise as the reinstatement work progresses.
- UKI should only pay the full amount of the reinstatement, less the amount paid to Mr and Mrs K already. The cash settlement already paid to Mr and Mrs K for the reinstatement works should either be returned to UKI or paid directly to the contractor towards the outstanding work.
- pay Mr and Mrs K £1,000 compensation to make up for the additional distress and inconvenience it's caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 10 April 2023.

Sophie Goodyear  
**Ombudsman**