

## **complaint**

Mr H's complaint is about a claim he made under his Liverpool Victoria Insurance Company Limited (LV) commercial insurance policy. He is unhappy with the service he received and because LV has reduced the claim settlement amount because of underinsurance. He would also like business interruption paid for the day that he was unable to trade from the premises.

## **background**

Mr H arranged a buildings and contents insurance policy for his business premises with LV. The policy was arranged through a broker and he was asked what buildings sum assured he needed to rebuild the property. He answered £100,000, believing that would be enough.

When the property was broken into in February 2017, Mr H made a claim under his LV policy for the loss. A loss adjuster was appointed by LV and assessed the claim. The loss adjuster was concerned about the buildings sum assured because of the age and construction of the property. He took measurements and ran the building through a rebuild calculator. This suggested that to rebuild Mr H's property it would cost £147,319. This didn't include the external patio, so the number was rounded to £150,000. LV informed Mr H that the claim for the buildings damage would be 'averaged' (reduced proportionately) to reflect the underinsurance.

The claim was accepted and an interim payment was sent shortly afterwards for £1,500. Mr H had requested that the payment be made by electronic transfer and be made to the family member who had paid out for supplies and equipment on a credit card. Unfortunately LV paid the money by cheque made out to Mr H's trading name.

Mr H was unhappy that the loss adjuster said that the sum assured was wrong. He used the same rebuild calculator to work out how much his sum assured should have been. This produced different figures depending on what was input. The lower of the figures produced was £141,000 for a building of basic condition, but of a cheaper build format (brick rather than stone walls and tile rather than slate roof). The loss adjuster considered Mr H's comments and information. It offered to reduce its estimate of the rebuild cost down to £126,000 for the purposes of processing the claim. This offer was made as a compromise and when it was not accepted, it was withdrawn.

This meant that when LV 'averaged' the claim for the buildings it used the £150,000 figure as the rebuild cost of the property. So it determined that the building had been only 66.7% insured. The damage to the building amounted to £2,073 – so £1,381.244 was paid (before excess).

Mr H's claim for business interruption wasn't paid. This was because he didn't provide the information that LV wanted to assess the claim. LV requested the daily takings figures for the three weeks before and two weeks after the break-in. It also asked for the last full set of accounts produced. Mr H explained that some of the paperwork was taken in the burglary including daily till receipts and the till was damaged beyond repair, so he only had handwritten record of daily takings since.

Mr H complained when it was confirmed that average would be applied to the buildings element of the claim. He was also unhappy that the cheque sent for the interim payment was

made by cheque in his trading name, rather than by electronic transfer to the family member who had purchased replacement supplies. LV paid Mr H £25 for the mistake about the interim payment. However, it referred him back to his insurance broker regarding the matter of the underinsurance.

One of our investigators considered the complaint, but didn't uphold it. In relation to the averaging of the buildings claim, she considered that the amount and method of the assessment that LV had done for the rebuild cost was reasonable. She also wasn't persuaded that there were undue delays in settling the claim, although she did find the £25 offered for the mistake with the interim payment was appropriate.

In relation to the business interruption claim, the investigator pointed out that this wasn't part of Mr H's original complaint to LV. She pointed out that the claim hadn't been declined, but rather LV was waiting for information from Mr H. She didn't think it was unreasonable for LV to require Mr H to evidence the loss before it was paid.

Mr H didn't accept the view. Mr H reiterated that he didn't think that the way the rebuild cost had been calculated was right, because the rebuild calculator used was for residential property, not commercial. He said that it is smaller than the loss adjuster said it was and repeated that there is no kitchen, bathroom, fixtures or fittings. He said that the property is below the standard of 'basic' assumed by the calculator. He was also unhappy that the loss adjuster added in a sum for walls and fences, when the calculator includes such things.

Mr H also said that he didn't agree that it was reasonable for LV to ask for the previous year's full accounts. He said that it would cost almost as much as he was claiming to get this document from his accountant.

Following this further discussions with the investigator, LV concluded that the £150,000 rebuild cost might have been too high. It said that if Mr H wanted to get a rebuild calculation done by a surveyor it would reassess the claim based on that value and adjust the settlement accordingly. In addition, it would pay reasonable costs for the survey to be done.

LV then agreed that if Mr H didn't want to commission his own surveyor, it would reinstate the offer made by the loss adjuster to consider the rebuild cost as £126,000. This would mean an increased payment of £263.25.

Mr H didn't make any further comment in relation to the offer that was made to him; he simply asked that an ombudsman review the complaint.

The documentation sent to Mr H when his policy renewed contains an underinsurance section, explaining what LV will do if a sum assured is too low. It says that it might lead to average being applied and explained:

*'... whereby claims may be proportionately reduced if the sum insured is less than the full value at risk or, where underinsurance is of a significant amount, a claim could be rejected entirely.'*

The policy terms and conditions included a section '*Basis of Settlement Clauses*', in which the following is detailed:

'1)     *Average*

*If the Property covered by this Policy shall at the time of the Damage be collectively of greater value than the sums insured then the Insured shall be considered as being their own insurer for the difference and shall bear the rateable share of their Damage accordingly.'*

- 'iii. If at the time of reinstatement of any item the sum representing 85% of the cost which would have been incurred in reinstating the whole of such property covered by such item exceeds its Sum Insured at the time of the Damage the liability of the Insurer shall not exceed that proportion of the amount of the Damage which the said Sum Insured shall bear to the sum representing the total cost of reinstating the whole of such property at that time.'*

## **my findings**

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

I will first consider the matter of the setting of the sum assured. Mr H used the services of a broker when arranging his policy and had no direct dealings with LV. As such, it wasn't LV's role to explain to Mr H what the sum assured should be or how to calculate it.

Mr H is unhappy that his claim has been averaged. If, as LV has said it is, the property is underinsured (which I will discuss below) the policy does allow for the claim to be averaged. I see nothing wrong with LV doing so in this case, if the sum assured was significantly too low.

LV's calculation of the sum assured was done using a rebuild calculator. It then rounded that figure up to account for the patio outside the rear of the property. In principle there is nothing wrong with what it did. Whilst the property is used for commercial purposes, given its construction, the cost of rebuilding the structure of the property would be no different to what it would be for a residential property. I would point out at this stage that rebuild costs are subjective and will vary significantly over time and depending on where the property is.

Another difference comes with the fixtures and fittings. In Mr H's property there is a toilet rather than a bathroom and there is no kitchen, as would be expected in a residential building. However, the commercial property will have things that are not expected in a residential building – in this case additional sinks and most likely more electrics. So while the rebuild cost calculated by this method might be slightly higher than it should be, I don't think it would be that far out – so much so as to reduce the rebuild price by a third.

LV has said that it accepts that the rebuild may not be right and Mr H has been given two options:

- To have a rebuild cost assessed by a suitably qualified surveyor, with LV paying the cost. The claim settlement would then be reassessed based on the figure that the surveyor sets; or
- Accept the compromise figure for the rebuild cost that was put forward by the loss adjuster in March 2017. That being £126,000. This would result in Mr H being paid an additional £263.25.

Having considered the offer, the first option would very clearly place Mr H in exactly the position he should be in and at no cost to him. That is the principle this service works to when considering what redress should be – what position should the complainant be in, but for the mistake. However, should Mr H not wish to go to the bother of finding a surveyor and arranging the valuation, the second option is a reasonable alternative. Given that Mr H's own calculation, admittedly for a slightly larger floor space, came to £141,000 and it was based on a cheaper method of construction, I think the compromise figure seems fair in the circumstances.

Mr H is unhappy that LV wants his last annual accounts in order to consider the business interruption claim, because it will cost him money to get a copy from his accountant. I can understand that he might not want to pay out money in the circumstances. However, it is normal for an insurer to want to see the most recent accounts when assessing such a claim and I can't find that LV is unreasonable to want this document. It is also a policyholder's responsibility to provide the evidence that the insurer requires. It is Mr H's decision whether to proceed with the claim by providing the information LV wants or not. I can't find that it has done anything wrong in this respect.

Mr H isn't happy with how long the claim took to settle and the fact that the interim payment was made by the wrong means. I don't think that the settlement of the claim took longer than it should have done, given the discussions that were taking place over the rebuild cost of the property. There was a clear mistake that would have caused a few days delay in money reaching the correct place – the misdirected interim payment. LV offered £25 for the administrative mistake with the interim payment. I think this is reasonable in the circumstances.

### **my final decision**

My final decision is that I uphold this complaint, but find the offer detailed above made by Liverpool Victoria Insurance Company Limited to be fair and reasonable in the circumstances. If Mr H decides to accept this decision, he should confirm whether he wishes to arrange for the property to be valued by a suitably qualified surveyor or alternatively accept the compromise rebuild value and the increased claim settlement.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr H to accept or reject my decision before 15 March 2018.

Derry Baxter  
**ombudsman**