

complaint

Mr L is unhappy that Congregational & General Insurance Public Limited Company ("C & G") reduced his settlement for an arson claim, as his buildings were underinsured.

background

The background to this matter is set out in my provisional decision. A copy is attached and forms part of this final decision.

C & G didn't have any response to make.

Mr S wanted to point out that it took a year before he received any payment. It took over two years to bring the property to a habitable state. He and his wife are still dealing with the police in respect of the arsonist who also burnt down their business.

my findings

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

Having done so, I've decided to confirm my provisional decision.

I understand Mr L's points and what he has gone through. I think this was a complicated case to assess so it should have been expected to take some time to agree on a payment. I set out in my provisional decision the compensation I am awarding and the reasons why. I think it's fair.

my final decision

I uphold the complaint.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend that C & G pay the balance.

I direct Congregational & General Insurance Public Limited Company to:

- pay Mr L £112,799, less the policy excess and any payments previously issued for this section of his claim.
- pay interest of 8% simple per year from the date of loss to the date of settlement, but deducting two years' interest payments.
- pay Mr L the consequential loss of value he incurred following the sale of his home, calculated as follows:
 - Arrange for three independent surveyors to provide an opinion of the property's value in its pre-incident condition, based on its sale date of 24 June 2014.

- Average the three valuations obtained to establish a reasonable value for the property on this date. These should assume it had been rebuilt and sold in its pre-incident condition.
- Pay Mr L the difference between the average valuation figure, and the sale price of £244,000 achieved for the property.
- Pay interest of 8% simple per year on this amount, from the date the property was sold to the date of settlement.
- pay Mr L compensation of £1,000 for the distress and inconvenience he has been caused by its handling of his claim

My decision is that Congregational & General Insurance Public Limited Company should pay the above amounts – up to a maximum of £150,000 – plus interest where indicated.

recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that Congregational & General Insurance Public Limited Company pays Mr L the balance plus simple interest at 8 percent per year on the balance from the date of this decision until the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 14 December 2015.

Ray Lawley
ombudsman

PROVISIONAL DECISION

complaint

Mr L is unhappy that Congregational & General Insurance Public Limited Company ("C & G") reduced his settlement for an arson claim, as his buildings were underinsured.

background

Mr L made a claim to C & G in December 2010 following an arson attack on his home. Both he and C & G appointed their own loss assessors.

C & G ultimately decided that based on the rebuilding cost and the amount the property was insured for, it was underinsured by some 65%. It was estimated that the cost of repairs to the house was £137,976. The final settlement was £44,291.60, 35% of this.

Mr L accepted the settlement at the time although he didn't believe it was fair. He felt he had no choice as he was continuing to pay a mortgage. He was also unable to repair the property to the same standard because of the shortfall. When repaired the property was sold but for much less than it should have been

On referral to this service our adjudicator upheld the complaint. C & G admitted that it didn't correctly index the rebuilding cost for the property before settling the claim. The index linked figure should have been £112,799, rather than £109,409. As a result of this, the settlement on a proportionate basis should have been 37% rather than 35%.

Also there was a clause in the policy allowing C & G to reduce the claim for underinsurance. An endorsement to the policy deleted the clause as far as the mortgage company's interest was concerned. Our adjudicator thought this had the effect of 'ring-fencing' the amount of the mortgage, meaning that if the claim was less than the sum owing on the mortgage, C & G couldn't reduce it. She thought it should pay the full amount of the repairs, plus interest. She also thought that C & G should pay the difference in price between its proposed sale value and the amount it was sold for. She further said that C & G should pay Mr L compensation for trouble and upset of £2,000.

C & G thought this was unfair as:

- the endorsement was common prior to 2012. If applied in the way suggested this would only protect a consumer who had a mortgage but not one who was mortgage free. This type of clause no longer applies as in 2012 the ABI told the British Bankers Association it would end the protocol which protected the banks' interest.
- it wouldn't be fair to make it pay the cost of repair over and above the sum the property was actually insured for.
- It wouldn't be reasonable to expect it to pay interest as Mr L waited four years before making his complaint
- property prices in the area have hardly increased at all since Mr L bought the property in 2006. It thinks the price the property sold for reflects this, and that it wasn't reduced because of the quality of the repairs
- it doesn't accept the proposed compensation award. Mr L had never raised any of these issues with it.
- it feels that the adjudicator's view is technically incorrect and is punitive

my provisional findings

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

underinsurance

C & G offered a proportionate settlement for the claim as Mr L's policy. The relevant parts of policy term, under 'Basis of Claim Settlement' on page 7, are:

- "1 The sum insured must be adequate to pay for the full cost of rebuilding the whole of the buildings in a new condition similar in form and style....*
- 3 If the sum insured is not sufficient to pay for the full cost of rebuilding as stated in 1. above, any claim payment will be reduced by the proportion which the sum insured bears to the full cost of rebuilding the whole of the buildings."*

This is called "averaging".

However, the policy schedule effective from June 2010 includes the following endorsement on page 24 of the policy document:

3. Deletion of Proportionate Reduction in Claim Payment. SECTION 1 – BUILDINGS – Basis of Claims Settlement – Paragraph 3 is deleted so far as the interest of any mortgagee shown in the Schedule is concerned.

So I must first of all decide how that clause is to be interpreted. C & G says that the endorsement clearly states that *only* if it has to pay the lenders any monies in respect of the claim would it not apply averaging.

The problem is that the clause doesn't clearly state what C & G says it does. The clause is designed to protect the interest of the mortgagee (lender). It doesn't say when it will or won't pay out. The natural way to interpret the clause is that it "ring-fences" the mortgagee's interest and saves that from being reduced if there is an underinsurance. That may not have been C & G's intention but I think it's a fair way to interpret the endorsement. I'm not sure of the relevance of comparing this to an owner with no mortgage. The intention clearly at the time was to safeguard lenders.

The effect of this is to save the lender's interest from being reduced but only up to the amount the property is insured for. I understand that there was a £180,000 mortgage. I agree with C & G that it can't pay out more than the insured amount. But it has admitted that this wasn't calculated correctly. It should pay the full index linked sum of £112,799 (less any payment already made).

value of the property

I take C & G's point concerning the value of the property. But I'm cautious about using property price sites. These only reflect the price when bought and when sold. They don't take into account any improvements which may have added to the value. They also don't say whether the original price reflected a fair value of the property. So I think it would be fair, if Mr L had to sell his house at an undervalue because he didn't have the funds to repair it, he should be paid that loss. If C & G's assertion, that the property was sold for its market value, is correct, then the proposed formula should deal with that.

interest

I think it should also pay interest from the date of loss. That would be our normal approach. But I do take the point that it took four years for Mr L to approach us. For the balance of the payment under the claim, I propose that C & G should deduct two years of interest payments from the amount it pays.

compensation

Mr L and his family suffered a good deal of stress and financial hardship for several years. But I can't hold C & G responsible for the underinsurance. Even paying up to the value of the claim would still have left Mr L with a shortfall in payment. So, to some extent he would still have suffered financial hardship. I will make a compensation award, but of £1,000.

my provisional decision

I propose to uphold the complaint.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend that C & G pay the balance.

I propose to direct Congregational & General Insurance Public Limited Company to:

- pay Mr L £112,799, less the policy excess and any payments previously issued for this section of his claim.
- pay interest of 8% simple per year from the date of loss to the date of settlement, but deducting two years' interest payments.
- pay Mr L the consequential loss of value he incurred following the sale of his home, calculated as follows:
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 - Pay interest of 8% simple per year on this amount, from the date the property was sold to the date of settlement.
- pay Mr L compensation of £1,000 for the distress and inconvenience he has been caused by its handling of his claim

My provisional decision is that Congregational & General Insurance Public Limited Company should pay the above amounts – up to a maximum of £150,000 – plus interest where indicated.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that Congregational & General Insurance Public Limited Company pays Mr L the balance plus simple interest at 8 percent per year on the balance from the date of this decision until the date of payment.