

The complaint

Mr W and Mrs G are complaining that Zurich Insurance PLC has declined a claim they made on their commercial property insurance policy and also declined to renew it.

What happened

In February 2022 the roof on an outbuilding on Mr W and Mrs G's farm was severely damaged following a storm so they contacted Zurich to claim on their commercial property insurance policy. However, Zurich said that the building was in a poor condition and, had it known this, it would have only offered cover on a "FLEA basis", covering only Fire, Lightning, Explosion, Earthquake or Aircraft perils. So it reduced cover on the policy to this which it said meant it wasn't liable to cover the damage to the building.

Zurich also said it had discovered an undisclosed county court judgement (CCJ) and an individual voluntary arrangement for Mr W. It said Mr W and Mrs G should have disclosed these when the policy started. It said it wouldn't take this into consideration in assessing the claim. But, it said it wouldn't renew the policy on any terms.

However, it agreed the decision to decline the claim should have been made quicker than it was, so it offered £500 in compensation.

Mr W and Mrs G didn't think Zurich's decision was fair so they referred their complaint to this Service.

Our investigator didn't uphold this complaint. She said Zurich instructed a structural engineer to carry out an assessment and report their findings about the building in question. She said the engineer reported several issues including the repair and maintenance as well as the general stability of the building. So she didn't think it was unreasonable that Zurich said it wouldn't have covered the building for storm damage, due to the overall stability issues.

Mr W and Mrs G didn't agree with the investigator's opinion, so the complaint was passed to me to decide. I wrote to both parties saying that I intended to reach a different conclusion to the investigator and I said the following:

"In short, Zurich hasn't covered this claim because it says Mr W and Mrs G failed to make a fair presentation of the risk in regard to the question on the statement of fact which asks whether the property was:

"maintained in a sound condition and a good state of repair?"

Zurich believes, based on the structural engineer's report that the outbuilding in question wasn't as such and it's said it would have only offered FLEA cover had this been explained.

However, it is for Zurich to show that Mr W and Mrs G ought to have known they needed to say this building wasn't in a sound condition and a good state of repair. But I'm not persuaded that I've seen enough to support this. The structural engineer's report seems to be largely based on conjecture rather than a definitive statement based on facts about the

condition of the property - i.e. he's said there may have been existing issues. It seems the engineer was unable to say whether the damage to the building was a consequence of the storm/high winds or was something that was pre-existing.

I do not dispute that there may have been some design challenges that meant the roof couldn't sustain such high strength winds as there were on the day in question. But the question for me to ask is whether Mr W and Mrs G ought to have known the property wasn't in a sound condition and a good state of repair when the policy started. This was an old, but I understand a working building. I've seen some photos of the building and naturally they show a degree of wear, but I don't think this would mean that it wasn't in a sound condition and a good state of repair. I think there's a significant difference between a building suffering with some wear and tear as opposed to not being in a good state of repair. Based on the evidence I've seen I don't think I can reasonably conclude that Mr W and Mrs G failed to make a fair presentation of the risk in regard to the condition of the property. So I don't think this would be considered a qualifying breach under the Insurance Act 2015 for this.

I note Zurich also had concerns that Mr W and Mrs G didn't disclose a previous CCJ and IVA. But it's also said it wouldn't take this into account in the policy in question – only at renewal. So I don't think it can now go back and take this into account at this juncture.

So, subject to either party providing me with any further information, I intend to say that Zurich should do the following to put things right:

- 1. Reconsider the claim in line with the existing terms of the insurance policy; and*
- 2. Pay £500 in compensation for the distress and inconvenience this delay in settling the claim has caused."*

Despite granting Zurich an extension to respond, Zurich didn't respond to my provisional decision.

Mr G and Mrs W responded to say they didn't have anything further to add.

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 neither party has given me anything new to think about, I see no reason to reach a different conclusion to the one I reached before. So I've decided to uphold this complaint for the reasons I've set out above.

I also note Mr G and Mrs W are unhappy that Zurich didn't automatically renew the insurance policy. Insurers are entitled to make commercial decisions as to what risk they're willing to insure. But they must exercise them fairly and reasonably. I've reviewed and considered Zurich's decision in this regard. Zurich has set out that it wasn't willing to provide the insurance going forward given the undisclosed CCJ and IVA, together with the claim made. I can't say it's being unfair in making the decision it did.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Zurich Insurance PLC to:

- 1. Reconsider the claim in line with the existing terms of the insurance policy; and*
- 2. Pay £500 in compensation for the distress and inconvenience this delay in settling the*

claim has caused.”

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs G and Mr W to accept or reject my decision before 5 February 2024.

Guy Mitchell

Ombudsman