

# Determination

**Case number:** 626391

26 August 2019

## 1 Determination overview

### 1.1 Complaint

The complainant is a lot owner in a residential strata development insured under a strata policy with the financial firm (insurer). He lodged a claim for fire damage to his lot. The insurer accepted the claim and initially offered to authorise repairs or cash settle based on its preferred repairer's quote for \$194,141.16. In the course of this complaint, the repairer provided a revised, actionable quote for \$325,108.75, which the insurer is prepared to pay.

The complainant is not happy with the cash settlement amount. He says the quote is unrealistic and does not account for the logistics of implementing the scope of works. He provided three quotes from his preferred builders and is wanting a cash settlement based on the average of the quotes, being \$442,469.00.

### 1.2 Issues and key findings

#### Is the insurer required to increase the cash settlement?

The evidence does not establish the complainant's quotes most accurately reflect the reasonable cost of repairs. The insurer's revised quote for \$325,108.75 is an appropriate starting point to determine a fair cash settlement, since it reasonably reflects the scope of works and has been confirmed as being actionable by the complainant. However, the insurer's cash settlement offer should be increased by a further 10% to allow for unforeseen variations and the additional risks assumed by the complainant in undertaking the work directly (since he loses the benefit of the insurer's lifetime guarantee on repairs).

The insurer must also pay the temporary accommodation benefit for the estimated duration of the repairs (24 weeks), as well as compensation for delays and upset caused by the inadequate original repair assessments and the issue of temporary accommodation payments.

### 1.3 Determination

This determination is substantially in favour of the insurer. The insurer is required to:

- increase the cash settlement for the building repairs by an additional 10% on the \$325,108.75 quoted cost, making the final cash settlement for repairs \$357,619.63
- pay the complainant temporary accommodation benefits for the expected 24 week duration of repairs (\$12,870)
- pay \$500 compensation for non-financial loss.

## 2 Reasons for determination

There has been a full exchange of material between the parties, and each party has had the opportunity to address the issues arising from that.

Due to the nature of/complexities involved in this dispute, it has been referred to a Panel for determination.

This determination follows consideration of all the information exchanged, and is based on what is fair in all the circumstances, having regard to the relevant legal principles, terms of the policy, good industry practice including codes of practice and previous AFCA decisions where applicable.

### 2.1 Is the insurer required to increase the cash settlement for repairs?

#### Cash settlement should reflect reasonable cost of repairs

Under the terms of the policy, the insurer may settle a claim for damage to the complainant's property by:

- repairing the damage or rebuilding the property, or
- paying the complainant the reasonable cost of doing so.

In this case, the insurer has given the complainant the choice, and the complainant opted for a cash settlement.

Where a claim is to be settled by a cash settlement, the insurer is required to pay the complainant the reasonable cost of repairing the damage to the property. This means the cash settlement amount should be sufficient to ensure that the complainant is able to engage his own contractors to complete the necessary repairs.

#### Scope of works is appropriate

The repair quotes obtained by the parties are based on a scope of works prepared by the insurer's engineer, HCE.

The complainant has not disputed the scope of works. So the panel accepts it provides an accurate assessment of the damage to the complainant's property caused by the fire, together with an appropriately detailed breakdown of the works required to restore the property to its pre-loss condition.

The issue still in dispute is the amount which represents the reasonable cost of implementing the scope of works.

### Parties disagree about fair cost of repairs

The insurer initially considered a repair quote from builder TBS for \$174,865; however, subsequently accepted that did not accurately reflect the scope of works and was disregarded. The insurer also reviewed a desktop quote from AB for \$229,400.16, but ultimately chose BBS, who initially quoted an insurance repair cost of \$194,141.16.

Following negotiations between the parties in the course of this complaint, BBS provided a revised quote, actionable by the complainant, for \$325,108.75.

The complainant provided three quotes (from ABS, SS and DJF) and seeks a settlement based on the average of the three, being \$442,469.00.

Each of the builders has confirmed that their quotation was prepared based on HCE's scope of works. Each builder has quoted a lump sum amount and provided an itemised breakdown of this amount on a trade by trade basis.

### Complainant's quotes not shown to reflect reasonable required costs

The complainant's quotes are significantly higher than BBS's in certain areas, the most prominent of which are set out in the following table, together with the panel's comments.

Item	Parties' comments	Panel's comments
Demolition	The complainant says the house essentially needs to be demolished by hand down to the concrete slab and wooden frame, while maintaining the façade. He says this is a time-consuming and delicate job, particularly given the property's location (on a hill bordering a steep slope), limited access and the environmental sensitivity of the area (requiring machinery to be placed on the main road rather than near the property). He says BBS's inspection was cursory and the builder has vastly underestimated the logistics of this work. This is supported to some extent by comments by DJF.	<p>There is insufficient expert evidence regarding what is required for the demolition process and it is difficult to conclude the higher amounts in the complainant's quotes are necessary.</p> <p>However, the complainant's concerns are plausible and insurer has not sufficiently addressed them. The panel therefore accepts the demolition cost may be higher than that quoted by BBS.</p>
Smoke damage	DJF says everything smoke-damaged should be replaced, not just cleaned, in order for the builder to warrant	The scope allows some items to be cleaned and only replaced / repaired if necessary. Therefore, the quotes which cover the cost of replacing all smoke-

Item	Parties' comments	Panel's comments
	repairs.	damaged items may not be accurate. This is, however, a contingency BBS should account for.
Utilities	DJF says the house requires a complete electrical re-wiring to comply with regulations. They also say there may be unknown damage to the plumbing.	Whilst the loss adjuster says electrical and plumbing works are not required, the panel accepts that there may be unforeseen costs in relation to utilities. The insurer has not addressed DJF's comments and BBS has acknowledged this contingency.
Kitchen	DJF says BBS's kitchen allowance is too low, being likely for supply but not the furnishing of the kitchen.	There is insufficient evidence to explain this difference. It is questionable whether the higher amount is justified.
Carpentry	DJF says this allowance is almost triple BBS's.	There is insufficient evidence to explain this difference. It is questionable whether the higher amount is justified.
Supervision, documents & fees	The loss adjuster points out that the difference between the complainant's quotes and BBS's is in excess of \$40,000.	There is insufficient evidence to explain this difference. It is questionable whether the higher amounts are justified.
Contingency	<p>The complainant's quotes are fixed-price and include amounts for unforeseen contingencies.</p> <p>The insurer says BBS has now accounted for contingencies. It also says that because the complainant refused to allow access for a re-inspection during this complaint, BBS was forced to offer a higher contingency than is likely necessary.</p>	<p>BBS accounts for certain contingencies, but not others (for instance, demolition costs, wall framing, damage to utilities, repair/replacement of certain smoke-damaged items).</p> <p>The panel accepts it is appropriate to allow a relatively modest increase in the quote to account for additional contingencies.</p> <p>This should be offset by the fact BBS includes allowances for replacing the toilets, bath, hand basins and the laundry trough, even though the scope of works says these items can be re-used.</p>

Apart from the items discussed above, the quotes / builders provide limited information or explanation about the differences in costings.

The insurer says the complainant's quotes are excessive. The loss adjuster provided a 'validation report' to assist in its determination of the reasonable cost of repairs. The adjuster says the report is based on the average market rates for repairs, which range from between \$213,470.00 to \$260,908.00 with a median cost of \$237,189.14. These figures suggest BBS's quote is more reasonable.

The market rates have been drawn from insurance and industry data. The complainant says AFCA should disregard the validation report because the loss adjuster did not provide this data. It is true that AFCA requested this information and the insurer has not provided it; this might arguably diminish the probative value of the report. However, in the panel's view, whilst the absence of data may make the report less authoritative, it does not invalidate the report entirely. The panel accepts the validation report lends weight to the proposition that, on balance, BBS's quote is more in line with the average market cost of repairs than the complainant's quotes.

The fact that the complainant's builders have quoted significantly higher amounts for the repairs than BBS does not of itself establish that they are more accurate or comprehensive. It is not unusual for there to be significant discrepancies in the amounts quoted by different builders for undertaking the same works. There can also be variations when items are not strictly 'like for like' – such as, for example, DJF's provision for a stone bench top.

The complainant provided an independent report which values the rebuild cost for the property at \$452,142. This is almost as much as the complainant is seeking, although the property is not a total loss. The complainant says this proves his quotes are more accurate than BBS's because:

- the property must be demolished down to the foundation and wooden frame
- assuming the foundation and wooden frame are 20% of the building cost, the 80% of the property was lost in the fire, being \$361,714 in value.

In the absence of expert evidence to support the complainant's calculations, the panel is not persuaded by this argument. In any event, it actually supports the insurer's position given the speculated loss of value is closer to BBS's revised quote than the amount sought by the complainant.

It is not in dispute BBS is a professional building company capable of carrying out the works and that their quote is confirmed by the insurer as being actionable for the complainant. The insurer has offered to authorise repairs, but the complainant insisted on a cash settlement. He says the amount he seeks is justified given the extent of the damage and logistics of implementing the scope of works. However, beyond the quotes and limited commentary from DJF, the complainant has not provided substantial expert evidence to support his position.

Having carefully reviewed the available information, the panel is not satisfied that the complainant's quotations most accurately reflect the reasonable cost of repairing the property. For the above reasons, there is insufficient evidence for the panel to prefer the complainant's quotes over BBS's, subject to an increased allowance for contingencies and transfer of risk (discussed below).

### **It is fair the insurer increases its cash settlement**

The panel needs to be satisfied the proposed cash settlement is sufficient to repair the damage for which the insurer is liable under the policy.

Based on the available information, the panel considers the insurer's offer of \$325,108.75 represents a reasonable starting point for determining an appropriate cash settlement amount. The quote on which that is based is relatively recent and so should accurately reflect the costs of undertaking the works.

However, the panel considers the cash settlement amount should be increased to allow for:

- any unexpected or other necessary variations to the works which may be required during the course of repairs (including for demolition costs, damage to utilities, repair/replacement of certain smoke-damaged items)
- the additional risks assumed by the complainant on the basis that he loses the benefit of the insurer-backed repair warranty.

The panel considers it is fair in all the circumstances that the cash settlement offer of \$325,108.75 be increased by an additional 10% (\$32,510.88) in order to make appropriate allowance for the factors outlined above.

In addition, the policy provides additional benefits following an insured event, including temporary accommodation payments. The insurer is only liable for a maximum of 15% of the sum insured in respect of all additional benefits. BBS estimated the works would take 20-24 weeks to complete. Based on the weekly rate of temporary accommodation being paid by the insurer currently, 24 weeks amounts to \$12,870.

In summary, the insurer is required to:

- cash settle the complainant's claim for building repairs for \$357,619.63
- pay the complainant the temporary accommodation benefit of \$12,870.

The insurer is not required to pay interest on the settlement sum.

### **Insufficient evidence of misconduct by insurer**

For completeness, the panel acknowledges the complainant's allegations that BBS and the loss adjuster acted in bad faith. He says that, given this misconduct, the BBS quote and the opinions of the loss adjuster should be disregarded. He alleges:

- the loss adjuster initially appointed the builder, TBS, despite the fact their quote did not include necessary allowances or comply with the scope of works
- the tender process was not competitive
- BBS initially quoted a substantially lower amount in order to win the tender
- the loss adjuster – who has a conflict of interest – overlooked this and appointed BBS anyway.

Whilst it is true the TBS quote was unsound, the complainant was not prejudiced by the loss adjuster's conduct and ultimately TBS was not appointed. The rest of the allegations are serious and require persuasive evidence before the panel will accept them. They are not supported by the available information.

### **Compensation for non-financial loss is warranted**

However, while the insurer broadly handled the claim reasonably, there is a concern about the significant difference (about \$150,000) between the first proposed repair quote by TBS and the final one from BBS. An insured should not have to second-guess the validity, thoroughness and fairness of figures and proposals put forward by an insurer when having a claim dealt with.

As well, there was the suggestion from the insurer that the complainant's further temporary accommodation cover might be at risk as the claim and dispute became protracted. Under the circumstances, since it became clear the insurer's own initial proposals for cash settlement were inadequate and the complainant needed to obtain his own quotes and advice, it was unfair the complainant was faced with that extra concern.

The complainant is entitled to \$500 compensation for non-financial loss.



## 3 Supporting information

### 3.1 Builders' repair quotes

Quote	Total repair cost (inc GST)
<b>Insurer's builder (TBS)</b> Undated	\$174,865
<b>Insurer's builder (BBS)</b> 08-01-2019	\$191,141.16
<b>Complainant's builder (ABS)</b> 07-02-2019	\$447,800
<b>Insurer's builder (AB)</b> 14-02-2019	\$229,400.16
<b>Complainant's builder (SS)</b> 17-02-2019	\$443,400
<b>Complainant's builder (DJF)</b> 06-03-2019	\$436,207.75
<b>Insurer's builder (BBS)</b> 02-05-2019	\$325,108.76

### 3.2 Relevant policy wording

#### Section 1 – The indemnity

We will pay You up to the Sum Insured specified in the Schedule for Building(s) and Common Contents, for accidental loss or damage to the Building(s) or Common Contents which occurs during the Period of Insurance.

We will not pay You under Section 1 of the Policy in respect of any of the matters set out in the Exclusions or the General Exclusions. You must comply with the Special Conditions in Section 1 and the General Conditions.

## Summary of cover and key benefits

- Sum insured for all units together is \$6,330,000.
- Cover is for any accidental loss or damage to the Building or Common Contents
- Relevant additional benefits:
  - > loss of rent
  - > temporary accommodation
  - > removal of debris
  - > extra costs of reinstatement, professional fees, government fees or charges.

## Relevant definitions

'Reinstatement' means:

- 'where property is lost or destroyed, in the case of a Building, the rebuilding, or in the case of property other than a Building, the replacement of that property, by similar property, in either case in a condition equal to but not better or more extensive than its condition when new; and
- where property is damaged, the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same as but not better or more extensive than its condition when new.'

## Basis of settlement

The basis upon which the amount payable to You is calculated will be the cost of Reinstatement of the Property Insured damaged at the time of its Reinstatement, subject to the following provisions and subject also to the terms, conditions and limit(s) or sub-limit(s) of liability of the Policy:

> the work of rebuilding, or replacing, or repairing, or restoring or reinstating, as the case may be (which may be carried out at another site and in any manner suitable to Your requirements, but subject to Our liability not being increased), must be commenced and carried out within a reasonable time, failing which We will not be liable to make any payment beyond the amount of the Indemnity Value of the Property Insured at the time it was lost or damaged;

...

## Additional benefits

Following loss or damage by any cause not excluded, the following Additional Benefits will be paid in addition to the Sum Insured.

3.1. Temporary Accommodation, Loss of Rent Receivable, Reletting Costs, Maintenance Fees and Removal and Storage Costs of Lot Owners Contents.

We will pay, in total, for the following benefits 3.1 A-G, up to 15% of the Building Sum Insured.

### 3.1A Temporary Accommodation

Where an owner occupied Lot/Unit is uninhabitable or unfit for its intended purpose or access to the Building is prevented as the result of an Incident covered under Section 1 of the Policy, We will pay to the Lot/Unit Owner, an amount equal to the amount that the Lot/Unit could have been Rented for.