

The complaint

Mr C complains the amount offered by U K Insurance Limited (UKI) to settle an escape of water claim under his buildings insurance policy is too low.

Mr C is being represented on this complaint, but any reference to him in my decision includes the comments and actions of his representative. Likewise, any reference to UKI includes the actions and comments of its agents.

What happened

The circumstances of this complaint are well known to both parties, so I've summarised

- In October 2020, Mr C made a claim on his buildings insurance policy when water leaked from a defective water tank in his loft, causing significant damage. UKI accepted the claim. In November it attended Mr C's property and a schedule of works was produced which estimated the building repair would cost UKI approximately £10,000.
- Mr C provided an estimate from his own contractor which said the repair would cost around £60,000 including value added tax (VAT).
- Having reviewed Mr C's estimate, UKI said it was satisfied its schedule of work accurately reflected the amount of work required. But it proposed attending Mr C's property with a local contractor and Mr C's architect - once strip-out works had been completed - to assess the full extent of the damage and to confirm the exact repair cost.
- UKI attended with Mr C's architect in March 2021. Following which it sent a settlement proposal to Mr C. But UKI says it didn't hear back from Mr C despite sending several reminders.
- In August 2021, Mr C submitted costs for his own contractor's work which significantly exceeded the repair figure UKI had put forward.
- UKI agreed to increase its settlement amount to £13,622.90 - which accounted for VAT, electricity costs, and professional fees. But it said it wouldn't cover the full amount Mr C had paid his contractor because he'd gone ahead with the repairs without UKI's approval and in doing so, had prejudiced its position to inspect any additional damage which may have become evident.
- Mr C considers UKI's position to be unfair. He says it hasn't demonstrated the repair work could have been completed for £13,622.90. It had told him he could appoint his own contractor when he first made the claim. The claim happened during the pandemic and so, contractor availability was limited, and it wasn't possible for him to get several quotes.
- Unhappy, Mr C brought a complaint to this Service. An Investigator considered it and

upheld the complaint saying:

- UKI should include in the settlement figure the amount it would have cost it to install a like for like kitchen which includes replacing the kitchen units. And that if it couldn't provide a quote, it should refund Mr C the amount he paid for the kitchen.
- Whilst UKI's initial reports said the kitchen units could be reused, it later said it would assess these again to be sure they could. And because it hadn't provided evidence to show the units could be reused – and noting the extensive damage to the kitchen - she thought it was reasonable to ask UKI to cover the cost of replacing the kitchen units.
- She accepted the costs detailed by UKI in the schedule of works were fair, and so, said UKI didn't need to increase its settlement figure in respect of this.
- UKI disagreed. It said because Mr C hadn't engaged with it – following its request to reinspect the property – it hadn't been able to assess the damage to the kitchen units. And when Mr C did reply, the repair works were already underway meaning its position had been prejudiced.
- In reply, the Investigator maintained her position, adding that the photographs provided by UKI only show the outside of the kitchen unit, and so, don't show the carcasses, shelves and doors were not damaged and could be reused.
- Whilst she recognised Mr C had the work carried out by his own contractor and without UKI's approval, she said as the claim occurred during lockdown – and Mr C had genuine concerns as to the availability of contractors given the remoteness of his property – it was reasonable that he'd want to employ a local contractor known to him.
- UKI disagreed, and so the complaint was passed to me for an Ombudsman's Decision.

I issued a provisional decision, in which I said:

“What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I intend to reach a different outcome to the Investigator, and I'll explain why.

The issues to be decided are whether the schedule of works which UKI used to calculate the settlement is fair and whether the costs to complete the repairs was reasonable. Here, Mr C wants UKI to cover his contractor's costs for carrying out the work, but UKI doesn't think this is fair.

UKI has said the settlement amount was based on its contractor carrying out the repair works – it said this is in line with the policy terms, which state:

“If the buildings are damaged by any of the causes listed in Section 1, we will either:

- *repair or rebuild the damaged part using our suppliers*
- *pay to repair or rebuild the damaged part using your suppliers*

- *make a cash payment*

If we can repair or rebuild the damaged part, but we agree to use your suppliers or make a cash payment, we will only pay you what it would have cost us using our suppliers and therefore, the amount you receive may be lower than the cost charged by your suppliers.”

So, I’m satisfied the policy makes it clear UKI can choose to repair the damage by using its own contractor, Mr C’s contractor or by making a cash payment. But notably, UKI’s costs relating to the latter two would be capped at what it would have cost it to use its own contractor.

Is the settlement amount fair?

Mr C argues the settlement amount is unfair - saying it would be impossible for a contractor to complete the works for the proposed amount. Mr C’s contractor’s costs were significantly higher than UKI’s but under the terms of the policy UKI is only required to settle the claim by paying what it would have paid its contractor – so long as it is fair and reasonable in the circumstances.

It’s worth explaining that most insurers have established relationships with a network of building companies, and often have pre-agreed rates with builders that tend to be below the market price – which will in part explain why UKI’s settlement and Mr C’s contractor’s costs differ.

UKI has explained the cost to carry out the repairs was based on previously agreed costs with its suppliers and that had it been able to carry out a full inspection of the work (following the strip-out) it would have determined the exact cost. But due to Mr C appointing his own contractor to complete the repairs, UKI were prevented from doing this.

I haven’t been provided with any evidence which persuades me UKI’s settlement offer is obviously wrong, and I don’t consider it reasonable to conclude that the costs would have been higher had UKI completed a full review of the damage. And whilst Mr C’s contractor’s total cost might be higher, that doesn’t mean UKI’s costings were unreasonable and that it should increase this.

But I’m aware the omission of the kitchen cabinets has been disputed between the parties and so, I’ve considered whether this should have been included in the schedule of works, and in turn the settlement.

Should the kitchen cabinets be included in UKI’s schedule of works?

I’ve considered this, but I’m not persuaded it needs to – I’ll explain why. Whilst Mr C has said his contractor said the cabinets were beyond economic repair, I’ve not been provided with any evidence to support this. Whereas conversely, the photographs of the cupboards’ exterior, along with UKI’s surveyors’ reports, appear to confirm the cabinets were in good condition.

As Mr C went ahead with the repairs, he prejudiced UKI’s ability to fairly assess the damage to the kitchen cabinets. Had UKI’s contractor had difficulty reusing the cabinets, then I would have expected it to put that right – by amending the schedule of work – but it wasn’t given that opportunity.

UKI wanting to reassess the cabinets doesn’t negate the two reports it had carried out which said the cabinets were in good condition – and so, I’m not persuaded this demonstrates the

cabinets were not reusable. Nor does the absence of photographs showing the interior of the cabinets mean it's reasonable to conclude the cabinets were damaged to such an extent they couldn't be reused. So, on balance, I'm not persuaded Mr C has demonstrated the units were beyond economic repair, and I won't, therefore, be directing UKI to include this in its settlement amount.

Was it reasonable for Mr C to use his own contractors?

As I've said above, the policy makes it clear that UKI can choose how to settle the claim – Mr C doesn't get a choice. There's nothing unreasonable about that in principle as the insurer is paying for the claim – and so, it's only fair it decides how the claim will be settled and, as a result, how much it costs.

Prior to Mr C's contractors starting the repairs, UKI had told him that it wanted to reattend his property - following the strip out works - to review the extent of the damage and finalise the schedule of works and costs. So, I'm satisfied Mr C was aware, or ought reasonably to have been aware that UKI hadn't approved him appointing his own contractor and hadn't agreed to bear these costs.

But UKI still must consider what's reasonable for the consumer in the specific circumstances of the complaint. So, I've thought about Mr C's argument that he had no choice but to appoint his own contractor, but I'm not persuaded by this. Whilst I accept the pandemic, Mr C relocating 500 miles from home, and his desire to hire someone he trusted all played a part in his decision to appoint his own contractor, that didn't absolve him of his responsibility to engage with UKI. And despite numerous attempts to get in touch with Mr C during this time, Mr C wasn't forthcoming until he was seeking payment for his contractor's costs.

Mr C ought to have given UKI the chance to progress his claim – which it has said it could have done by appointing one of its contractors - before prematurely deciding UKI wouldn't be able to complete the repairs, thus prejudicing its position. From what I've seen so far, UKI handled the claim promptly and Mr C's decision to appoint his own contractor was at his own volition and wasn't attributable to UKI having been at fault. And so, I don't consider it reasonable to ask UKI to cover his contractor's costs.

As things stand, I'm currently minded to say UKI has handled Mr C's claim fairly, and that the settlement is fair and reasonable in the circumstances.

My provisional decision

UKI has already made an offer to pay Mr C £13,622.90 to settle the complaint and I think this is fair in all the circumstances. So, my provisional decision is that UKI should pay Mr C this amount."

UKI responded to my provisional decision to say it had nothing further to add. Mr C didn't reply.

What I've decided – and why

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

I've nothing further to consider from the parties and so, my final decision is the same as that reached in my provisional decision.

My final decision

U K Insurance Limited has already made an offer to pay Mr C £13,622.90 to settle the complaint and I think this is fair in all the circumstances. So, my final decision is that UKI should pay Mr C this amount.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 December 2023.

Nicola Beakhust
Ombudsman