complaint

Ms E and Mr N complain about the way that Public Loss Adjusting Group Ltd (PLA) dealt with the management of their insurance claim for fire damage to their home.

background

In October 2016 Ms E and Mr N unfortunately had a fire at their home while they were away. When they returned PLA approached them (having been in contact with Ms E's mother). They agreed that PLA could act for them and signed a mandate accordingly.

PLA corresponded with the loss adjusters (G) appointed by the insurer (A). A accepted liability quite quickly and a site visit took place. PLA then advised G that it wanted to appoint a surveyor it had chosen to act on behalf of Ms E and Mr N

G refused, and there followed a long stand-off when PLA refused to progress the matter or allow access to the site until the surveyor could be agreed. G then agreed on instructions from A to consider the appointment of PLA's surveyor if details of their qualifications and suitability were put forward. When G reviewed that information it indicated that A wouldn't agree as the proposed surveyor wasn't registered with the Royal Institute of Chartered Surveyors (RICS).

After further argument PLA put forward its proposed structural engineer whose firm was RICS registered to be the main surveyor for the project. This was agreed by early April 2017. PLA then agreed the cost for site clearance with G and arranged for this to be carried out. Payment for the contents was also agreed around this time.

At this stage (PLA says) G first put forward the figure it believed the property should have been insured for. PLA responded with Ms E and Mr N's actual calculations which they'd used following the Building Cost Information Service (BCIS) index. The parties couldn't agree and PLA made a formal complaint to A. Subsequently, in early August 2017, G offered a settlement of £350,000 which PLA and Ms E and Mr N thought to be insufficient.

It was decided to go ahead with a schedule of works to be provided by PLA's surveyor and then to put the job out to tender. Ms E and Mr N then lodged a complaint against A with this service concerning the underinsurance and the delays.

The tender process took some time – the tenders were received and analysed by the end of November 2017. It was apparent that the cost of repairs/rebuilding was going to be considerably more than the sum insured (at that stage thought to be £515,000). PLA suggested that A pay a settlement of £750,000 and Ms E and Mr N pay the back premiums to reflect the higher insured value.

A rejected this approach in January 2018. It confirmed that it would apply averaging to the settlement – ie a reduction in the settlement proportionate to the lower premiums paid. This brought about an offer of £448,000. PLA advised Ms E and Mr N that the maximum pay-out they could achieve would be the policy limit of £515,000. It proposed putting that figure to G along with a request for an extra £15-20,000 to reflect the delays.

Ms E and Mr N became concerned that PLA was attempting to agree a settlement which might prejudice their complaint with this service. They also complained that PLA didn't offer other avenues to pursue to get more than their policy limit. For those reasons they

terminated their instruction to PLA in February 2018. They agreed a settlement of PLA's fees at just over £30,000, which they paid.

Subsequently our adjudicator spoke to A who indicated that it was willing to pay a cash settlement to Ms E and Mr N. A advised that the policy was in fact index linked meaning that the policy limit had increased for two years up to the date of the claim. A agreed it wouldn't apply averaging, and offered settlement of the insured amount after increasing for indexation; £555,000, plus the cost of alternative accommodation. Ms E and Mr N referred a complaint to this service about PLA.

I issued a provisional decision. In it I said that I thought PLA was responsible for some delay over the appointment of a surveyor, and should have obtained the correct policy wording. It was also careless in sending an email to the wrong company. For those failings I proposed that it pay compensation of £250.

Ms E and Mr N said that PLA were aware early on in the claim that its proposed surveyor didn't have the "*necessary*" qualification. But that because it had a close relationship with its proposed surveyor, it still continued to try to get A to agree to the appointment. They felt that was acting against their interests.

They further said that PLA not obtaining the correct policy wording prejudiced their position. They pointed out that PLA told them that A's maximum liability was the original policy limit of £515,000. Had they continued to instruct PLA they would have received a pay-out of less than they were entitled to. They point out that A was only ever prepared to offer a maximum pay out of £448,000 whilst PLA was acting, over £100,000 less than the ultimate pay-out.

They felt that PLA''s conduct of their claim fell well below the standards expected and whilst it may have arranged clear-out and a surveyor they believe it received a referral fee from the clearance company and may also have done from the surveyor. They feel that a partial refund of the fees is fair.

PLA had no further comment to make following my 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.

In my provisional decision I said:

"appointment of PLA

Ms E and Mr N believe that PLA turned up at their home having monitored the fire brigade's twitter feed. They were on holiday at the time but PLA's representative was told Ms E's mother lived nearby and went there. They feel it took advantage of their situation and pressured them into signing a contract. They also feel that PLA turned then against A.

PLA can't or won't say how it became aware of the fire apart from referring to "social media". It believes it acted fairly and respectfully, and agreed a contract with Ms E and Mr N. They negotiated a reduction in the percentage fee. It gave them time to decide if they wanted to use its services.

The difficulty is that loss assessors specialise in managing insurance claims. These will inevitably happen at a time when the customer is vulnerable and upset. From my review of all the papers in this case, although Ms E and Mr N were frustrated at the delays and in particular with A's attitude to the underinsurance, they were mostly happy with PLA's work on their behalf. I'll deal with this in more detail below, but I don't think it can be said that PLA unfairly turned Ms E and Mr N against A or G

As for the initial approach, unless PLA acted in breach of the code of conduct of the Chartered Institute of Loss Adjusters (which it is a member of) I would find it difficult to criticise this. I haven't seen any evidence that it acted in breach of that code, nor that it acted unfairly in signing Ms E and Mr N up.

A's view of PLA

Our adjudicator said that PLA effectively poisoned the relationship between Ms E and Mr N and the insurer. It was only after they dropped PLA that A became willing to compromise. The reason for this was the combative and adversarial approach that PLA took.

I bear in mind that the claim was conducted by G. On occasions PLA approached A directly, but they were for the most part referred back to G. The evidence that PLA adopted an adversarial approach comes from when it disagreed with G. This was firstly over the appointment of a surveyor and then over the issue of underinsurance. PLA tended to, if it objected to decisions or actions taken by G, make formal complaints direct to A, question G's competence and/or threaten to report them to professional bodies or the regulator.

I don't think it's really appropriate for me to criticise that sort of approach, which is the way loss assessors or claims management companies tend to act. Certainly from reading through all the correspondence I haven't seen any evidence that G, or A, were unwilling to engage. Or that the approach prevented the matter from being negotiated. And I have to bear in mind that Ms E and Mr N had serious misgivings about the way A's surveyor acted when he visited their home, and were equally very upset at the suggestion that they had substantially underinsured their home.

As for the point that A was only willing to compromise once Ms E and Mr N had terminated their instructions to PLA, I can't see that that is the case. At the time that PLA finished acting, there was an offer on the table based on averaging. PLA proposed to Ms E and Mr N that it ask A to make an offer based on the sum insured but Ms E and Mr N didn't want their complaint to this service to be compromised.

At no stage did A, or G on its behalf say to PLA that it would be willing to settle the claim using the claim limit. It also didn't advise PLA that the insured sum was index linked. Together with the fact that our adjudicator was able to negotiate directly with A, I don't find it surprising that he was able to settle the claim on better terms. But I don't think that it was PLA's conduct that stopped the claim from being settled."

I'll comment further about the actual settlement below. But, and I can assure Ms E and Mr N that I have read through all PLA's files, there is very little evidence that A couldn't negotiate with PLA or that PLA's attitude somehow prevented this. I can discern from the files that A was unwilling to get involved directly, leaving all negotiations to the loss adjuster. Whereas, as I've said, A was more than willing to review its settlement of the matter once it was considered by this service.

In my provisional decision I said:

"dispute over the choice of surveyor

Effectively, this dispute held up the matter for six months. From the outset PLA insisted that Ms E and Mr N would be using the surveyor it wanted to appoint. It insisted to G that they were entitled to use their own surveyor. G was equally adamant that it would appoint its chosen surveyor. I do criticise PLA here for stubbornly refusing to move the matter on unless G agreed to its surveyor. And, despite PLA's insistence, the policy doesn't require the insured to be allowed to appoint their own surveyor - it allows for the payment of fees such as those of a surveyor, if they are agreed in advance. PLA quoted to G what are, in my view, irrelevant parts of the insurance rules to support its position.

But G did then, after consulting with A, agree to consider an alternative surveyor, if details of its qualifications could be given. This was in early January 2017. PLA did this, and it was discovered that the proposed surveyor wasn't RICS registered. They were registered with the Chartered Institute of Building, (CIOB). PLA argued that its chosen surveyor was perfectly capable of managing the repairs, but G rejected them for not being RICS registered.

PLA had, right at the start of the claim, proposed using a structural engineer. As it happened that engineer was a part of a company that was RICS registered, and some time in March 2017 it was realised that as an alternative that firm could be used for the whole claim. G agreed to this in April 2017.

Our adjudicator suggested that this was about underinsurance, and the CIOB registered firm had specifically said it didn't carry out valuations. But, although at the initial meeting in October 2016, A's surveyor said the property was underinsured, I can find no evidence that G formally raised this issue until June 2017.So it wasn't a live issue that needed taking into consideration as part of the dispute over the choice of surveyor.

Our adjudicator further suggested that PLA should have referred the choice of surveyor dispute to this service. I can't see how this would have helped. All we could have said was that the policy allows for the cost, which has to be agreed with the insurer. It seems to me that, once it moved matters on, the steps PLA took to resolve it itself were appropriate.

So I don't think PLA should be criticised over its choice of surveyor. But once it realised the RICS registration was an issue, it should have considered the alternative surveyors it was already proposing to use for structural engineering input. The issue was first raised on 11 January 2017, but the alternative not considered until mid-March. I think PLA was responsible for some delay, and for not making it clear to Ms E and Mr N that the policy didn't confer a right to use their own surveyor. Having said that it did reach agreement with G that its alternative choice of surveyor could be used."

Ms E and Mr N say they were only aware of the importance of the surveyor being RICS registered when they made a complaint to this service. They have referred me to an email that PLA sent to the proposed surveyor which for them highlights the fact that PLA knew the surveyor hadn't got the necessary qualification.

The email that Ms E and Mr N refer to was written between PLA and its proposed surveyor. It is informal and urged the proposed surveyor to deal with A's queries urgently as PLA was keen to get them on board. In fact the question of the surveyor being RICS registered hadn't

come up then. G had said that "*in order to commission an alternative surveyor....[A] will require his full details, including his qualifications for handling a property of this construction*". The email to the surveyor should be read in that context ie that it should provide the necessary details.

Whilst insurers generally prefer RICS registered surveyors if they are to approve an independent one, there is no absolute requirement and views on this may differ between insurers. The surveyor proposed was, as I've said CIOB registered which is a perfectly respectable qualification If A had said it would only accept a RICS registered surveyor at the outset no doubt PLA could have acted accordingly.

I've also criticised PLA for its part in the delay here, but don't think it appropriate to change my award.

In my provisional decision I said:

underinsurance issue/delays

A suggested that the delays after the surveyor was agreed were because PLA was at fault in not advising Ms E and Mr N properly about the underinsurance issue. As a result there was a long delay in waiting for the tenders to come back.

It's clear that G had, from the very first site meeting in October, advised that the property was underinsured. It had even suggested a value for this to A. It later confirmed this in a meeting in January 2018. But, apart from verbally advising Ms E and Mr N, I can't see that G confirmed it was pursuing underinsurance, until June 2017. At that stage it put forward a figure, which PLA said hadn't been previously advised to it. Certainly there's no evidence of it on the files of papers. PLA advised that Ms E and Mr N had used the BCIS index, and had asked a surveyor when they took the policy out, to establish the right sum to insure the buildings.

Our adjudicator criticised PLA for failing to get a RICS surveyor to carry out a valuation exercise. But that would have entailed a cost for Ms E and Mr N. And I'm not sure what that would likely have achieved. The maximum pay-out would have been the policy limit so it seems to me that it made sense to carry out the tender exercise to establish what the repairs would cost. I'm aware that that took a long time, and in the meantime Ms E and Mr N were in alternative accommodation. But once the issues of underinsurance were seriously raised, it was always likely the claim would be resolved by payment of a cash settlement. I note that in August 2017 G put forward an offer of £350,000. When I consider that the final settlement was over £200,000 more than that I can't say that waiting for the tenders was unreasonable. The tender process took some time but I don't think PLA was at fault for that.

failing to obtain correct policy wording and to notice indexation

PLA obtained policy wording from G. It appears that this was dated July 2016, when the policy was first taken out in April 2016. Our adjudicator was shown the correct wording by A and from this it shows that the policy limit was increased each year in line with the House Rebuilding Cost Index.

PLA clearly should have noticed this – if it was given the wrong policy wording by G (which it appears that it was) it should have noticed this. I also note that it asked for the schedule and

didn't receive it – but it didn't chase this up. If it had received the schedule it would presumably have seen the increased policy limit.

But I think A, and G, were equally to blame here. The offer in January 2018 for £448,000 based on averaging, was calculated according to the initial sum insured. G should have ensured it was working based on the correct sum insured, and should have advised PLA of the indexation.

So I think PLA was partly at fault here, and I can understand if it caused some anxiety to Ms E and Mr N. But the advice over the policy limit and G's offer happened at the end of 2017 to early 2018. The eventual settlement wasn't based on the old limit and we don't award compensation for what might have happened.

Ms E and Mr N have pointed out that, because of PLA's failure to obtain the correct policy wording it failed to advise them of the correct policy limit. If they had continued to instruct PLA they would have only got a settlement of £448,000. I can understand this and again I have criticised PLA for failing to note that it was given the wrong policy and having failed to obtain the schedule. Ms E and Mr N did tell PLA that they had used the BCIS index and that they felt that the up to date value should have been taken into account. I can't see that they said to PLA that they thought their policy was index linked.

As A had refused to back down on its proposal to reduce the claim because of underinsurance, PLA advised and helped Ms E and Mr N make a complaint to this service, several months before they terminated their instructions. And whilst PLA suggested that it ask A to offer the full policy limit plus around £15-£20,000, Ms E and Mr N refused that as they didn't want to prejudice their complaint.

My conclusion is that PLA was at fault in not requesting the correct policy document and schedule. I've noted that A had issued and received premiums for a policy that was index linked, but didn't tell PLA or Ms E and Mr N. And G didn't obtain the correct policy documents. For PLA's part in this, I'm satisfied that the compensation award is fair and reasonable.

In my provisional decision I said:

"sending correspondence to the wrong business

PLA sent a detailed email of complaint to the wrong email address. This was in breach of data protection. It apologised for it and I don't believe it had any consequences. It should have taken more care – I can understand if Ms E and Mr N were upset by this.

overall

It's been suggested that PLA added no value to the case. And that by being so confrontational with G and A, poisoned the relationship, so much that it failed to achieve any kind of settlement that Ms E and Mr N couldn't have achieved on their own.

The appointment of a loss assessor isn't done just to achieve a settlement. That is the ultimate goal but in addition to that and with a view to achieving it, the assessor manages the claim. Here PLA arranged clearance of the property and appointed a surveyor to draw up a schedule of works. It dealt with Ms E and Mr N's insistence that they weren't underinsured

and negotiated over this. It drew up lists of contents and agreed a valuation. It arranged for a tender exercise to be carried out.

PLA didn't achieve a satisfactory offer, but at the time of its instructions being terminated it had proposed putting forward an offer based on the (thought to be) sum insured, plus around £20,000 – this wasn't that far off the settlement our adjudicator achieved once A had realised the policy was index linked. I don't think that A could seriously argue that it would have stuck to its view that averaging should apply, just because it didn't like the way PLA dealt with the case.

Ms E and Mr N signed a mandate agreeing the percentage to be charged for PLA's fees. It based those fees on the last settlement offer made while it was still acting (the £448,000), and discounted them. Whilst I fully understand Ms E and Mr N's disappointment at the final settlement and having to pay PLA's fees out of that, I don't think that it would be fair or reasonable to expect PLA to forego its fees because its actions, in my view, did add worth the claim process.

But I do think PLA was responsible for some delay over the appointment of a surveyor, and should have obtained the correct policy wording. It also was careless in sending an email to the wrong company. For those failings I would propose that it pay compensation of £250."

I stand by those findings and have no further comment to make. My provisional findings, as set out above, are now final and form part of this final decision.

my final decision

I uphold the complaint in part and require PLA to pay compensation of £250 to Ms E and Mr N.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E and Mr N to accept or reject my decision before 3 July 2019.

Ray Lawley
ombudsman