

complaint

UK Insurance Limited (UKI) refused to pay Mr S's claim in full.

background

Mr S owned a rental property which he insured with UKI. He made a claim when his tenant accidentally caused a fire. UKI accepted the claim and appointed loss adjusters. The loss adjuster concluded that the 'sum insured' (ie what it would cost to rebuild the house) that Mr S had indicated was less than it would have cost to re-build it. He advised UKI to pay only a proportion of the claim (approximately 70%) because Mr S had undervalued the property when he took out the insurance.

Mr S complained to UKI. He said that the 'sum insured' figure was based on the purchase price and was 'index linked' each year. UKI said that the complaint should have been against the broker who sold Mr S the policy. It also said that, *'in relation to Index linking, the policy booklet shows that this sum will be adjusted at monthly intervals in accordance with the percentage change in the House Rebuilding Cost Index which is prepared by the Association of British Insurers (ABI). The sum insured provided to the broker needs to represent the rebuild cost at the time of inception to enable the index link to remain accurate'*.

Mr S said that he had been given a 'Statement of Fact' document and that this document had failed to provide information on how to calculate the 'sum insured'. He said that he was only asked *'what is the buildings sum insured and does it represent the full rebuilding cost'*. He did not accept that the complaint was against his broker and said the Statement of Fact document represented the contract between himself and UKI.

In a further response, UKI said that the fact that one of Mr S's properties had been deemed to be underinsured in 2005 meant that he was aware that other of his properties might also have been underinsured and that the sum insured was based on the rebuild value rather than the market value. It maintained its decision to partially settle the claim and stated *'it is the responsibility of the policyholder to check all details within the policy you have purchased are correct and meets your needs. At the same time it is the broker's role to assist the policyholder to ensure the policy purchased has the correct sums insured'*.

UKI subsequently offered to review the claim based on a new valuation. However, when it failed to respond to Mr S's continued enquiries, he complained to this service. He says that he was never given any guidance concerning how to calculate the 'sum insured' and that he had not been aware that he had not been adequately insured. He was also unhappy with the time it had taken UKI to resolve his claim.

Our adjudicator felt that the complaint should be upheld. He was not satisfied that Mr S had been given reasonable guidance on how to calculate the 'sum insured'. He recommended that UKI should pay Mr S the difference between what it had offered and the full cost of the repairs. He recommended that UKI should increase the settlement from £75,000 to £80,000 (before the average was applied) and pay Mr S £300 for the distress and inconvenience caused by its poor handling of the claim. He noted that since Mr S complained to this service, he was claiming that the cost of the repairs had increased, however he said that this would need to form the basis of a new complaint to UKI.

UKI disagreed with our adjudicator's conclusions and asked for the complaint to be reviewed by an ombudsman. It maintained that the complaint should be directed against the broker. It

said that Mr S was not a normal consumer for the purposes of insurance because he had five insured properties in relation to which he was likely to have had loans or borrowings. It said that the sum insured was clearly defined as *'the maximum amount that an insurer would have to pay'* and that the Statement of Fact document made it clear that the insurance offer was based on the information that it was given by the insured. UKI also argued that Mr S understood the importance of keeping the sum insured up to date. It accepted that there had been delays to the claim and agreed to pay Mr S £300 compensation. At also agreed to increase the settlement amount to £80,000 (before the average was applied)

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

UKI has argued that any complaint should be against the broker because it sold the policy to Mr S. UKI is offering a reduced settlement based on information given in response to a question that it asked (albeit via the broker). The complaint has not arisen because the broker has failed to pass on information that it should have done. It has arisen because Mr S believes that UKI did not provide him with enough information relating to how it expected the 'sum insured' to be calculated. Therefore, I find that it is fair and reasonable that this complaint is against UKI.

At the outset I note that UKI's decision to apply an average to the claim because the sum insured was incorrect is something which the policy permitted it to do. The issue for me to consider is whether the information it provided to Mr S was sufficient to enable him to provide it with the right information. As noted above, if the 'sum insured' figure that Mr S gave when he took out the policy was lower than it would have cost UKI to rebuild the house (and this is something which is not in dispute), then UKI would be entitled to rely on this in paying a proportion of the claim. However, this would only be fair and reasonable if UKI had asked a clear question and provided Mr S with the appropriate information to enable him to give it the right information.

UKI has argued that it would expect Mr S to be aware of certain issues and requirements related to insurance and that he should be considered as a *'sophisticated consumer'* for insurance purposes. It is right that Mr S insures a number of properties which he rents out and that he uses a broker to do this (and has done so for many years). It is also right that this is intended to be a profit-making venture. However, I do not think that this means that Mr S is a 'sophisticated consumer' as this is something that we would normally apply to a business *'with a large turnover and a developed structure – and which receives legal advice from solicitors, brokers or an in-house legal department'*.

Mr S has said that the sum insured was increased each year by 'index linking'. In my view, this shows that he understood the significance of the 'sum insured' and that he had taken steps to keep this figure updated for the purposes of insuring his rental properties. It also suggests that he would have taken the appropriate steps if he had been given adequate information about how to do so.

The crux of this complaint is whether Mr S was given enough information about how to calculate the sum insured when he took out the policy and whether this information was clear and unambiguous. Therefore, the information UKI gave to enable him to give it the correct information is critical.

The insurance schedule simply refers to the 'sum insured'. From the other documents I have seen (UKI has not provided its business file), I have not seen any evidence that Mr S was given any information concerning what the 'sum insured' needed to include or how it should be calculated. This is despite UKI having suggested that the information was given.

In one of its responses to Mr S's complaint, UKI said that Mr S's broker 'should' have provided Mr S with the following information: *'the sum insured must be sufficient to cover full rebuilding cost of the home including fixtures and fittings, domestic outbuildings and garages also the costs of complying with Local Authority and other statutory requirements, architects', surveyors' and legal fees and site clearance costs'*. However, I have not seen any evidence that the broker was instructed to give this information or that UKI communicated it to him in any other way. Because UKI has not produced its business file, I have not seen the document (if there is one) which featured the information or any other confirmation that it was given. In his written opinion, our adjudicator noted that there was no evidence to corroborate what UKI had said about the guidance it had given. He also said that the only evidence he had about what Mr S was asked was what was contained in the insurance schedule (referred to above). When it responded to our adjudicator, UKI did not deal with this, despite having had the opportunity to do so. In these circumstances, I have no option other than to conclude that it is most likely that M was not given the information that UKI referred to in its response to this complaint.

Taking into account the circumstances as a whole, I am not satisfied that UKI provided Mr S with sufficient information to enable him to give it the information it required about the 'sum insured'. I accept that Mr S was aware of the significance of the information he gave when he took out the insurance, especially as he'd had issues with underinsurance in the past. However, if UKI had not given Mr S the information he needed to give it the correct figure, it can't reasonably hold him responsible now that it has become an issue. In these circumstances, I find that it was not fair or reasonable for UKI to have refused to pay Mr S's claim in full. I find that UKI should pay Mr S the difference between what it has paid Mr S and the full cost of repairs.

alternative accommodation

I note that Mr S has concerns about alternative accommodation for his tenants. If Mr S has claimed for costs relating to alternative accommodation then UKI should consider this in line with the policy terms. He says that UKI gave him no assistance even though the cover was included in the policy and that his tenants were forced to sleep on the floor of a friend's house. I have limited information concerning this aspect of the complaint but I note that UKI told Mr S that he would have to make the necessary arrangements through a letting agent. In the circumstances, I find that this was fair and reasonable.

compensation

I find that UKI's handling of the claim, including its poor communication and the unnecessary delays resulting from the circumstances giving rise to this complaint, did cause Mr S undue distress and inconvenience and that £300 compensation is fair and reasonable.

my final decision

I uphold this complaint and direct UK Insurance Limited to:

- pay Mr S the difference between what it has already offered and the full cost of the repairs (based on £80,000). If this results in a cash payment this is to include 8% simple interest from the date the relevant costs were incurred.
- Pay Mr S £300 compensation.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 13 November 2015.

Carolyn Bonnell
ombudsman