

The complaint

A complains that Zurich Insurance PLC declined its claims on its commercial property and business interruption combined insurance policy.

Mr W is a director of A and brings this complaint on its behalf.

At times throughout this claim and complaint both Mr W and Zurich Insurance PLC have been represented by third parties. For ease, I've referred largely just to Mr W and Zurich. But all references include the actions of their representatives.

What happened

Mr W took out a combined commercial insurance policy to cover material damage and business interruption for A, that was underwritten by Zurich. In March 2022 there was a fire at A's premises and Mr W made a claim for the damage and the interruption to his business.

Zurich declined both of his claims. It said that the fire, which originated from an electric fryer, wasn't covered as the fryer had been left unattended after it had been switched on. And there was a condition in the policy that said it couldn't be left unattended. In regards to the business interruption cover, it said in order to have a successful claim, Mr W needed to show the peril that caused the interruption had been covered by an insurance policy. And as that claim had been declined, the business interruption would also not be covered.

Mr W didn't think this was fair. In summary, he had the following objections:

- He said the Insurance Act 2015 requires an insurer to show that a condition it relies upon was material to the loss, in order for it to decline a claim. And he didn't agree that the fryer being left unattended was material to the loss.
- He said this requirement of the Insurance Act also applied to his business interruption claim. And therefore to decline the claim, Zurich would need to prove that the fire claim being declined was material to the business interruption loss. He said as he used his own funds to rectify the damage caused by the fire, this prevented any delays in the work being done. Therefore the fact the claim was declined wasn't material to the loss caused by business interruption, so the claim should be covered.
- The condition regarding the cooking equipment and the proviso in the business interruption insurance, weren't made clear in the documents made available at the sale of the policy. He said this is a breach of FCA rules, so the terms can't be fairly used to decline the claims.

He made a complaint but Zurich didn't uphold it. It said its expert had commented that had the fryer not been left unattended then the fire may have been stopped altogether or at least tackled sooner and the damage reduced. It therefore maintained that the exclusion applied to the main damage. And it said the proviso in the business interruption cover clearly requires a successful claim for the material damage, and it didn't agree that the fact Mr W funded the repairs himself made a difference to this. It also thought both terms were made

clear in the policy documents.

Unhappy with this response, Mr W brought the complaint to this service.

Our investigator considered the issues but didn't recommend the complaint be upheld. He thought Zurich had acted fairly by applying the condition for the fryer being unattended and the proviso that requires a successful claim for the business interruption claim. He also thought Zurich had made these terms clear in the policy documentation, as it is required to do.

Mr W didn't agree and asked for the complaint to be reviewed by an ombudsman.

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.

As part of this complaint, Mr W has raised a number of different points. As this is an informal service, I've not responded to each one individually. Instead, I've focussed on those I consider to be key to the outcome here. However I want to reassure Mr W that I've considered everything he's said carefully when reaching my decision.

Cooking condition

The main claim for the damage was declined based on the fact Zurich said Mr W failed to comply with the following condition:

'it is a condition precedent to our liability for damage caused by fire that...

e) all cooking equipment used for deep fat frying...

iii) will not be left unattended whilst the heat source is operating'

There is no dispute that the fire started from the electric fryer. And that Mr W was in another room, on another floor of the building when it did.

The policy doesn't define the word 'unattended'. And where this is the case, this service would consider a reasonable interpretation of the word to be a fair application. Here, I think a reasonable definition of unattended would be for the fryer to be out of view and out of reach, so that any problems couldn't be immediately addressed.

Here, Mr W went to the toilet on a different floor of the building. He was therefore unable to see or attend to the fryer. So, should there be an error or issue, he wouldn't be aware or be able to respond immediately. I therefore think this meets a reasonable definition of unattended.

However in order to say that Zurich applied the condition fairly, I need to also be satisfied that by not complying with the condition, this increased the risk of the loss Mr W is claiming for.

Zurich initially instructed a forensic investigator to inspect the fire damage and report on the cause. In that report, the investigator stated:

'Had Mr [W] remained in the kitchen and in close proximity to the fryer it is likely that he would have seen smoke coming from the oil inside the right-hand pan before it reached its

auto-ignition temperature. In those circumstances, he should have been able to switch off the fryer before the oil ignited.'

Based on this, I'm satisfied that Mr W failed to comply with the policy condition. And that this failure was material to the fire damage he has claimed for. I am therefore persuaded Zurich acted fairly by declining his claim for the fire damage.

Business interruption

Mr W also made a claim for business interruption for A. Zurich declined this based on the following policy wording:

'In the event of any incident occurring during the period of insurance which causes interruption of or interference with the business we will pay you the amount of loss that results from that interruption or interference during the indemnity period.

Provided that:

a) the incident is caused by an operative Insured event

b) at the time the incident occurs there is insurance in force covering your interest in the property at the premises against the damage and that payment under the insurance:

i) has been made or liability has been admitted for it

ii) would have been made or liability admitted for it if not for a provision excluding losses below a certain amount.'

Zurich declined Mr W's claim for the fire damage. And he's confirmed that he didn't have any other insurance to cover the loss. So I'm satisfied that the proviso for the business interruption that liability has been accepted under an insurance policy hasn't been met.

Mr W has said that while he accepts the fire damage isn't covered by an insurance policy, under the Insurance Act 2015 Zurich can only decline a claim where the condition that is breached increased the risk of loss under the section of the policy. He says that Zurich would therefore need to show that the fact the claim for the fire damage was declined, increased the risk of loss in a claim for business interruption. And he says that this would only be the case where there was a delay due to the fact there was no insurance cover. But here, he funded the repairs himself, so there was no delay. He therefore says the fact the proviso wasn't met, wasn't material to the loss being claimed for.

I've considered what Mr W has said but I don't agree this means Zurich acted unfairly by declining his business interruption claim.

Firstly, the proviso in the business interruption term has to be fulfilled in order for any business interruption cover to come into force. Unlike a policy condition, where the cover is in place as part of the policy, the policyholder just has to ensure that they comply with certain conditions to maintain it. So the cover is only in place if there is a successful claim, and if there is, only then is a claim for business interruption assessed in line with the remaining policy terms. I therefore don't agree the test of materiality would fairly apply here.

Further, the requirement of a successful claim is a very common clause in business interruption policies. As this cover is generally not available for all types of interruption, only where there is an insured peril. And it's reasonable that this requirement is met when an insurer assesses the claim, regardless of how the damage is paid for outside of insurance cover.

But regardless of whether Zurich is required to show that the fact the proviso hasn't been met was material to the loss, I don't think Mr W has done enough to show that it wasn't. He's said that because A funded the work itself, this reduced any delay that may have been experienced due to a declined insurance claim. Therefore it was immaterial whether the claim was covered or not. But it isn't possible to know how quickly work would have been carried out if a claim had been covered, to say that there was no delay. Therefore it is difficult to say whether the declined insurance claim increased the potential business interruption claim and I've not seen enough to persuade me that it was immaterial. Further Mr W has said that A crowd funded and borrowed money in order to cover the cost, and it seems likely this would take more time than payment from an insurer. So regardless of whether materiality needs to be proven for the business interruption claim, this isn't enough to persuade me that Zurich acted unfairly by declining the claim.

Clarity of terms in policy documents

Mr W has also said that he doesn't think either the fire damage condition or the business interruption proviso were made clear enough in the policy documents. He says that Zurich have a responsibility to include these in the important information document, under rules set out by the Financial Conduct Authority (FCA).

Mr W bought the policy through a broker. Under FCA rules, Zurich, as the insurer, is responsible for ensuring that the policy documents are clear and unambiguous.

I can see that the endorsement for fryers is included in the policy schedule. It is listed on page five, with the full wording detailed on page seven. The condition to not leave a fryer unattended isn't one I would consider to be unusual. It is quite usual that under an insurance policy, there is an expectation that you take reasonable action to avoid loss. And ensuring a fryer is attended at all times, would reasonably fall within this. So I don't think Zurich needed to highlight the endorsement outside of the policy schedule and the wording was clear enough to explain the condition.

In regards to the business interruption insurance, Mr W has said this is only listed in the policy document itself, rather than anywhere on the important information or policy schedule. When business interruption insurance is included in a policy, it is usual that cover will be dependent on a successful claim for the material damage. In fact, it's very rare that this would not be a proviso of the cover. So I'm satisfied that the explanation in the policy terms is sufficient and makes the conditions of the cover clear enough.

Based on this, I'm persuaded that Zurich has done enough to meet its obligation to provide clear information about the policy cover. And therefore that it acted fairly by applying the terms to decline A's claims.

My final decision

For the reasons I've given, I don't uphold A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W, on behalf of A, to accept or reject my decision before 21 December 2023.

Sophie Goodyear
Ombudsman