DRN-5016535

The complaint

Mr L complains about U K Insurance Limited's handling of a claim made under his landlord insurance policy.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

Mr L has a landlord insurance policy underwritten by UKI which covers two properties he owns and rents out. He added the second property to the policy in 2019.

He made a claim in July 2022 after that property (the second one, added to the policy in 2019) was damaged by a fire which started in a neighbour's garden.

UKI accepted the claim. However, they told Mr L that he was underinsured.

When he bought the policy in 2019, Mr L had said the total sum insured (the re-build cost of the property) should be £100,000. UKI said it was in fact now (in July 2022) around £238,000.

The policy was index-linked so that the sum insured went up with each renewal. But the total sum insured at the relevant time was around £114,000.

Initially, UKI said they'd settle the claim proportionately. They told Mr L he'd paid around 92% of the premium he should have paid, so they'd cover around 92% of the claim.

However, when the necessary repairs were costed, UKI told Mr L that 92% of the claim costs would be more than the total sum insured on the policy (by now around £114,000). And they said they would pay no more that the total sum insured in settlement of the claim.

UKI also covered loss of rent at the property up to the 12 months limit set out in the policy terms. To be clear, they covered 92% of the loss of rent because of the underinsurance.

Clearly, that settlement left Mr L a significant way short of the total cost of the repairs to his property. And he made a complaint to UKI.

In essence, Mr L's complaint is as follows.

One – when he added the property to the policy, he was given no advice about how to calculate rebuild costs - and the potentially very significant repercussions of underestimating those costs (and being underinsured) weren't made clear to him.

Two – he wasn't given an opportunity to pay the shortfall in the premium (resulting from the above) before his claim was settled.

Three – he was initially misled when he was told the claim would be settled proportionately. And by implication that also caused him to incur costs he wouldn't otherwise have incurred.

Four – the index-linking was inadequate.

Five – on-going delays in the handling and settlement of the claim have caused the property to suffer further damage.

UKI didn't uphold Mr L's complaint and said their decision to limit the settlement to the total sum insured was correct.

Mr L wasn't happy with this outcome and brought his complaint to us. Our investigator looked into and thought UKI hadn't acted fairly.

They said UKI should settle the claim proportionately, based on a comparison of the premium Mr L paid for the policy covering both properties against the premium he ought to have paid (had the rebuild costs of both properties been accurate). And add 8% simple interest to any additional payment now made to Mr L. And they should not limit the settlement to the total sum insured.

They also said UKI should pay for any repairs to additional damage which occurred after the initial proposed settlement had been put to Mr L and because of the subsequent delay in repairs commencing.

And they said UKI should pay Mr L £500 in compensation for the trouble and upset he'd experienced as a result of UKI's errors.

UKI disagreed and asked for a final decision from an ombudsman.

I agreed with our investigator that the complaint should be upheld – in part – but I disagreed about the outcome, so I issued a provisional decision. That allowed both Mr L and UKI a chance to provide further information or evidence and/or to comment on my thinking before I make my final decision in this case.

My provisional decision

In my provisional decision, I said:

> "I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
>
> *The limit UKI applied to the settlement for building repair costs*
>
> Mr L's landlord policy is a commercial policy, not a private policy taken out by a customer to cover their own home. So, the applicable legislation is the Insurance Act 2015 (as amended).
>
> The Insurance Act places a duty on potential policyholders to make a fair presentation of the risk they wish to be covered when they buy an insurance policy. And on that basis, an insurer can fairly decide whether to offer cover and, if so, on what terms.
>
> We'd expect that an insurer selling a commercial policy would ask for certain information from the potential policyholder. We'd expect their questions to be clear - to a commercial customer – so that the customer understands exactly what information is being requested.
>
> I am aware that Mr L has said he is not an experienced landlord. However, he has

told us that he bought at least one of his properties in order to generate income – and he has been a landlord since 2011. He is in fact a commercial customer (as the policy type would suggest) and it's not unreasonable or unfair for him to be treated as such by UKI – or indeed any other insurer.

Customers buying private domestic insurance policies, to cover their own homes, might expect more assistance from an insurer to understand what the term "sum insured" means, or to find resources to calculate rebuild costs. With commercial customers, it's not unreasonable for insurers to assume a greater degree of pre-existing knowledge.

In 2019, when he added the property to his existing policy, Mr L was asked to declare a total sum insured. What UKI wanted to know is the most they might conceivably have to pay out on a claim relating to the property – in essence the cost of a total rebuild. This allows them to properly assess the risk they're exposed to and to set premiums and/or other contract terms accordingly.

Mr L says he wasn't given any advice about how to calculate rebuild costs when he added the property to the policy. And he says the very significant consequences of declaring an insufficient sum insured weren't made clear to him.

The policy documents sent to Mr L to confirm his purchase of the (addition to the) policy mainly refer simply to "*Sum Insured*" (which Mr L set at £100,000). Even though he is a commercial customer, I don't think UKI would have done enough to explain to Mr L what they required if they had simply asked him for the "sum insured" and left him to his own devices.

However, it's very clear from Mr L's explanation of events that he understood that he was being asked for the full rebuild cost of the property. He tells us he wasn't supported to assess the *rebuild cost* accurately and that he wasn't told what might happen if he underestimated the *rebuild cost*.

Mr L added the property to his policy during a phone call to UKI. Because of the time elapsed, UKI no longer have a recording of that phone call (from 2019). And Mr L, understandably, tells us he has no recollection of the detail of the conversation.

However, it's clear that Mr L was asked for a sum insured – and, as I say, it's clear from what Mr L tells us that he understood that to be the total rebuild cost. The sum to be insured was recorded as £100,000. And that figure appeared in the policy documents then sent to Mr L. So, it's clear Mr L gave that figure to UKI.

It's not entirely unreasonable for an insurer to assume that a commercial customer will know how to calculate the total rebuild cost of their property. In any case, it's worth looking in more detail at the policy documents Mr L was sent when he bought the policy in 2019 – and at each annual renewal since then.

The Statement of Fact document contains a fairly clear warning – at the outset – which says:

> *"You must check all the information in the Schedule and this Statement of Fact and tell us immediately if any details are incorrect."*

It goes on to state very clearly that if the details aren't accurate, this may lead to UKI voiding the policy or settling any claim only in part. It also says that UKI will assume that the customer has conducted reasonable searches for all the relevant information

they've provided.

Mr L's Schedule very clearly states that the sum insured is £100,000 - in the first year – and then the index-linked increased amounts in subsequent years at renewal.

The introduction section to the policy terms booklet says:

> *"Your schedule provides details of the insurance protection provided, the sections of the policy which are operative* ***and the level of cover you have*** *[my emphasis].*
>
> *Please examine your Schedule to ensure it meets your requirements."*

It then points out very clearly that the index-linking works to assist the customer, but only if the sums insured are accurate at inception.

In the Section which describes the cover provided, the policy terms say UKI will pay for repairs to damage caused by fire, but:

> *"Our liability… for all claims… arising out of any one original cause, will not exceed the Sum Insured…"*

This message is repeated in the following section, titled Conditions, which says, under the heading Limit of Liability:

> *"The maximum amount payable in respect of any item insured under this Section is the Sum Insured stated in the Schedule…. plus index linking…"*

On that basis, I don't think Mr L can reasonably suggest that he wasn't aware (or oughtn't to have been) that the stated sum insured was important - and that there might be significant consequences if it weren't accurate.

As I've already said, I also think it's clear that Mr L understood the sum insured to be the full rebuild cost. And as a landlord, it wasn't unreasonable to think he might understand how that could be calculated – or at least, that he needed to be careful to find out how to calculate it accurately.

As I understand it, parts of the building at least are listed. Minimal research on Mr L's part would have led him to understand that he might need to engage a surveyor to get an accurate estimate of the rebuild costs of his property (assuming any survey he'd had carried out when he bought the property hadn't specified a rebuild cost).

In short then, I'm satisfied Mr L knew – or should have known – what UKI were asking for when they asked him to specify a sum insured for the property.

As things have turned out, it's also absolutely clear that Mr L's estimate for the sum insured (the total rebuild cost) was very wide of the mark. So wide of the mark in fact that it's not possible to argue that it was a reasonable estimate within a permissible range (given that rebuild costs are a matter of opinion rather than an exact science).

In other words, the fault here, when it comes to the inadequacy of the sum insured, is Mr L's, and not UKI's. In those circumstances, the Insurance Act sets out remedies that are available to the insurer.

UKI have said they believe Mr L's misrepresentation was careless rather than

knowing or reckless. And in that case, the remedies are to void the policy – if the insurer wouldn't have offered cover at all had they known the facts – or to settle any claim on different terms – where they would have offered cover.

If the difference would have been the premium charged – as it would in Mr L's case – then insurers may settle any claim proportionately – comparing the premium actually charged to the premium which should have been paid. In Mr L's case, UKI's loss adjuster originally calculated that he paid 92% of the premium he ought to have been charged, and so he would get 92% of his claim paid.

We'd expect that remedy to be applied, in the way described above, in cases such as Mr L's, if the total sum insured (or other internal policy limits) weren't exceeded.

However, we also expect that if a policy limit is exceeded – and if that policy limit was made clear to the customer at the outset and the impact of that limit was made clear – then an insurer would be entitled to limit the settlement of any claim to the specified policy limit.

I've set out above why I think, in Mr L's case, the policy limit was very clear, and the potential impact of that policy limit was very clear. So, I don't think it was unfair or unreasonable for UKI to limit the payment on Mr L's claim to the maximum claim limit set out in the policy documents.

In this case, I'm satisfied Mr L chose an upper limit of insurer's liability for his policy which is significantly short of the actual liability to which the insurer might have been exposed, when he knew or should have known the possible consequences - and paid a smaller premium as a result.

In those particular circumstances, I don't think it's reasonable to suggest that the remedies set out in the Insurance Act were intended to legally restrict an insurer to paying a proportionate settlement in cases where they might otherwise wish to apply a clearly stated upper policy limit to a high-value claim settlement.

Retrospective payment of the proper premium

As I understand it, it was Mr L's view that it would be reasonable to ask UKI to accept a payment of the shortfall in his premiums over the years the policy had been in place and then to settle the claim in full.

To be fair, I think Mr L saw the flaws in this argument after our investigator put forward their view. But to be clear, that's not an argument that holds any water. It would be roughly the equivalent of paying up your stake only after the horse you bet on had won the race.

In short, the insurance industry would be in a very strange place if we allowed that the only people who had to pay their full premiums were the ones who'd subsequently made a claim.

That might well lead to many people choosing to pay the absolute minimum premium and then "topping it up" only when they made a claim and their underinsurance became apparent.

The misinformation about the likely settlement

It seems UKI's loss adjusters told Mr L that he might expect a proportionate

settlement of his claim – at around 92% of the total claim value. And that, of course, turned out to be mistaken given the later application of the sum insured policy limit by UKI.

It wouldn't be fair to hold UKI to something their loss adjuster had told Mr L was a likely outcome of his claim. However, that misinformation did create an expectation in Mr L that was subsequently disappointed.

He also says it caused him to incur higher costs associated with the rebuild than he would otherwise have incurred. In particular, he refers to the use of a company of national standing to set out and handle the arrangements for the work to be carried out.

So, I'm upholding this part of Mr L's complaint. And I'm minded, as things stand and unless I get any further information or evidence from either party on this point, to require UKI to pay Mr L £1,000 in compensation for his disappointed expectations. I bear in mind the significant difference in the amount the loss adjuster gave Mr L to understand would be paid in settlement of the claim and the amount eventually paid.

I'm also minded to require UKI to consider any evidence Mr L wishes to provide which purports to shows that the fees or costs he incurred whilst he thought the claim would be settled proportionately were higher than those he would have incurred had he known the policy limit would apply. And if that evidence is persuasive, I'd expect UKI to cover those additional fees or costs.

I'd ask Mr L to bear in mind that his property was going to need significant repairs no matter what the settlement might have been. And he's unlikely to find UKI agreeing to pay for costs which would have been incurred in any case. But if he can establish to UKI's satisfaction that he took a particular route with the repairs which he would not have taken had he known the claim outcome, then I'd expect UKI to consider paying those additional fees or costs.

The index-linking

It's Mr L's contention that the index-linking – which appears to work out at around a 3% per annum increase to the sum insured – is inadequate, given the increases in building costs in the relevant period.

UKI say they base their index-linking on information provided by the Building Cost Information Service (BCIS).

I don't think it's unreasonable to use BCIS data to underpin UKI's index-linking. That said, the increases they've worked into Mr L's policy appear not to fully reflect increases in building costs over the relevant time period – though I accept that this is a somewhat subjective impression.

In any case, however, the newly calculated sum insured was made clear to Mr L at every annual renewal of the policy. He would – or should – have known what the increases in the sum insured were and what the total sum insured now came to. And he received the same warnings (see above) at each renewal that he should check that the policy cover still suited his needs.

Again, Mr L is a commercial customer and a landlord. It wouldn't be unfair or unreasonable for UKI to assume that he would keep an eye on the rebuild costs and make amendments to his policy if required.

The real issue in this case is that Mr L was so far off in his estimate of the rebuild costs. No amount of (reasonable) index-linking would have brought him close to the true rebuild figure. And that's his responsibility.

That also indicates, in my view, that Mr L didn't pay sufficient attention to the rebuild costs at the outset and so likely would not have done so at renewal. And again, that's Mr L's fault, not UKI's.

Delays

Mr L says there were avoidable delays in UKI's handling of the claim. And he says that had a number of consequences.

Mr L's policy covers loss of rent for a maximum of 12 months. As I understand it, UKI have paid for 12 months loss of rent, with a deduction for the underinsurance. The deduction appears to have been calculated according to the formula set out in the Insurance Act.

Mr L thinks UKI should cover a further period of loss of rent because it's down to their errors and delays that the property wasn't repaired – and rented out again – within 12 months.

Mr L also says the avoidable delays led to his property suffering further damage because it has been left for longer than necessary in a state of disrepair.

And he says some of that further damage in particular is due to delays in UKI agreeing to the installation of a "tin hat" at the property to keep off the rain.

The claim was made on 7 July 2022. The loss adjusters had assessed it and issued a preliminary report by 7 September 2002 (two months later). Given the nature of the property and the significance of the damage, I don't think that's an unreasonable amount of time to take at that stage of the process.

At that point, an experienced company of chartered structural engineers was appointed to oversee the building works to be carried out. They had to specify the work to be done – on a listed building, with party walls in play, and with a number of neighbouring properties' roofs damaged by the same incident.

That company then undertook a tender process to find suitable builders to carry out the work.

Having considered their position – including how to deal with the underinsurance – UKI made a settlement offer (at the limit of liability set by the sum insured – which, as I say above, I think was fair) in April 2023. That's around six months after the chartered structural engineers were appointed.

Of course, UKI could reasonably suggest that they had to wait for at least the specification of works, if not the tender bids, before settling the claim. And in that context, I can't reasonably conclude that there were any significant avoidable delays up to that point (the settlement offer being made).

The delays after that point are the consequence of Mr L not accepting the settlement offer (although I believe he did accept the payment as potentially an interim payment until he'd had the chance to make the argument that he should be paid more – and indeed, make this complaint to UKI and then to us).

Because I think that settlement offer was fair – for the reasons I've set out above – I'm minded to conclude that the timetable for the repairs after that point was Mr L's responsibility, rather than UKI's. As were any delays in that timetable.

I'm also minded, as things stand, to say that UKI can limit their loss of rent payments to the maximum 12 months set out in the policy. The settlement offer was made to Mr L around nine months after the claim was made. And, as I say, I don't think there were significant avoidable delays up to that point.

Mr L may have been able to get the repair work completed within the remaining three months of the 12-month period covered for loss of rent. If not, that appears to me to be down to the significance of the damage and the complexity of the repairs, not due to any failing on UKI's part.

The proportionate deduction applied to the loss of rent aspect of the claim is entirely in line with the provisions of the Insurance Act, given that Mr L did, in fact, misrepresent the total rebuild cost (by a significant distance) when he bought the policy.

I am however minded to uphold Mr L's complaint about the "tin hat". This was eventually erected at the property in late December 2022 – around six months after the fire which led to the claim.

I assume it was erected because UKI – and/or their loss adjusters – thought it was necessary, or at the very least would serve a purpose. Otherwise, they wouldn't have paid to put it in place.

The only real purpose it might serve is to protect the property from the elements. So, it follows that UKI agreed to its use because they thought it was necessary / useful in protecting the property from further on-going damage.

If that is the case, I can't see any reason why it ought not to have been erected as soon as possible after the claim was made. Instead, the property was left exposed to the elements for half a year.

I can also see from the evidence we have on file that Mr L persistently chased the loss adjuster about this given that he was worried about further deterioration of the property. All to no avail until late December 2022, when the "tin hat" was finally installed.

Bearing that in mind – and unless I get further evidence or information which changes my mind in response to this provisional decision – I'm minded to require UKI to pay Mr L a further £500 for the inconvenience and stress he experienced when chasing UKI's agents about the installation of the "tin hat" and as a result of his worries about the on-going damage to the property.

I'm also minded to say that UKI should consider any further evidence Mr L may be able to provide to demonstrate that more radical repairs were necessary *because* the property was left exposed to the elements for six months.

I should be clear that I'd expect that to be expert evidence, with clear reasoning as to why the more extensive (and therefore expensive) repairs were necessary solely because of the delay in installing the "tin hat".

I should also be clear that if Mr L presents convincing evidence that extra costs have

been incurred as a result of UKI's error in delaying the installation of the "tin hat" – or indeed (see above) as a result of the misinformation he received from the loss adjusters - and UKI are obliged to make further payments, we'd regard those payments as redress for Mr L's consequential losses (caused by UKI's errors).

They would not, in other words, be subject to the sum insured policy limit (which has already been reached). Nor indeed would compensation for trouble and upset be regarded as part of the sum covered by the claim limit."

So, in summary, I said I was minded to uphold Mr L's complaint in part and to require UKI to:

- pay Mr L £1,500 in compensation for his trouble and upset; and
- consider any evidence Mr L might provide to demonstrate that his repair costs had increased due to the misinformation he'd received from UKI's loss adjusters and/or the delay in erecting the "tin hat" at the property.

The responses to my provisional decision

Mr L responded to my provisional decision to say that he was disappointed with the proposed outcome.

His main point is that he was misled about the likely settlement of his claim - and that caused him to make decisions he would not have made had he known the payment would be limited to the sum insured.

He believes UKI and/or their agents acted unreasonably in changing their position on what he'd be paid in settlement of the claim – and that should be deemed significantly poor practice.

He says that the loss adjuster wasn't acting alone in saying that his claim would be settled at 92%. The loss adjuster was in fact only conveying the conclusion reached – at the time – by UKI themselves, the underwriter of the policy.

He also says he was led to believe by the loss adjuster that he might be able to make up the shortfall in the premiums and then have his claim settled in full.

UKI also responded to my provisional decision. Unsurprisingly perhaps, they approach the issue of the information given to Mr L about the settlement from a different angle altogether.

They say the information provided (and/or passed on) by the loss adjuster about the likely settlement of the claim was correct at the time. It was only the later information about the costs of the necessary repairs that changed the situation and meant the sum insured limit was exceeded.

UKI have made no other comments on my provisional decision. So, I'm going to assume they either agree with it or have no additional information or arguments to put forward.

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'm not convinced by UKI's argument that the information provided to Mr L early on the life of the claim – that his claim would be settled proportionately at around 92% - wasn't mistaken or misleading.

Mr L was clearly told that his claim would be settled on that basis. He was not told (or not told sufficiently clearly) that might change if the repair costs exceeded the sum insured. At that point, UKI and the loss adjuster were aware of the sum insured. And they were aware of the extent of the damage to the property.

That being the case, one might reasonably expect that Mr L might have been given a clear warning or indication that the sum insured might prove inadequate in all of the circumstances.

I know UKI hadn't by that time fully scoped and costed the repair work but given that those calculations eventually gave repair costs at more than twice the sum insured, you might think UKI and/or the loss adjuster would have recognised the possibility that the limit set by the sum insured would come into play. And that they might have exercised some caution in what they told Mr L.

I understand Mr L's point that the initial (misleading) indications on the settlement came *via* the loss adjuster but *were agreed* by the underwriter.

I had only intended in my provisional decision to indicate that it was the loss adjuster who *told* Mr L the claim would be settled proportionately (at around 92%).

I don't think it's significant – in terms of the outcome of this case – how that message was initiated, agreed or formulated between the underwriters and the loss adjuster.

The loss adjuster was working for UKI and UKI have to take responsibility for his actions or omissions. It was always understood, in other words, that UKI were responsible for any misleading information provided to Mr L.

Mr L's main point was that providing that misleading information should be seen as significantly poor practice.

Whilst accepting that this was a complex claim, which had numerous issues to keep in mind, I agree with Mr L that it was poor practice on the part of UKI and/or the agents to tell him the claim would be settled proportionately (without adding sufficient caveats about the sum insured).

That's why I'm upholding that part of Mr L's complaint – and asking UKI to compensate him for his trouble and upset.

However, UKI's mistake in that respect doesn't mean that they should pay Mr L's claim in full (or at 92%). Mr L was in fact chronically underinsured. And for the reasons set out in my provisional decision, I'm satisfied that was Mr L's responsibility, not UKI's.

I understand Mr L's assertion that it was the loss adjuster who told him he might be able to make up the shortfall in the premiums and get the claim paid out in full. We haven't investigated that issue sufficiently for me to be able to agree or otherwise.

And the reason for that is that it makes no difference either way to the outcome of this case. For the reasons set out above, we aren't going to ask UKI to accept the shortfall payment and settle the claim in full, whether Mr L was told that might be a possibility by the loss adjuster or not.

Putting things right

Having fully considered the responses to my provisional decision from both parties, I have

no reason to change my mind about the outcome of this case.

I remain of the view that UKI should compensate Mr L for his trouble and upset and consider any further evidence he might provide (now or in future) to demonstrate that he's incurred additional costs due to UKI's errors or omissions. My reasons for coming to that conclusion are set out above and in my provisional decision.

If Mr L does provide any such further evidence to UKI and is unhappy with their consideration of it, or with the outcome of their consideration, then he'd be entitled to make a further complaint to UKI – and then to us, if he remains unhappy with UKI's response.

My final decision

For the reasons set out above, I uphold Mr L's complaint in part.

U K Insurance Limited must:

- pay Mr L £1,500 in compensation for his trouble and upset; and
- consider any evidence Mr L wishes to provide to demonstrate that his repair costs increased because of either the misinformation he received from UKI's loss adjusters and/or the delay in erecting the protective "tin hat" at his property.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 10 October 2024.

Neil Marshall
Ombudsman