

The complaint

Mr and Mrs F are unhappy with how Advantage Insurance Company Limited (AIC) has proposed to settle a claim under their building and contents insurance policy.

Mr and Mrs F are being represented on this complaint, so any reference to Mr and Mrs F includes the comments of their representative. Any reference to AIC includes the actions of its agents.

What happened

The circumstances of this complaint are well known to both parties, so I've summarised what's happened.

- Mr and Mrs F's home insurance policy is underwritten by AIC. They made a claim in January 2023 when their garage and its contents was damaged by a fire. And they appointed a loss assessor (LA) to deal with the claim on their behalf.
- The claim was accepted, and AIC attended the property to survey the damage and speak to Mr and Mrs F. The LA said doing so, caused Mr F a great deal of stress owing to his health concerns.
- At the end of January, AIC appointed an expert to forensically examine the damage.
- At the end of March, Mr and Mrs F told AIC they'd instructed a surveyor (Surveyor A) to provide an estimate for the remedial works. And they'd instructed their own to ensure the findings were independent.
- AIC said its own surveyor (Surveyor B) was independent and local - and therefore, more cost effective. It said Mr and Mrs F would receive a copy of any reports and could comment on these.
- Mr and Mrs F said AIC could appoint a surveyor, but that doing so, should not hinder their ability to instruct their own surveyor. They also raised concerns about the competency of Surveyor B.
- In response, AIC asked to be provided with Surveyor A's qualifications. On the same day, Mr and Mrs F instructed Surveyor A as they said it was necessary due to Mr F's vulnerabilities.
- It appears there was some delay due to a change with the LA's Financial Conduct Authority (FCA) status, and AIC needing to satisfy itself it had authority to continue speaking to them. Whilst this was being dealt with, it wrote to Mr and Mrs F directly explaining that it wanted to use its own surveyor.
- Having reviewed the claim, AIC said it would only pay up to £2,000 for the contents in the garage as it considered the garage to be an "outbuilding", and this was the respective policy limit.

- Mr and Mrs F disagreed with AIC's decision. It said the garage should be considered part of the building - which had a higher policy limit. They also complained that AIC said it wouldn't cover Surveyor A's fees.
- AIC maintained its position saying the key factor for determining if the garage is part of the building is whether it's attached to it – which Mr and Mrs F's garage isn't. And so, it was satisfied it had correctly defined it as an outbuilding. It said it wouldn't cover Surveyor A's costs because these weren't necessary. It recognised it could have been clearer about things though and so, offered £30 compensation.
- Unhappy, Mr and Mrs F brought a complaint to this Service. An Investigator considered it and upheld it. He said the policy terms were unclear and so, AIC should reconsider the claim without relying on the policy limit applicable to outbuildings.
- He thought AIC could have done more to better serve Mr F who is a vulnerable consumer and said it should pay £400 compensation in total. He wasn't satisfied appointing their own surveyor was necessary and so, he didn't ask AIC to reimburse Mr and Mrs F these costs.
- The parties disagreed and so, the complaint has been passed to me for a final decision.

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.

Having done so, I agree with the outcome our Investigator reached. I'll address each complaint issue in turn. But before I do, it's important to explain that I'm only considering events up until the date of AIC's final response - 14 June 2023. So, any new concerns after this time would need to be dealt with as a separate complaint.

Is it fair for AIC to apply the outbuildings policy limit?

The crux of this issue is whether AIC is correct to consider the garage an 'outbuilding' in line with the policy terms. The impact of this being that the garage's contents would be subject to a £2,000 indemnity limit.

In justifying its position, AIC has said that whilst the garage is in the boundary of the property, it isn't attached to the main building and therefore, doesn't form part of its structure – which it says is required for it to be considered part of the main building. So, I've looked at what the policy document says.

The policy defines '*buildings*' as:

"The structure of the home including fixtures and fittings which form part of the property, including permanently installed garages within the boundaries of your property."

This satisfies me that permanently installed garages within the boundary of the property form part of the "buildings". It does not specify the garage in question needs to form part of the main building. And so, as Mr and Mrs F's garage is permanently installed and within the boundary of the property, I think it's reasonable to consider it as part of the building.

The policy doesn't define property, but it defines "home" as:

“The private residence shown in your policy schedule including its garages and outbuildings within the boundaries of your property, occupied by you and used for domestic and clerical business purposes.”

This definition satisfies me that “home” will include both garages *and* outbuildings within the boundaries of the property. I note here the policy distinguishes between the garages and outbuildings, which satisfies me such a distinction was intentional.

The term “garage” is not defined. But the policy defines “outbuildings” as:

“Sheds, greenhouses, summer houses, other permanent buildings which don’t form part of the main building, are within the boundaries of the property and used for domestic purposes. This does not include car ports or any structure that is open on one or more sides, caravans, mobile homes or motor homes, structures made of canvas, PVC or any other non-rigid or inflatable material.”

AIC suggests that Mr and Mrs F’s garage falls within this definition of outbuilding. Having reviewed the policy definitions, I’m not persuaded the policy makes it clear that garages which are not attached to the main building are to be considered “outbuildings”.

Whilst it’s possible that what is considered an “outbuilding” isn’t an exhaustive list, notably, it does not include garages not attached to the main property as an example of an outbuilding. And when I consider this, with the fact outbuildings and garages are listed separately under the “home” definition – I’m not persuaded Mr and Mrs F’s garage should be considered an “outbuilding” in line with the policy terms – and moreover that it is simply a garage.

It seems AIC recognises the policy isn’t clear in this respect either, having said in its final response: *“We would agree that our policy wording more indicates that this is the case rather than providing a more clear definition of each.”*

And so, with the above in mind, I don’t consider it fair and reasonable for AIC to consider the garage an outbuilding – and therefore subject the claim to the respective outbuilding policy limit. It follows therefore, that it must reconsider the claim without classifying the garage as an outbuilding, and instead apply the contents policy limit – as specified in the policy schedule – which is applicable to ‘buildings’.

Should AIC cover Mr and Mrs F’s surveyor’s fees?

Mr and Mrs F say their surveyor’s fees are covered under the policy and so, AIC should reimburse them these costs. In respect of surveyors’ costs, the policy says:

“Your insurer will only pay for any necessary expenses incurred when rebuilding or repairing the buildings following a valid buildings claim under sections 1–7 and 10, including:

- Architects, surveyors, consulting engineers and legal fees.*
- The cost of clearing debris from the site or demolishing or shoring up the buildings.*
- The cost to comply with government or local authority requirements.”*

So, it’s clear surveyor’s fees *can* be covered under the policy, but only if they are *necessary* – and so, for me to say AIC is responsible for paying Surveyor A’s costs, I need to be satisfied that they were incurred *necessarily*.

AIC has said Surveyor A's costs weren't necessary because it could appoint its own, local, and therefore, more cost-effective surveyor. Whilst AIC seems to have accepted Mr and Mrs F's surveyor was independent, it has said that it was able to fulfil its obligations under the policy by appointing its own.

From what I've seen AIC may have incurred some delay in places, but these were not to the extent that I'm persuaded it was necessary for Mr and Mrs F to instruct a surveyor based on AIC not, for example, having taken prompt action.

Rather, it seems to me a surveyor was appointed by Mr and Mrs F because they considered it a reasonable course of action given Mr F's vulnerabilities. I don't doubt such a service may have eased the claim experience for Mr and Mrs F. But I'm not satisfied this meant appointing their own surveyor was a necessary cost, nor one AIC should in turn bear, given it was appointing its own expert.

Mr and Mrs F's representative has said insurers don't routinely share the surveyors and contractors' reports and so, it was necessary for Mr and Mrs F to instruct their own so a fair assessment could be carried out. But I don't agree. Insurers must handle claims fairly, and in doing so, I would expect them to share findings which have been material to their decision making so that the consumer can challenge this if necessary. But, in any event, AIC expressly said it would share its surveyor's report with Mr and Mrs F and give them the opportunity to comment on this. So, I'm not persuaded by this argument, and I don't think it is supported by AIC's comments.

Mr and Mrs F's representative has also raised concerns about the surveyor B's competency. But I note this is anecdotal and relates to other consumers claims, so I'm not persuaded this argument carries any weight.

Whilst Mr and Mrs F might disagree with AIC's position regarding the claim – and wanted to use their own surveyor to challenge these findings, as is their right – it doesn't automatically follow that AIC should bear these costs. Cover for "surveyors fees" isn't an absolute right under the policy – and as I'm not persuaded their actions were material to the claim's overall progression nor that they were necessary, I'm not persuaded it's fair and reasonable to direct AIC to cover these costs.

I realise Mr and Mrs F will say AIC's agent told them Surveyor A's costs would be covered, but when I consider this email in the context of the communications as a whole – along with the fact Mr and Mrs F instructed Surveyor A a month prior - I'm more persuaded they were determined to use their own surveyor. And so, whilst unhelpful, I'm not persuaded the misinformation from AIC's agent had any bearing on their decision to appoint Surveyor A. With this and the above in mind, I won't be directing AIC to cover Surveyor A's costs.

Compensation

When determining compensation, I must keep in mind that AIC is only responsible for the impact on Mr and Mrs F which is due to its handling of the claim. And so, whilst the fire at their property was undoubtedly a difficult event for Mr and Mrs F, it wouldn't be reasonable to hold AIC responsible for stress and worry which would ordinarily be associated with such an event. But what I can consider is whether AIC's handling of the claim added to what was already a stressful time for Mr and Mrs F. And from what I've seen, it has.

Whilst I accept dealing with Mrs F and the LA would have mitigated some of the impact on Mr F, ultimately, because I'm satisfied AIC unfairly applied the £2,000 policy limit, Mr and Mrs F have had to deal with the ongoing stress of this situation for longer than necessary. And owing to Mr F's health concerns, this has been felt more greatly by him. And so, to

recognise this AIC must pay compensation.

I note Mr and Mrs F's say AIC caused some avoidable delays in respect of determining whether it could continue to liaise with their LA in light of the change in FCA status, but I think this was reasonable due diligence on AIC's part and so, I'm not persuaded it acted unfairly in doing so.

So, considering the above, I'm satisfied £400 compensation in total is fair and reasonable in the circumstances.

My final decision

My final decision is I uphold this complaint and direct Advantage Insurance Company Limited to:

- Reconsider the claim without classifying the garage as an outbuilding and applying the respective policy limit – in line with the remaining policy terms and conditions.
- Pay Mr and Mrs F £400 compensation in total. If AIC has already paid Mr and Mrs F £30 – in line with their final response – it can deduct this amount from the payment it needs to make. AIC must pay the compensation within 28 days of the date on which we tell it Mr and Mrs F accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 15 December 2023.

Nicola Beakhust
Ombudsman