

The complaint

Mrs P is unhappy with what HCC International Insurance Company Plc did following a claim on her 'Tenanted Property' insurance policy.

Mrs P is represented by her daughter and the complaint is brought by Mr D on her behalf.

What happened

In July 2023 Mrs P claimed on her policy for damage to her tenanted property following an escape of water. HCC accepted the claim but said the buildings sum insured of around £95,000 was inadequate. It calculated that the rebuild cost of the property was £239,000 and so the sum insured only represented 39.8% of the rebuild cost. And it said it would be applying 'average' on that basis to the settlement figure. It subsequently agreed to reduce the cost to exclude certain items that it said were the freeholder's responsibility meaning the rebuild amount reduced to around £225,000.

In her most recent view our investigator noted Mrs P had taken out her policy through an independent broker. In relation to the sum insured HCC had asked it to provide information on "*Full cost of reconstruction in present form. This amount must also include all outbuildings, garages, domestic oil and gas pipes, domestic fuel tanks, swimming pools, tennis court, drives, patios, walls, gates and fences*" She thought that question made clear HCC wanted to know the full rebuild cost of the property and the figure provided was significantly less than the actual amount.

But she didn't think it was fair for HCC to apply 'average' in the way it had. It told us it would have charged an additional premium of £162 if correct information had been provided about the rebuild cost of the property. So Mrs P had paid 46.83% of the premium she should have done. She thought HCC should use that figure when calculating the claim settlement amount (plus interest).

HCC agreed to calculate the settlement in that way. Mr D didn't agree. In summary he said:

- The policy had been in place for 20 years during which time HCC had applied inflationary increases to the sum insured. At no point was Mrs P asked to provide a revised figure for the buildings sum insured or given instructions on how to calculate that.
- It was reasonable for her to do so by looking at the purchase price of similar properties. And given the purchase price of similar properties was significantly less than the rebuild cost it was reasonable for Mrs P and her broker to think she had adequate cover.
- HCC like other insurers were much closer to the cost of restoring properties and had their own contractors and panels of loss adjusters. That wasn't the case with Mrs P who was an elderly and vulnerable customer who suffered from dementia. He didn't think a broker would be in a position to provide guidance on the correct sum insured either.
- Even after becoming aware through this claim that the sum insured was inadequate HCC hadn't significantly increased that in the renewal documentation Mrs P was sent.

- He didn't believe HCC had ensured a good outcome for its customer or provided a policy that was suited to her needs, offered fair value and avoided harm. And there was no reference in the documentation she'd been provided with to the policy containing disadvantageous terms.

So I need to reach 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.

The relevant rules and industry guidelines say HCC has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably. In his response Mr D has also made reference to HCC not ensuring a good outcome for its customer and not providing a policy that offers fair value. That wording reflects the requirements of the Financial Conduct Authority's 'Consumer Duty' rules. And those apply to any actions HCC took in relation to the claim from 31 July 2023. So I've also taken those rules into account when deciding what's fair and reasonable in all of the circumstances of this complaint.

The complaint issue in this case relates to the sum insured under Mrs P's policy. The 'Buildings Section' of her policy says *"If you are under insured, which means the cost of rebuilding the buildings at the time of loss or damage is more than your sum insured for the buildings, then we will only pay a proportion of the claim. For example, if your sum insured only covers one half of the cost of rebuilding the buildings, then we will only pay one half of the whole cost of your claim. This settlement basis applies to the whole of the buildings section"*.

I'm satisfied the sum insured was inadequate in this case. For the policy period the claim fell within the policy schedule has a buildings sum insured of £95,143. And it says that should be the *"Full cost of reconstruction in their present form"*. In estimating the actual rebuild cost HCC has used a calculator provided by the Building Cost Information Service (which is recommended by the Association of British Insurers and available for policyholders to use for free). That's produced a rebuild cost of £239,000. HCC then discounted some amounts from that figure which I think was fair.

Mr D said in correspondence with HCC that reliance on the BCIS calculator produced an overestimate of the rebuild cost. But he hasn't provided an alternative calculation or any further evidence in support of that position. So I don't think it was unreasonable of HCC to use the BCIS figure as the basis for concluding there was significant underinsurance.

I've gone on to think about whether it's fair of HCC to use the underinsurance clause in Mrs P's policy to reduce settlement of her claim in the way it has done. The underinsurance has arisen because of the sum insured that was set at the 2023 policy renewal. So I think it's relevant consider what happened at that time. And as this is a commercial policy (it relates to a tenanted property) the relevant law is the Insurance Act 2015. The Act requires a commercial customer to make a 'fair presentation of the risk'.

That includes the policyholder ensuring that *"every material representation as to a matter of fact is substantially correct and every material representation as to expectation or belief is made in good faith"*. Given that I don't agree with Mr D that it should be for HCC to carry out its own assessment of the amount it would cost to rebuild a property prior to accepting cover.

Mr D says HCC didn't give Mrs P any guidance on to how to calculate the sum insured. I appreciate this isn't something that a policyholder would necessarily be aware of. And I

recognise at the relevant renewal Mrs P was elderly and sadly affected by dementia. But I think it's relevant in this case that the policy was taken out and renewed through an independent broker. And HCC has provided screen shots from its broker portal which show the broker would have been asked to provide the Buildings Sum Insured. Guidance in that section said this should be the *"Full cost of reconstruction in present form. This amount must also include all outbuildings, garages, domestic oil and gas pipes, domestic fuel tanks, swimming pools, tennis court, drives, patios, walls, gates and fences"*.

I think it's clear from that question HCC wasn't asking for the purchase price of the property or the total amount a policyholder might want to insure but the rebuild cost. So I think it was for the broker to gather the relevant information HCC needed by asking relevant questions and providing appropriate support and guidance to the policyholder. I appreciate the guidance didn't include a link to a calculator but I think in general terms a broker operating in the buildings insurance market should be able to understand the question asked and provide additional support and guidance to a policyholder on this as required. If Mrs P has any concerns about what the broker did that's something she can raise as a separate complaint if she wants.

But I think HCC provided the broker with sufficient information to make it aware it wanted to know the full rebuild cost of the property. So I think it was entitled to rely on the amount that was provided in response. And while estimating the rebuilding cost of a property isn't an exact science there is a very significant difference between the actual sum insured and the calculated rebuilding cost. I don't think the information Mrs P provided via her broker fell within a reasonable range.

Initially HCC sought to apply the 'average' clause the policy contains to reduce the claim settlement using a calculation based on the proportion of the sum insured compared to the actual rebuild cost. However, the Insurance Act sets out the remedies available to an insurer when it's found a policyholder didn't provide the information they ought to have done when the policy was taken out or renewed. Applying 'average' in the way HCC has done isn't one of the remedies it contains. And the Act says a term which puts the insured in a worse position in respect of matters covered by the Act has no effect unless the transparency requirements it contains are met.

I think that's the point Mr D is making when he refers to the disadvantageous term not having been drawn to Mrs P's attention. I haven't seen evidence to show it was and so I don't think it's in line with the Act or fair for HCC to apply 'average' as it has. But I am satisfied that if it had been provided with a more accurate figure HCC would have charged more for Mrs P's policy. Taking into account the relevant rules (including the requirements of the Consumer Duty) I think it's fair for HCC to calculate settlement on the basis of what Mrs P should have paid for her policy compared to what she actually did. So HCC will need to pay 46.83% of the claim. I also agree it should pay interest on the settlement amount at 8% simple from the date the claim was accepted (August 2023) until payment is made.

My final decision

I've decided to uphold this complaint. HCC International Insurance Company Plc will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 11 December 2024.

James Park
Ombudsman

