

complaint

Ms E complains about the way UK Insurance Limited (UKI) handled her landlords' insurance claim for fire damage at her rental property.

background

Ms E made a claim under her landlords' insurance policy following a fire at her rental property in June 2016. UKI appointed loss adjusters to report on the damage. The claim was accepted and UKI instructed a structural engineer to scope the repair works needed. It then invited tenders from three different contractors. Unfortunately only one contractor submitted a quote so UKI sought further tenders. Once the tenders were received UKI made Ms E a cash offer of settlement based on the lowest of the quotes. UKI also said it had reduced the cash settlement offered by applying the policy's average clause because it'd discovered Ms E was underinsured.

Ms E complained to UKI. She said that when she took the policy out in 2014 she'd done so online and the property rebuild cost box was pre-populated. She said she relied on the amount stated so it was unfair for UKI to now say she was underinsured. She also complained about the delays in handling her claim and the poor service she'd received.

UKI looked into Ms E's complaint but didn't think it'd done anything wrong. It thought the way it'd handled her complaint had been satisfactory and that updates had been provided to her. It said that the claim had taken a while but an engineer had to be appointed, a scope of works prepared and tenders invited. It said it appreciated this had all taken time but thought that had been unavoidable.

UKI said that it was Ms E's responsibility to ensure that her property was adequately insured and disputed that its online form was pre-populated. It didn't think it had unfairly applied the average clause to Ms E's claim.

Unhappy with UKI's conclusions, Ms E complained to this service. Our adjudicator investigated Ms E's complaint and recommended that it was upheld in part. He didn't think there was any evidence of unnecessary delays in handling the claim nor of poor customer service. He thought the evidence was inconclusive about whether the online form was pre-populated but given the sale of the policy was non-advised he didn't think it'd be reasonable to find UKI responsible for the under-insurance.

But our adjudicator did think that the application of average had been unfairly applied by UKI to Ms E's settlement. He didn't think it was adequately explained or mentioned in the policy terms and conditions. He said that this service expects such terms to be clearly explained if they are going to be relied upon and he didn't think it had been. He recommended that UKI reconsider the claim without applying the average clause to the settlement offered subject to the remaining policy terms and limits.

UKI disagreed with our adjudicator. It referred to the policy's reinstatement clause. Although this made no mention of 'average', it said it was clear from this clause that average would be applied to claims where the insured has failed to adequately insure their building.

The complaint was passed to me for a final decision.

my findings

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

This was a major insurance claim which took UKI about 3½ months to deal with from notification through to settlement. Given the nature of the claim, the need to instruct a structural engineer and to wait for a detailed scope of works to be prepared before it could even be put out for tender, I don't think the claim took UKI an unreasonably long time to deal with. Insofar as there were any delays they were outside of UKI's control. Of the three contractors originally invited to tender, only one did. This meant UKI had to seek further tenders, and I think it did so within a reasonable timeframe. I don't think it would be fair for me to hold UKI responsible for a third party contractor's failure to provide a quote.

I'm unable to agree that UKI provided Ms E with poor customer service. I've seen evidence that its loss adjusters kept her updated and, as I've said, this was a major fire claim which was always going to take a little while to reach its conclusion.

UKI has said that Ms E was underinsured. Ms E says the online application form was pre-populated with a sum assured/rebuild cost. UKI says it wasn't. I do know that the sale of the policy was on a non-advised basis. In other words, UKI provided Ms E with no advice about the suitability of the policy. The responsibility was hers alone. So, whilst I can't know whether the form was pre-populated or not, I don't think it would be fair to say UKI was responsible for Ms E's underinsurance.

Insurers often include an average clause in the policy terms and conditions which they apply when a customer makes a claim and it turns out they are underinsured. The existence of such a clause in Ms E's terms and conditions is, in my view, far from clear. UKI says the clause is clear and it's entitled to apply it to this claim. I'm unable to agree. The word 'average' doesn't appear at all. UKI says that may be but the relevant clause clearly defines the principle of average. I'm afraid I don't agree with this either.

The policy says that claims will be settled on a '*Reinstatement Basis*'. This is then followed by the clause reproduced below:-

"If at the time of reinstatement the sum representing 85% of the cost which would have been incurred in reinstating the whole of the Property covered by any item subject to this Clause exceeds its Sum Insured at the commencement of any Damage, Our Liability shall not exceed that proportion of the amount of the Damage which the Sum Insured shall bear to the sum representing the total cost of reinstating the whole of such Property at that time".

It's not unreasonable to think that the above clause doesn't adequately explain the principle of average. This service expects clauses that are to be relied upon to be clearly explained within the policy booklet. I don't think, in all fairness, the above clause meets that threshold. So I don't think it's reasonable of UKI to seek to apply it to the settlement of Ms E's claim.

Our adjudicator recommended that UKI reconsider Ms E's claim without applying average subject to the remaining policy terms and conditions. As UKI is now aware, it's my view that the claim should be settled without being reconsidered. This is because it has already reached the end of consideration of the claim. Indeed this is a complaint about settlement. That being the case, UKI should settle the claim without application of the average clause.

As Ms E has only been paid a proportion of the total settlement she is due as a result of this decision, and has been out of pocket for the balance, UKI should pay her interest on the difference at our usual rates. Interest applies from the date UKI originally settled Ms E's claim in October 2016 to the date it pays the balance resulting from this decision.

my final decision

My final decision is that I uphold this complaint in part. I require UK Insurance Limited to calculate the cash settlement for Ms E's claim without the application of any average clause. It should deduct from the figure reached the sum it's already paid to Ms E. Interest should be added to the difference at our normal rate of 8% simple* per year from the date the claim was settled to the date it pays this award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 6 March 2017.

Claire Woollerson
ombudsman

*If UK Insurance Limited considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Ms E, it should tell them how much it's taken off. It should also give Ms E a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate