

The complaint

Mr M has complained about Highway Insurance Company Limited's decision to cancel his home insurance policy and reject his claim for storm damage citing an exclusion for fraud.

What happened

The background is well known to both parties and set out in more detail in my provisional decision. So I've summarised what happened below.

Mr M made a claim to Highway Insurance Company under his home insurance policy for damage following a storm. Included in his claim for property damage was a claim for chimney pots from his roof.

Highway declined the claim and cancelled his policy, citing its fraud exclusion. It said the chimney pots Mr M claimed for were never there.

Mr M complained to Highway, but it didn't uphold his complaint. Our Investigator thought Highway had been unfair and recommended Mr M's complaint should be upheld.

Highway didn't agree and asked for an ombudsman to decide. I issue a provisional decision on 19 September 2023. I thought Highway had acted reasonably, so I didn't intend to uphold the complaint.

Mr M didn't agree. He's provided a detailed response with a separate response from his legal representative which I'll refer to as 'L' and which I've addressed in my findings below.

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 set out in my provisional decision, Highway can cancel a policy and decline a claim if it believes a condition of the policy has been breached, which in this case was in the event of fraud. In my provisional decision I wrote the following:

"It isn't for us to decide whether a policyholder has acted fraudulently or not. Instead, I need to decide if Highway acted reasonably on raising the fraud condition and taking the action it has. So I've looked at what Highway has taken into account, and whether I think this was fair."

When Mr M called Highway to report damage caused by a tornado, he said that some of the pots had been lost from a rear chimney stack. He explained that he thought some of the chimney pots come off. Highway said it would send a Surveyor out to visit the property. Mr M said he couldn't quite see properly and somebody would need to go up on a ladder and look because he couldn't access the area."

A Surveyor visited Mr M's property to inspect the damage on behalf of Highway. He provided photos taken at ground level of the front and rear of the property . These photos showed there were three chimney pots for the front chimney stack and one chimney pot for the rear chimney stack. Mr M had said there were one or two missing chimney pots from the rear chimney stack which had been lost when the tornado struck.

The Surveyor reported concerns to Highway. He said there was no sign of debris to evidence that chimney pots had been lost during the tornado. Online images of Mr M's property from 2009 to September 2022 didn't show more than one chimney pot to the rear of the property.

Highway called Mr M to discuss his claim in light of the concerns raised by the Surveyor. I've listened carefully to the recording of that call - provided by Highway and Mr M.

Key comments from Mr M in relation to the claim for damaged chimney pots to the rear of the property are as follows:

At around six minutes 30 seconds, Mr M said there was damage to guttering, outbuilding and chimney stacks. He explained that he has two chimney stacks and that the front one seemed ok. He said the rear chimney stack was most affected by the tornado and that there was one chimney pot left when he believes there were three, from memory.

Mr M went on to explain that he can't evidence this without a photo and he'd looked at his phone (for photos). He went on to say that there might be damage to the chimney stack but he can't be sure - "although I do know at least one or two chimney pots have been removed".

Highway asked Mr M when was the last time he knew that all the pots that should be there were in place and in order. Mr M said up until the day of the event, he noticed it immediately after the event.

At around eight minutes, Mr M said; "well I'm in the garden everyday - there was no damage tochimney pots were intact. As I said, there were three and now there is one"

Highway asked Mr M if he were to put a timescale on this, when was the last time he knew there were three pots up there. Mr M replied; "the day I would say - quite categorically - the day I knew there were three chimney pots up there was the day before."

Highway asked Mr M if he had undertaken any work to the chimney pots in the years he had lived at the property. Mr M confirmed he'd had a flu fitted at the front, but no works carried out to the rear chimney.

At around nine minutes, Highway repeated back to Mr M his statement that categorically the day before there were three chimney pots (at the rear chimney stack) and Mr M replied "yes".

So I think Mr M was very clear when he answered Highway's questions about his claim for damaged chimney pots to the rear chimney stack.

Highway has relied on online images of Mr M's property showing one chimney pot to the rear chimney stack. Mr M says it's possible that the chimney pots couldn't be seen from the ground. However, I agree with Highway that on looking at these images and the Surveyor's photos, there is visible flashing (material holding the chimney pot in place) around the one chimney pot at the rear chimney stack - so it's reasonable to expect to see the same for the missing chimney pots Mr M claimed for. And the Surveyor reported there was no debris to evidence tornado damage consistent with Mr M's claim for at least one or two missing chimney pots.

An insurer is entitled to make reasonable enquiries when investigating a claim. I understand Mr M says he feels Highway tricked him into saying what he did about the chimney pots. But I can't agree. Mr M reported the damage to the chimney pots when he first made his claim.

Mr M discussed this part of his claim with the Surveyor when he visited. And I think Mr M had no doubt about when he last viewed the chimney pots he claimed for - being the day before the tornado. He used the phrase "quite categorically" which I find compelling - and so I can understand why Highway reached the decision it did.

There is no evidence to show there was more than one chimney pot to the rear chimney stack of Mr M's home before the tornado struck - and no evidence of damage caused leading to the loss of a second or third pot by the tornado.

So, putting all of its concerns together, I don't think it was unreasonable for Highway to decide the fraud condition of the policy had been breached. And having reached that conclusion, I don't think Highway acted unreasonably. I think it was entitled to cancel the policy and add a fraud marker against Mr M's record with a fraud prevention agency."

Mr M and his legal representative have provided detailed responses to my provisional decision. I have summarised the points raised below with my replies:

Mr M has provided details of the weather conditions at the time the event occurred. It isn't in dispute as to whether a tornado or storm occurred. This isn't the reason why his claim has been declined.

Mr M says that he had swept away the debris following the storm - and so this explains why the Surveyor found no evidence of debris from the damaged pots when he visited. But because there is no other evidence of chimney pots having ever been there, this point doesn't change the outcome. I would also say that L in his response says that it is common ground that there were no chimney pots, which seems inconsistent with Mr M's statement.

Mr M says he asked the Surveyor to inspect the flashing but he hadn't brought ladders to inspect the roof. Mr M says if the Surveyor had inspected his roof at the time, he would have established if it had sustained any damage to his satisfaction - and could have negated any risk of a dispute afterwards between Mr M and Highway.

We don't consider it unreasonable for a Surveyor not to physically inspect a roof, given Highway had accepted the claim. I think the information provided by the Surveyor and

Highway has shown its investigation was reasonable and decision was reached in a fair and reasonable way.

Mr M says the redacted Surveyor report he received has no estimate of costs for the works. He believes Highway may have falsified the Surveyor report as I've referred to comments made by the Surveyor which he hasn't seen in the redacted report. He suspects Highway looked online for the images of his roof after receiving the Surveyor's report.

I haven't seen anything to suggest the Surveyor's report was falsified by Highway. The Surveyor provided comments to Highway in a separate email - so this wasn't attached to the report. It was the Surveyor who set out his concerns as to the validity of the claim. There was no estimate for costs as the Surveyor didn't provide any.

To clarify, when I said in my provisional decision that Highway had looked at online images, these images had been provided to Highway by the Surveyor - and are within the redacted report provided to Mr M.

Mr M has obtained estimates for the damage and says only 5% of the costs relate to the chimney pots in question.

This isn't relevant. The issue is that Highway found that Mr M tried to claim for items he wasn't entitled to. And so it is entitled to decline the claim in full when applying the fraud exclusion, which it did.

Mr M has asked if it was reasonable to have expected him to remember how many chimney pots there were when Highway called him to discuss the Surveyor's report.

I think Highway asked Mr M clear questions and as I set out in my provisional decision, based on Mr M's answers, I think Highway fairly reached the decision it did. Mr M was - in his own words - quite categorical - that he had seen the chimney pots from the garden the day before - so immediately before the storm. I therefore think these later statements supersede his earlier comments about his memory of the existence of chimney pots, which may have suggested an element of doubt.

Mr M says Highway should have shared its concerns with him before it called him. However, Highway had concerns that Mr M was claiming for something that wasn't there before the storm. And so asking questions of Mr M was entirely appropriate. Had Mr M been less certain or assured in his responses, I believe it's more likely than not that the outcome would have been different.

Mr M believes Highway hasn't complied with the CII code of ethics. But I haven't found any evidence to support this.

Mr M's legal representative 'L' says it is now common ground that there were no chimney pots. This isn't consistent with Mr M's statement that he had cleared debris from the damaged pots a couple of days after the storm.

L is concerned that Highway provided a recording of the claim notification call after the Investigator issued their view. I see nothing wrong with this. Highway didn't agree with the view and was given - as was Mr M - an opportunity to provide new representations. This call was provided to show that Mr M listed the damage to his property (including the chimney pots) since the outset of his claim. The key evidence in deciding the outcome of the claim is in the call I have quoted from above. Mr M has a copy of this call recording as he too provided us with a copy of it.

L says it is unfair that a copy of the claim notification call hasn't been made available. I don't know if Mr M requested a copy of this call from Highway. If Mr M would like a copy of the claim notification call, he can ask Highway for this.

L says Highway hasn't provided a written reason for its decision to reject the claim or cancel the insurance.

Highway provided letters dated 6 April 2023 and 20 April 2023 clearly setting out its reasons and its decision to Mr M. Mr M responded to these letters and so I'm satisfied he received them.

L says I haven't taken into consideration Mr M's comments that he wasn't sure and that his answers were from memory. As I've said, as the conversation continued, Mr M was assured in his responses that he saw the chimney pots every day from his garden up until the day before the storm.

L has commented on the tests a court would apply in determining fraud. And L has questioned the test this service has applied when determining that Highway hasn't acted unreasonably in deciding the fraud condition of the policy had been breached – including whether a criminal standard of beyond reasonable doubt would apply.

I've taken into account the law in reaching this decision. And in all cases this service deals with, we need to try to establish what was more likely to have happened on the balance of probabilities, based on the available evidence. And so this is the test I've applied here. While fraud is a serious allegation, and potentially a criminal offence, the test I have to apply is still whether it is more likely than not that Mr M committed fraud. Although L has indicated he's seen no summation or reasoned decision to show how Highway has established fraud in this case, I've outlined in my provisional decision the key material evidence that Highway has sought to rely on.

So after carefully considering the representations from Mr M and L, my final decision remains the same as my provisional decision as they have not changed my view.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 November 2023.

Geraldine Newbold
Ombudsman