

complaint

A claim made under Home insurance for damage caused by fire was not settled fully by UIA (Insurance) Limited ("UIA").

background

I issued a provisional decision in June 2013. An extract is attached and it forms part of this final decision.

The response made by/on behalf of Mr and Mrs S included:

- two parts of the kitchen have been retained – a spare part kept remote from the fire and the second in place at the time of the fire;
- they insist a (named) representative of the loss adjusters agreed cleaning work to the kitchen had not achieved a satisfactory finish and he had authorised its replacement;
- the quality of the original kitchen was at least equal to, if not superior to, the replacement;
- the fire started in the main bedroom suite but the suite UIA agreed to pay for was a *"side bedroom suite"*.

In its response UIA said Mr and Mrs S are seeking *"betterment"*. It also provided comments about the provisional decision made by its loss adjusters. These included:

- a summary of events from the time of the fire;
- a suggestion that the fire started in a bedroom that was not the main bedroom;
- the buildings and contents sums insured were considered adequate;
- Mr S raised issues with/about the contractors that UIA/the loss adjusters had appointed, including failure to keep appointments, the alternative accommodation that was arranged (via agents appointed by the loss adjusters) was dirty, replacement floor joists were not laid straight;
- Mr S agreed to the sum paid in respect of the work required to complete all necessary building repairs not finished by UIA's contractors – that did not include the cost of a replacement kitchen and that suggests the kitchen was not an issue at that time;
- the claim for a replacement kitchen is believed to relate to difficulties that Mr S experienced with the contractors that he appointed, perhaps including causing additional damage (the loss adjusters accept they cannot prove this);
- the retained part of the kitchen should be inspected by a restoration company;
- Mr S's expectations for the repair work were very high;
- Mr S returned to live in the insured property while repair work by UIA's contractors was ongoing – the loss adjusters doubt he would have done that if the kitchen was unusable;
- Mr and Mrs S should, at an early point, have detailed their claim for contents not damaged beyond repair;
- Mr and Mrs S were in a better position than UIA's agents to *"price/validate"* the contents claim as they would have known how much was paid for the items originally and would have known the quality of those items, whereas the agents would have had to guess;
- it is agreed that UIA should deal with the claim for curtains and tracks.

my findings

I have considered all the available evidence and arguments (including everything that has been said in response to the provisional decision) to decide what is fair and reasonable in the circumstances of this complaint.

I am not satisfied UIA has shown that Mr and Mrs S are seeking "*betterment*".

Mr and Mrs S continue to insist that a representative of the loss adjusters agreed cleaning work to the kitchen had not achieved a satisfactory finish and had authorised its replacement. It seems UIA/the loss adjusters continue to dispute this but notes made when the kitchen was inspected in the light of Mr and Mrs S's concerns include "*There may be an issue with the kitchen units*" and "*Insured concerned unit doors discoloured by smoke. Carcases ok. Worse (sic) case replace doors*". In my view these remarks do not support the loss adjusters' assertion that the inspector did not agree the doors were damaged/stained.

In the circumstances, I am not persuaded agreement to the sum paid in respect of the work required to complete all necessary building repairs that were not finished by UIA's contractors shows there were no issues regarding the kitchen at that time.

It seems the kitchen was usable. The loss adjusters appear to suggest this undermines this aspect of the complaint. I do not believe that follows. The issue is whether the damage was repaired properly.

The loss adjusters accept that they cannot prove that any need for a replacement kitchen relates to difficulties experienced with the contractors that Mr and Mrs S appointed (such as additional damage being caused). Even if it does relate to such issues, I am not satisfied UIA could fairly disclaim all responsibility for that. It chose to undertake to carry out (or arrange) necessary repairs and in that situation I consider it is responsible for that work being completed efficiently, effectively and expeditiously. I acknowledge that such an undertaking implies UIA will choose the contractors to act on its behalf, but, if it agrees to other contractors being involved, I believe it may still have a responsibility for their actions.

It seems to me there is an implication that, in raising concerns about repairs and other matters, Mr S was being unreasonable. I am not satisfied it was unreasonable for him to raise the points that the loss adjusters mentioned. For example, I consider agents of UIA should have kept appointments that they made and the alternative accommodation that was arranged by UIA should have been reasonably clean.

While I accept it may be unreasonable to demand absolute perfection in reinstatement work, I think it is understandable that homeowners who take pride in their properties may expect an insurer that undertakes to carry out or arrange repairs to take account of the standards that they demand when they commission work.

I believe it is normally reasonable to expect claimants to submit details of their claims as soon as reasonably possible. I consider that approach involves account being taken of special and extenuating circumstances.

I am not persuaded that Mr and Mrs S were in a better position than UIA's agents to "*price/validate*" the contents claim in respect of the items that were beyond repair – the agents had identified and listed these. Given this, it is not clear what more was required to "*validate*" the claim, and I cannot see why the original purchase prices should be especially

significant. According to the copy supplied to us, the contents cover operated on a “new for old” basis.

Even after the adjudicator’s assessment UIA insisted curtains and tracks in the claim had not been damaged. However, its loss adjusters now agree they would at least have been affected by soot deposits.

I consider UIA may arrange for a restoration company to carry out the inspection of the retained part of the kitchen.

my final decision

UIA (Insurance) Limited should:

1. arrange for the retained part of the kitchen units to be inspected. If it does show fire-related staining/damage, UIA should either provide Mr and Mrs S with evidence that its agents carried out, successfully, cleaning or other remedial work to the kitchen furniture and appliances (or that its payment in respect of the work carried out by Mr and Mrs S’s contractors to complete the repairs included allowance for the kitchen furniture/appliances) or it should reimburse the cost they incurred replacing them. Regarding the latter, if it can show like-for-like or equivalent replacements were available at less expense than was incurred by Mr and Mrs S, it can limit its payment to the lesser cost;
2. settle the claim in respect of curtains/tracks, lamps/lampshades and the ornamental chair;
3. revisit the details of the outstanding parts of the claim and provide a more carefully considered response;
4. pay £500.

S Lilley
ombudsman

PROVISIONAL DECISION

background

Early in the claim UIA's loss adjusters agreed all rooms in the property had been affected by the fire or smoke from it. They appointed contractors to "*help mitigate the loss wherever possible*" and asked other contractors to provide an estimate for the necessary building repairs. They considered the sums insured had been adequate.

Subsequently, they said the building contractors had been instructed to proceed with the repairs. They said an inventory of contents that had been damaged beyond repair had been provided by the other contractors they had appointed and they were now awaiting Mr and Mrs S's detailed claim in this respect.

Later, they said agreement could not be reached with Mr and Mrs S regarding the work to be carried out by the building contractors and surveyors had been appointed instead to oversee the repairs and ensure they remained on track.

They said the other contractors' attempts to mitigate other damage had, in part, been unsuccessful. Payments were made for restoration work carried out on contents items by the contractors.

The loss adjusters said the contractors that carried out the building repairs (also chosen/instructed by UIA, it seems) were dismissed by Mr and Mrs S (although they said later the contractors had been unwilling to continue to carry out work at the property) and Mr and Mrs S would approach other building contractors to complete the work. Subsequently, it was agreed the replacement contractors could complete the work and UIA would reimburse Mr and Mrs S with the cost.

Our adjudicator considered UIA should pay the cost of making good the damage caused to kitchen furniture and appliances (such as smoke staining) and the sum (£6,882) attributed by Mr S to the inventory of contents that had been damaged beyond repair that was provided by UIA's agents. He said it should also consider the claim made for other contents items (but he thought the contents had been underinsured and UIA could take that into account when making a settlement offer). He thought interest should be added to further claim payments, but not for periods of inactivity attributable to Mr and Mrs S. He was of the view that UIA should also pay compensation of £250 for distress and inconvenience.

UIA agreed to pay the cost of making good the damage caused to kitchen furniture and appliances and the compensation suggested. Subsequently, however, it said all the damage to the kitchen/appliances had been included in its previous payments and no further payment would be made. It did not consider the replacement of these items had been necessary. It agreed to pay £6,882, £294 for utilities, and interest, but, other than for a bedroom suite, it would not make a further payment in respect of other contents as its loss adjusters did not consider the items concerned had been damaged by/as a result of the fire.

The adjudicator considered the offer was fair.

Mr and Mrs S disagreed. Via their solicitors, they said the loss adjusters had agreed the kitchen furniture/appliances should be replaced as smoke staining to them could not be

cleaned. Part of a unit has been retained and will demonstrate the degree of staining. They made the point that the floor covering in the kitchen was replaced, and suggested carpets should have been dealt with as part of the buildings claim. They sought payment of £44,697 in respect of contents (including the sum offered by UIA). They suggested a *“punitive”* award should be made.

my provisional findings

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

It seems to me the appointment, on behalf of UIA, of contractors to *“help mitigate the loss wherever possible”* (by means such as cleaning, I assume), and to carry out the building repairs, can reasonably be taken as a decision to settle the claim by carrying out (or arranging) the repair work and/or replacements made necessary by the damage. I say this despite the policy supplied to us appearing not to make it clear that UIA had a right to settle the buildings part of the claim by this method (it does make it clear in relation to replacing contents).

I have seen no evidence that Mr and Mrs S were informed of the consequences of choosing to employ contractors to carry out the repair of insured damage, or that, having been given this information, they nevertheless decided to employ the contractors introduced by the loss adjusters. UIA should already be aware that my ombudsmen colleagues and I consider that should reasonably be done if a claimant wishes to carry out/arrange repair work.

Mr S was asked to sign a *“mandate”* which referred to the contract for the building repairs as between him and the contractors, but, bearing in mind my comments above, I am not satisfied he was the contractors' employer. I see Mr S made the same point – he said he was not involved in the contractors' appointment and the repair contract was between UIA or the loss adjusters and the contractors.

In any event, it appears UIA agrees it chose to settle the claim by carrying out (or arranging) the necessary repair work and/or replacements, as the loss adjusters said *“the reinstatement option has been chosen”* and they also said they had appointed the contractors that carried out the building repairs.

Payment to Mr and Mrs S in respect of damaged contents does not seem consistent with UIA having chosen this method of settlement.

UIA should be aware already that, where an insurer chooses to settle a claim by undertaking and/or arranging the necessary repairs (or replacements), my colleagues and I consider it must reasonably ensure the work is carried out efficiently, effectively and expeditiously.

I consider UIA is responsible for the consequences of its agents' actions. When an insurer chooses to settle a claim by undertaking and/or arranging the necessary repairs (or replacements), but fails to achieve that efficiently, effectively and expeditiously, it is my view that it should compensate the policyholder for adverse consequences suffered as a result.

My colleagues and I consider another consequence of choosing this method of settling a claim is that the liability the insurer assumes by doing so cannot fairly be limited by the sums insured.

In summary, UIA should have carried out or arranged the efficient, effective and expeditious repair or replacement of the damaged items (buildings and contents). I am not satisfied it has shown it did so. I am also not satisfied it has shown that Mr and Mrs S made it impossible for it to complete the work.

However, at this stage I do not think it would be helpful to require UIA either to demonstrate that all damaged items were adequately repaired/replaced by its agents or to return to the property to complete any outstanding work.

The loss adjusters said contractors they had appointed had provided an inventory of contents that had been damaged beyond repair and Mr and Mrs S should make a detailed claim in this respect. I do not understand why that was considered necessary. The items had been (or should have been) identified by UIA's agents and it seems to me UIA was in just as good a position as Mr and Mrs S to value them (possibly better given the serious difficulties suffered by Mr and Mrs S). Settlement of this part of the claim was delayed by at least two years because of UIA's requirement – a payment seems to have been made (apparently in respect of carpets) in 2007.

It was more than five years after the damage when Mr S provided details of outstanding parts of the claim. Clearly, there was a delay in doing this, but it seems this was due to the effects of the fire for Mr and Mrs S and other difficulties they experienced (referred to above).

Dealing with the items concerned, it is not clear whether it is UIA's position that the kitchen furniture and appliances were not stained or otherwise damaged or that its agents carried out all necessary work to remedy such staining/damage. However, I note that its agents said the kitchen was one of the rooms affected by the fire.

UIA told us its loss adjusters have photographs that show the claim in respect of the kitchen is "*falsified*". However, we have received no such evidence.

UIA does not accept that its loss adjusters agreed the kitchen furniture/appliances could be replaced.

Mr and Mrs S say they can demonstrate the degree to which kitchen units were stained/damaged. I consider UIA should arrange for the retained part to be inspected. If it does show fire-related staining/damage, UIA should either provide Mr and Mrs S with evidence that its agents carried out, successfully, cleaning or other remedial work to the kitchen furniture and appliances (or that its payment in respect of the work carried out by Mr and Mrs S's contractors to complete the repairs included allowance for the kitchen furniture/appliances) or it should reimburse the cost they incurred in replacing them.

Regarding the latter, UIA has argued that the replacement furniture and appliances were superior to the originals. I am aware of no evidence supporting this. If it can show like-for-like or equivalent replacements were available at less expense than was incurred by Mr and Mrs S, I consider it can fairly limit its payment to the lesser cost.

UIA said contents items claimed by Mr and Mrs S had not been assessed as damaged. I am not satisfied that is correct. For example, UIA mentioned the sums claimed in respect of curtains/tracks and lamps/lampshades as not agreed for this reason. However, I have seen documents (apparently supplied by its agents) headed "*waste disposal*" that include 15 separate items relating to curtains/pelmets/blinds and seven separate items relating to

lamps/lampshades. Also, the agents said all curtains in upstairs rooms, and some downstairs, were damaged.

Also, UIA agreed to pay the sum claimed in respect of a bedroom suite but not the sum in respect of an ornamental chair, whereas Mr and Mrs S presented these items as part of the same suite.

Accordingly, I consider it should settle the claim in respect of curtains/tracks, lamps/lampshades and the ornamental chair. Further, because I am not satisfied it has provided a reasonable response to the details of the outstanding parts of the claim, it is my view that it should revisit this issue and provide a more carefully considered response.

It seems the sums already paid and still claimed in respect of contents exceed the sum insured that applied. I agree that is a concern (I agree carpets may reasonably be treated as contents), but I note that early in the claim UIA's loss adjusters twice assessed the contents sum insured as adequate. Further, UIA does not appear to have taken account of the separate cover for personal belongings and watches. The details of outstanding parts of the claim that were submitted include two watches specified as covered separately.

Even if (despite the loss adjusters' assessments) the contents sum insured was inadequate, the decision to settle the claim by carrying out (or arranging) the repair work and/or replacements made necessary by the damage, and the unreasonable response to the details of the outstanding parts of the claim, mean I am not satisfied UIA can fairly apply relevant policy terms to limit its liability.

It seems clear that from an early point in the claim UIA and its agents were aware a substantial number of items of contents had been damaged beyond repair, and it had details of those items, but it did not make a settlement offer for them. I consider that unreasonable.

I do not make punitive awards, but in my view it is likely that UIA's responses to the claim (or lack of them) aggravated the considerable difficulties experienced by Mr and Mrs S. I consider a compensatory payment of £500 would be fair.

my provisional decision

With my findings above in mind, UIA (Insurance) Limited should:

1. arrange for the retained part of the kitchen units to be inspected. If it does show fire-related staining/damage, UIA should either provide Mr and Mrs S with evidence that its agents carried out, successfully, cleaning or other remedial work to the kitchen furniture and appliances (or that its payment in respect of the work carried out by Mr and Mrs S's contractors to complete the repairs included allowance for the kitchen furniture/appliances) or it should reimburse the cost they incurred replacing them. Regarding the latter, if it can show like-for-like or equivalent replacements were available at less expense than was incurred by Mr and Mrs S, it can limit its payment to the lesser cost;
2. settle the claim in respect of curtains/tracks, lamps/lampshades and the ornamental chair;
3. revisit the details of the outstanding parts of the claim and provide a more carefully considered response;
4. pay £500.