

The complaint

Mr M and Mr S complain that MS Amlin Insurance SE refused to cover the cost of them appointing their own surveyor to deal with a claim on their commercial property insurance policy.

What happened

Mr M and Mr S own a property which was let to tenants. After a fire at the property which caused extensive damage, they made a claim on their insurance policy.

Amlin said it would be necessary to instruct a surveyor to inspect the building. Mr M and Mr S wanted to instruct their own choice of surveyor and said Amlin should pay the costs of this but Amlin didn't agree. It said, while Mr M and Mr S were free to instruct their own surveyor if they wished, it wouldn't cover the cost.

Mr M and Mr S complained but Amlin didn't change its position so they referred the complaint to this Service.

Our investigator said the policy did include provision for Amlin to pay professional fees but only if they were necessary. He said it was reasonable for Amlin to instruct a surveyor and manage the costs it incurred in dealing with the claim, and although Mr M and Mr S could also instruct a surveyor it wasn't necessary to do this.

Mr M and Mr S disagree and have requested an ombudsman's decision. They say:

- There's nothing in the policy terms that says Amlin can force their own choice of surveyor.
- It's for them as policyholders to present the claim, not for an insurer to do it.
- They are entitled to instruct their own surveyor. This is necessary to ensure they are properly represented and to prevent the insurer saving money by not including everything within the scope of works that needs to be done.
- Amlin should either agree or provide a cash settlement so they can use that to instruct their own surveyor.

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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

The policy terms say Amlin may choose to pay for, repair or reinstate any property insured that sustains damage.

Mr M and Mr S are correct that, in the first instance, it's for the policyholder to prove their

claim. But Amlin has the option to decide how to settle the claim. And given that Amlin will be paying the costs of any repairs or reinstatement work, it's reasonable for it to manage the claim and any costs that arise.

Mr M and Mr S have referred to a term in the policy that says professional fees are covered, as follows:

"The sum insured for each item on buildings and landlord's contents includes an amount for professional fees necessarily and reasonably incurred in the reinstatement of the property insured but not for preparing any claim."

They say this means they are entitled to cover for the costs of instructing a surveyor. But any such costs need to be necessary, and be reasonably incurred for the purpose of reinstating the claim, not for preparing it. I don't consider it necessary for these costs to be incurred where Amlin is covering the costs of a surveyor it has appointed. It's reasonable for Amlin to manage the claim and the costs that it is incurring. It's in line with usual practice for an insurer to instruct experts to assist with a claim like this.

There may be circumstances where it would be fair for Amlin to cover the costs of an expert appointed by Mr M and Mr S – for example if there were delays by Amlin in appointing a surveyor, or it wasn't able to find someone with the right expertise. But that's not the case here. Amlin wished to instruct a surveyor early on in dealing with the claim and didn't cause any unnecessary days.

Taking all of the circumstances into account, it was reasonable for Amlin to appoint a surveyor and as it was able to do so, it wasn't necessary to cover the costs of another surveyor instructed by Mr M and Mr S.

My final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mr S to accept or reject my decision before 18 April 2024.

Peter Whiteley
Ombudsman