

The complaint

Mr C has complained on behalf of L, a limited company, about the amount HCC International Insurance Company Plc, trading as Tokio Marine HCC, has offered to settle a claim made on their buildings insurance policy.

Reference to HCC includes its representatives and agents.

What happened

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- L took out a buildings insurance policy through an independent intermediary, who I'll call Y. When it renewed in 2022, it was underwritten by HCC. The policy covers a block of flats, for which L is the freeholder.
- Following fire damage to the building, Mr C got in touch with HCC to make a claim. HCC accepted the buildings claim and said L was underinsured, so it wouldn't pay the claim in full – it would instead settle it based on 'average', which meant paying around 63% of the buildings claim value.
- HCC reviewed the matter again. It said L was not only underinsured but had also underestimated the proportion of flat roof covering and given inaccurate information about a tenant. As a result, HCC said L had significantly underpaid for the policy. And, rather than applying average, HCC would settle the claim proportionately on a premium basis, taking into account all of these factors. That meant paying around 34% of the claim value – which significantly decreased the amount offered.
- Mr C complained but HCC maintained its position, so he referred the complaint to this Service. Our investigator thought HCC had acted fairly. Mr C disagreed. So the complaint has been passed to me.

My provisional decision

I made a provisional decision in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

- This complaint is about HCC. As a result, I will only be able to consider how HCC and its agents acted in relation to matters HCC is responsible for. In summary, HCC is responsible for the claim, including handling and settling it fairly. It's also responsible for setting the premium.
- Y is an independent intermediary. It's responsible for selling and renewing the policy, including the questions asked, any guidance given, and supporting documentation. HCC isn't responsible for any of those matters, so I won't be able to consider them in this complaint. L is entitled to raise a separate complaint about Y.

- It's not in dispute that the claim is covered by the policy in principle, or that HCC is prepared to settle the claim, so I don't need to go into those points.
- The dispute is solely about the reduction of the claim settlement, so that's what I'll focus on. That's arisen for three reasons – the sum insured, the flat roof proportion and occupancy information. HCC says L didn't provide accurate information about these things. And, had L provided accurate information, HCC would have charged a higher premium. As a result, HCC says it was entitled to reduce the claim settlement. I think Mr C agrees that *some* reduction is reasonable in the circumstances, but not to the extent of HCC's final offer of around 34%.
- The starting point is the 2022 renewal. There are laws about what a policyholder is required to do when taking out or renewing a policy. In summary, L had to provide reasonable information about the things HCC wanted to know in order for it to set the premium for the policy. The onus is on HCC to show L failed to provide reasonable information. I'll look at each of the three points raised by HCC in turn.

Sum insured

- When renewing the policy, HCC wanted to know the full rebuild cost of the property and for that to be the sum insured. Y told HCC the sum insured should be around £900,000 at the 2022 renewal. But HCC later said it ought to have been £1,437,000.
- HCC has provided various information about the rebuild cost estimate. It's shown an estimate based on a reputable rebuild cost calculator. It takes into account the type, size and location of the building, as well as typical costs at a certain point in time. In principle, I'm satisfied this is a reasonable way to estimate the rebuild cost of the property – and it's a tool commonly used by policyholders, so it's representative of the kind of information that would likely have been available to L at the renewal.
- One estimate is based on prices from December 2022, at the time of the renewal. The estimate comes to £1,304,000. Another is based on prices from March 2023, at the time of the claim. The estimate comes to £1,326,000.
- Lastly, HCC says it had a surveyor estimate the rebuild cost and that came to £1,437,000. However, I've only seen this quoted in an email from another party – I haven't seen anything from the surveyor or a report or breakdown of the estimate.
- I haven't seen any other estimate to challenge these figures. Nor have I seen anything to suggest the details entered into the rebuild calculator were inaccurate.
- I agree with HCC that a surveyor's estimate is usually more accurate than the rebuild calculator. But, in this case, I have little evidence to support the surveyor's estimate. I don't know, for example, what point in time and corresponding prices it was based on. Additionally, I don't think it's likely L would have been in possession of such a detailed estimate at the time of the renewal – so it's not reflective of the kind of information I'd have expected L to provide at that time. As a result, I'm not persuaded it would be fair for HCC to rely on it.
- The rebuild calculator estimate from December 2022 is reflective of the kind of information I'd have expected L to provide at that time. And, without anything to challenge it or suggest it's unreasonable, I'm satisfied HCC has shown an estimate of £1,304,000 would have been reasonable to provide at that time.

- That means I'm satisfied HCC acted fairly saying the £900,000 rebuild cost was unreasonable and should have been higher – but it acted unfairly by saying it should be as high as £1,437,000.

Flat roof proportion

- When renewing the policy, HCC wanted to know whether any part of the property was flat roofed and, if so, how much. Y told HCC there was '1-25%' flat roof. But HCC said it ought to have been 26-50%, based on its surveyor's estimate.
- I've seen evidence of the surveyor's estimate and I'm persuaded it's reasonable for HCC to rely on it. The surveyor provided aerial photos which broadly support their position. And it's clear they've taken steps to estimate with a reasonable degree of accuracy both the overall roof area and that which is flat roofed. And I haven't seen any other estimate to challenge the surveyor's.
- The estimate may not be precise, but I don't think it needs to be. HCC has shown the premium doesn't change based on each percentage point of flat roof proportion, but in ranges. It means that unless the proportion is 25% or less, the premium would have increased by the same amount. Given the estimate is for at least 40%, it would have to be significantly inaccurate to make a difference to the premium. I'm not persuaded it's likely to be, so I'm satisfied HCC acted fairly on this point.

Occupancy information

- When renewing the policy, HCC wanted to know how the property would be occupied. Y told HCC the flats were a combination of owner occupied and tenanted by employed people. But HCC said there were also housing benefit recipients – which it should have been told about.
- HCC has been asked to provide evidence to support its position. It says the information was based on what Mr C said during the initial site visit – but it has no further information than that. And it seems to accept that the three damaged flats, which it naturally looked into in more detail, are either owner occupied or tenanted, with nothing to suggest anyone was in receipt of housing benefit.
- Mr C has said his tenant was employed at the time of the 2022 renewal – and not in receipt of housing benefit then. I understand the tenant later became very unwell, and began to receive housing benefit during his recovery, before moving elsewhere. I haven't seen anything to show any other occupant was, or may have been, in receipt of housing benefit.
- In these circumstances, I'm not satisfied HCC has shown L provided inaccurate information about how the property would be occupied at the 2022 renewal. As a result, I'm not satisfied HCC acted fairly on this point.

Premium increase

- I note part of the complaint is about the scale of the premium increase HCC says it would have applied if L had provided different information. Mr C says other insurers would charge a lower premium for the same circumstances. That may be so, but that doesn't necessarily mean HCC has acted unfairly.

- Each insurer is entitled to take its own view of risk and, based on that, what price to charge for providing insurance to a particular policyholder. Generally, insurers can take into account any information they wish when deciding how risky something is to insure – as long as they use accurate and relevant information, don't discriminate or single anybody out, and treat each policyholder fairly and reasonably overall.
- HCC has shared detailed and commercially sensitive pricing information with this Service. It wouldn't be appropriate for me to reveal it here, as it would become publicly available. But I can assure Mr C I've thoroughly considered it and it shows HCC has treated L the same as any other policyholder in similar circumstances. It may be that HCC sees certain things as riskier to insure than some other insurers. But it's entitled to see things that way. Overall, I'm not persuaded HCC's risk assessment and pricing strategy has treated L unfairly.

Putting things right

- Overall, I'm satisfied HCC has shown the sum insured should have been higher – but not as high as it said – and the flat roof percentage should also have been higher. I'm not satisfied HCC has shown the occupancy information was inaccurate.
- To put things right, HCC will need to recalculate the premium it would have charged at the 2022 renewal, with a sum insured of £1,304,000 and flat roof proportion 26-50%. I'll call that the 'correct premium'. It should then take the proportion of the premium L paid, £857.96, compared to the correct premium, and settle the buildings claim at that proportion.
- If any sums have already been paid towards the buildings claim settlement, they can be deducted. To the remainder, interest should be added to reflect that L has been without the money unfairly. I intend to use the date of HCC's complaint response as the start date for interest, which is 1 August 2023, on the basis the claim should have been settled fairly by that point.
- A claim of this nature would reasonably have taken a number of months to settle and caused a great deal of inconvenience to the policyholder. That's not something I can hold HCC responsible for. However, I think HCC avoidably added to that by reaching an unfair settlement. The delay receiving the money is accounted for by interest. But the inconvenience of the situation isn't. So I think HCC should also pay compensation. I consider £250 a reasonable amount in the circumstances.

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.

- Mr C responded to my provisional decision to say he had nothing further to add.
- HCC responded to provide the report in which the surveyor estimated the rebuild cost at £1,437,000, as I hadn't seen this before. It said it had no further points to make.
- I've reviewed the report and note it was written by a surveyor following an inspection so, as I noted above, it's likely to be more accurate than an estimate generated by an online calculator.

- However, the surveyor's estimate is based on costs in April 2023 which, as I explained above, isn't the relevant point in time. It's likely costs were less at the relevant time, which was December 2022. And, again as noted above, I don't think L had any reason to have a detailed surveyor estimate or similar at the relevant time. It's likely the only tool available to reach an estimate would have been the online calculator and that's the kind of information I think it would have been reasonable for L to have provided at that time.
- As a result, I remain satisfied it's in line with the law, and fair and reasonable, for the proportionate settlement to be based on the premium that would have been charged for a sum insured of £1,304,000 – as well as a flat roof proportion of 26-50%.
- As no other aspects of my provisional decision have been commented on or challenged, I don't see a need to discuss them further.
- Overall, that means my view about how to put things right is as set out in my provisional decision. I'm satisfied that's a fair and reasonable outcome to this complaint against HCC.

My final decision

I uphold this complaint and require HCC International Insurance Company Plc to:

- Settle the buildings claim as set out above in the 'putting things right' section by making an additional payment*.
- *To that payment, add interest at 8% simple per annum, from 1 August 2023 to the date of settlement.
- Pay £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 6 December 2024.

James Neville
Ombudsman