

complaint

B, a limited company, is unhappy about the settlement offered following a claim for water damage. The commercial property policy is provided by RiverStone Insurance Limited.

background

B made a claim following water damage. RiverStone appointed loss adjusters and after initially declining the claim due to issues over the unoccupancy of the building, RiverStone accepted liability. B instructed claims consultants and a surveyor to prepare a repair specification for the building reinstatement works. The claims consultant explained that B might wish to accept a cash settlement of the claim.

RiverStone's loss adjuster considered the cost outlined by the surveyor to be too high and explained that if a cash settlement was made no payment would be included for VAT or professional fees as these would not be incurred. The loss adjuster also noted that the building was insured for a value at the time of the loss of £787,500 and considered that the buildings value was actually a minimum of £1,000,000. Therefore, it said the property was underinsured and the low sum insured meant that RiverStone would only pay out 79% of the claims costs as that is what had been insured.

A cash settlement offer of £75,000 was rejected and it was agreed that the surveyor would prepare a specification for repairs and then obtain competitive tenders. The surveyor considered that a rebuilding cost of £790,000 showed an underinsured value of only 14%.

Following tenders ranging from between £170,000 and £240,000 approximately a further cash settlement offer of £95,000 was made. This was calculated by deducting VAT, contingency sums and uninsured work and applying the underinsurance percentage. In addition, an adjustment for wear and tear was made. B remained unhappy about the offers and delays and brought a complaint to this service.

RiverStone instructed its own surveyor to assess what the reinstatement cost should be. A valuation of £2,850,000 was provided. Following this report the cash settlement was reduced further.

Our adjudicator upheld the complaint. She felt that as there was no evidence to show why the loss adjuster's initial assessment was unreasonable it would be fair to use this as an appropriate figure for the sum insured. RiverStone accepted the adjudicator's recommendation to base settlement on the 79% of the full value of the property.

Our adjudicator recommended that the repairs would need to be tendered again. As there was some doubt as to B's intentions with the property and it was possible that reinstatement would not take place, she felt it reasonable that RiverStone could offer a cash settlement by deducting VAT, surveyor's fees, contingencies and wear and tear. Then if B did actually reinstate the building she recommended that, upon evidence that reinstatement was taking place RiverStone should pay the difference in the cash settlement up to the limit of the policy. This means that there would be no deduction for wear and tear but would still be a deduction for underinsurance.

RiverStone agreed to reconsider the settlement and would re-tender the works required. Having put this offer to B it did not accept because B felt the delays involved in retendering

would be unfair and B would prefer the costs to be based on the original tenders but with an uplift and based on his surveyor's costs.

RiverStone considered that this could be appropriate but felt that this would need to be negotiated direct without this service's involvement. As agreement could not be reached the complaint was passed to an ombudsman for a final decision.

my findings

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

underinsurance

RiverStone has agreed that it would rely on its own loss adjuster's opinion as to the amount of underinsurance. B is still unhappy with this as it feels that there is no reason not to accept the surveyor's own calculations. On balance it does not seem unreasonable after reviewing the figures to rely on the loss adjuster's assessment which means that it would be fair for RiverStone to apply the 79% figure. In this case this seems a reasonable outcome.

settlement

RiverStone has concerns that B does not intend to reinstate the property and therefore does not feel it should be responsible for any costs that will not be incurred such as VAT and surveyor fees. I accept this point. If B does not intend to repair the property then it will not incur some of the costs and contingencies. On the other hand B is adamant that it intends to reinstate as it is looking to carrying on its business rather than sell the property. It seems that it will do this once a cash settlement is agreed rather than wanting RiverStone to continue to be involved with the reinstatement.

However, B wants the option after a cash settlement to go back to RiverStone to prove any additional costs it incurs such as increased cost of repair due to the amount of time that has passed, along with the other potential costs for VAT, surveyor's fees, contingency fees, etc. Additionally B wants the cash settlement to be based on its surveyor's uplifted costs.

In this case it seems that the detailed schedule of works drawn up before it was put to tender had been agreed by the surveyor and the loss adjuster. What is in dispute are the quotes that were provided as they have been adjusted, upwards by the surveyor and downwards by the loss adjuster. In my opinion it is not unreasonable for RiverStone to have doubts over B's intentions with the property. If B is able to show that it will incur the additional costs it is claiming for then RiverStone should reassess its cash settlement to take these costs into account. However, I do not consider it would be fair or reasonable for RiverStone to have to pay these costs in advance.

It would be reasonable for RiverStone to base its cash settlement offer on the costs shown through retendered quotes.

my final decision

I uphold this complaint.

I require RiverStone Insurance Limited to:

- deal with the claim at the accepted 79% sum insured level;
- get the schedule of works retendered;
- consider evidence from B for settlement of additional costs for the actual works once it is undertaken;
- add simple interest at 8% per annum from the date of loss to the date of settlement, less any tax properly deductible.

I make no other award against RiverStone Insurance Limited.

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 the business to pay the balance. It is unclear to me whether my proposed award will exceed £150,000.

Recommendation: If the amount payable in respect of the above exceeds £150,000, I recommend that RiverStone Insurance Limited pays B the balance.

This recommendation is not part of my determination or award. It does not bind RiverStone Insurance Limited. It is unlikely that B can accept my decision and go to court to ask for the balance. B may want to consider getting independent legal advice before deciding whether to accept this decision.

John Quinlan
ombudsman