

The complaint

Mr H and Mr J, directors of M, complain about the poor service and delays M received from Arch Insurance (UK) Limited (Arch) in respect of a claim for damage to its property. I have just referred to Mr H throughout.

What happened

I set out the background to the complaint within my provisional decision and also here.

‘Mr H said that on 25 July 2021 the area around M’s property suffered severe rainfall and flooding and M’s development of two large houses was affected. One property was flooded at basement level and needed a new floor, kitchen and pantry and redecoration. Mr H said he contacted M’s broker immediately and sent photo and video evidence in August 2021.

Arch instructed loss adjusters to manage the claim on its behalf, but Mr H said they took a month to make contact despite emails and calls. He said the loss adjusters inspected the site on 6 September 2021. Mr H said he sent estimates and material quotes to the loss adjusters on 21 September 2021, but then he and M’s broker had to constantly chase them.

Mr H said Arch requested evidence of the damage in mid-November that he had previously sent. He said development loan interest of about £9,000 per month meant they couldn’t wait for Arch and started the work themselves. Arch agreed to pay £42,000 when the work was completed and made a part payment of £16,734.96 on 31 January 2022, with a second payment of £24,908 on 21 February 2022. Mr H said payment for the final work was delayed and said the loan interest up to 14 February 2022 was £55,000 and complained to Arch.

Arch said it received the claim on 4 August 2021 and its loss adjusters tried to contact M on 9 August and left a message with further attempts on 17, 24 and 25 August 2021. It said contact was made on 2 September and a visit agreed for 6 September at M’s request. Arch said M’s quotes were sent on 21 September, but partial settlement wasn’t agreed until mid-December despite several chasers from M and its broker. Arch noted the loss of the sale of the property and costs incurred by M, but said these weren’t covered by the policy.

Mr H said Arch knew the claim had been dealt with extremely poorly and was considering paying for the interest, but in its final response in March 2022 Arch rejected this and offered £500 for delays between 6 September and 14 December 2021. Arch said it would ensure the claim progressed quickly from then on and final invoices were awaited to conclude the claim. Mr H was dissatisfied with this response and said they were unable to market the property until the work was completed in mid-February 2022. He said as well as loan interest an incredible amount of time and effort on the claim for a property had been needed and it should have sold in 2021. He wanted Arch to pay reasonable interest for its delays.

The claim has been fully settled, but since the parties disagreed about the issues, M’s complaint was referred to our service. Our investigator didn’t recommend the complaint be upheld. She said the claim took several months to resolve, without avoidable or excessive delays by Arch and the compensation it had offered was fair.

Mr H disagreed, saying the damage and the time taken by Arch on the claim prevented them from selling the property and it took Arch about six months to make the first claim payment. He said when Arch requested evidence in November 2021, they realised they had to start the work. He described Arch's offer of compensation as 'an offence' and requested an ombudsman review the complaint.'

My provisional findings and the parties' responses

In my provisional decision I intended to uphold the complaint in part. I intended to require Arch to recompense M for the loss of interest it paid from 6 September 2021 to 14 December 2021 due to avoidable delay, together with interest at 8% on the total of the reimbursement. I also intended to require Arch to pay M £1,000 compensation for the inconvenience it was caused by Arch's avoidable delay, less the £500 it has already paid for M's inconvenience.

The damage to M's property occurred at the end of July 2021 and M's broker told Arch that the property had been under offer at the time, but the sale fell through. Mr H acknowledges that the damage meant the property couldn't be sold, which was beyond Arch's control and so I concentrated on whether it caused avoidable delays and the impact of any delays on M.

M said it couldn't sell its property due to the delayed claim, and incurred interest payments. Arch declined to recompense this and said the policy excludes losses due to delay. I considered the law of causation to see if it was fair for Arch to decline to pay M's interest and to see if its offer of compensation for M's inconvenience is fair.

M's payment of interest

Mr H says they spent eight months chasing Arch and its loss adjusters and the delay caused it to lose over £60,000 on loan interest, at about £9,000 per month. Arch apologised for its delays which it said was from its loss adjusters' visit on 6 September to 14 December 2021.

I thought there were delays at the start of the claim when Arch's loss adjusters failed to make contact with M, but time was needed to validate the claim and arrange drying out and contractors. And delays after Arch requested the claim evidence that had already been provided on M's behalf in August. I thought much of the delay could have been avoided if quotes had been authorised and repairs undertaken in a reasonable time frame.

Although the policy states that M's interest payments are an uninsured loss, we consider a policyholder's loss when satisfied it was caused as a direct result of avoidable delays by the insurer and was reasonably foreseeable. We wouldn't recommend compensation if the loss would always have been suffered, or if it wasn't caused by delays. But Arch acknowledged delay which I thought delayed M's ability to sell its property. I thought Arch's delay materially contributed to the risk that M would incur avoidable interest payments.

In order to finance the building development, M had taken on significant development finance. I said there is specific provision in the policy to cover this loss – though not extended to M. Arch knew the property sale fell through due to the damage and M's broker emailed Arch and the loss adjusters in November 2021 to say M was losing money on interest payments every day. And so I thought it was reasonably foreseeable that a delay would cost M the interest on its loan to finance the development.

I said that insurers are required to progress claims without avoidable delay and Arch should have responded to M's circumstances by progressing the claim promptly to minimise losses. Arch imposes a policy condition on M to minimise any losses in a claim and I thought it fair and reasonable for Arch to have reacted to the claim by helping M mitigate its losses.

I said that M would need to provide evidence of the loan agreement.

M's inconvenience

Arch offered £500 compensation for M's inconvenience due to delays and poor claim's handling. I said M's broker pursued Arch and its loss adjusters to progress the claim and any progress was due to their persistence. I could see why M decided to start the repairs. I thought the impact of delay could have been reduced if Arch had responded to M's pleas for an interim payment, but M had to wait for the first payment until 31 January 2022. I thought the inconvenience suffered by M at this time merited an award of £1,000 compensation.

I concluded that delays by Arch and lack of oversight caused the claim to be unnecessarily prolonged. I thought that Arch has reasonably identified the period of avoidable delay, from 6 September to 14 December 2021. And I thought the remaining period of the claim was sufficient for the property to have been reinstated. I thought that M's prolonged payment of interest on its development loan was both a direct consequence of the delay and foreseeable, and it's fair for Arch to compensate M for this loss.

Arch said it had nothing further to add.

Mr H, on behalf of M, said they broadly agree with the provisional decision, but disagree with the period of delay. He said the timeline they've provided shows delay from notification of the claim on 27 July until the site visit on 6 September 2021. Mr H said Arch appointed a new loss adjuster on 14 December 2021 and the evidence had to be sent again. He said they chased Arch again in January until they received the first payment on 31 January 2022.

Mr H said the delay totalled six and a half months and cost them about £58,500 in lost interest. He said M hadn't received the £500 compensation previously offered by Arch.

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 have reconsidered all the issues and findings from my provisional decision. Having done so I remain of the view that the resolution of this complaint should be as I've set out within my provisional decision and for the reasons I have given.

Although the policy shows that M's interest payments are an uninsured loss, I'm satisfied the loss was as a direct result of the avoidable delays by Arch and was reasonably foreseeable. Arch acknowledged delay which I thought deprived M of a course of action – the sale of its property and contributed to the risk that M would incur avoidable interest payments.

M had taken on significant development finance, but hadn't obtained cover for this in its policy. Arch knew the property sale fell through and M's broker emailed Arch and the loss adjusters to say M was losing money on interest payments every day. And so I thought it was reasonably foreseeable that a delay would cause M to incur extended interest payments on its loan to finance the development.

I have looked again at the events of the claim and the time taken by Arch and its loss adjusters to progress matters. Mr H says their timeline shows delay from notification of the claim on 27 July 2021 until the site visit on 6 September 2021. He said M's broker sent photos and videos of the damage to Arch on 6 August 2021.

There was a small delay from 6 August 2021 when Arch's loss adjusters failed to make contact with M. However, Arch was entitled to take time to validate the claim and arrange its agents who would deal with the damage, and to arrange a site visit. Although this took a little longer than it should, overall I don't think one month was an unreasonable time to take.

Mr H mentions delays from mid-December to the end of January 2022. During this time M was carrying out repairs on the property and so to that extent the claim was no longer held up. I agree that Arch could have eased M's difficulties by making a much prompter interim payment, but I don't think it was a primary cause of the delay to the repair work any longer.

From what I've seen, Arch's assessment of the period of delay still looks about right. I have borne in mind that the damage to the property meant it couldn't be sold and this was beyond Arch's control. I don't think M should have had to undertake the repairs itself, but I can well understand the urgency it felt at that time while there was inaction from Arch and its agents.

Putting things right

Arch should recompense M for the interest it paid from 6 September 2021 to 14 December 2021 inclusive, and should add interest at 8% to recompense M for the loss of use of the funds for the period since its payment of the interest.

The inconvenience suffered by M from delays and delayed payments was significant and I remain of the view that Arch should pay it compensation of £1,000. I note that M hasn't received the £500 previously offered by Arch.

My final decision

For the reasons I have given above and within my provisional decision, it is my final decision that the complaint is upheld. I require Arch Insurance (UK) Limited to recompense M for the interest it paid from 6 September 2021 to 14 December 2021 inclusive, due to its avoidable delay. Arch should pay interest at 8% simple on the total amount of the reimbursement, calculated from the date the interest was paid by M, to the date of payment by Arch.

I also require Arch Insurance (UK) Limited to pay M £1,000 compensation for the inconvenience it was caused by the delays during the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 11 April 2023.

Andrew Fraser
Ombudsman