

The complaint

Mr B complains HCC International Insurance Company Plc trading as Tokio Marine HCC (“HCC”) unfairly declined a claim he made on his landlord insurance policy for malicious damage.

What happened

Mr B has a rental property that is insured with HCC. In summer 2023, he made a claim under his policy for malicious damage to a boundary wall around his property. He said a neighbour had caused damage to the wall.

HCC assessed the claim but declined it. It said Mr B hadn’t contacted the police, in line with his policy terms. Mr B later did contact the police and said he didn’t tell HCC the neighbour had caused the damage. HCC still declined the claim.

Unhappy with HCC’s response, Mr B brought a complaint to this Service. Our Investigator didn’t think HCC had acted unfairly in declining the claim. He was satisfied Mr B had initially told the insurer that the neighbour caused the damage. He also said HCC were uncertain as to who owned the wall being complained about, so it couldn’t even be sure Mr B had an insured interest in it.

Mr B said not informing the police initially had been an oversight, but he’d now done this so his claim shouldn’t be invalidated. He said any concerns as to the ownership of the wall were a surprise to him, and he requested that the insurer appoint an independent expert for a neutral report.

Mr B asked for an Ombudsman to consider the matter, so it has come to me to decide.

After he asked for an Ombudsman’s decision, Mr B provided a report from a building surveyor as to the ownership of the wall.

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.

Mr B’s policy does cover the property for malicious damage. Whilst this isn’t defined in the policy document, HCC says it defines it as “*with the intent to harm*”, which I consider to be a reasonable definition. So on the face of it, the damage Mr B has claimed for – damage to a wall – might fit under this part of the policy. But when making an insurance claim, it is the responsibility of the policyholder – so in this case Mr B – to evidence that an insured event has occurred.

When reporting the claim, Mr B named one of his neighbours as being the person who caused the damage. He later told HCC that he’d never accused a specific neighbour, and further investigation is needed if HCC want to find the culprit. I’m satisfied, based on the initial claim notification, that Mr B did name the neighbour HCC refers to. HCC says because he has now changed the story, and delayed contacting the police, it cannot substantiate the claim so it shouldn’t be covered. From reviewing everything, I can’t say that’s an unreasonable position for HCC to reach, bearing in mind it’s for Mr B to show he’s suffered a loss covered by the policy. So it is for him to show the damage has been done “*with the*

intent to harm". If Mr B now can't say who did the damage, it's difficult for him to be able to demonstrate it was done maliciously and so should be covered under his policy.

HCC has also said it's declining the claim on a policy condition, as Mr B didn't inform the police of the incident '*as soon as possible*' in line with the policy terms. And he didn't comply with its request for information, including an answer to why he hadn't informed the police earlier. HCC's policy says if any of its conditions of making a claim aren't met, it may invalidate the claim, so this is what it did.

Mr B raised the claim in the summer of 2023. He confirmed to HCC that he hadn't reported the damage to the police, but he later did once HCC had asked him to provide reasons for his delay. I've seen emails between Mr B and the loss adjuster. Mr B was asked several times to provide an explanation for his delay in informing the police, but he didn't answer the question. So I don't think Mr B met the policy condition of informing the police of the incident '*as soon as possible*' in line with the policy terms. And he hasn't provided a reasonable explanation for not doing so. He's told this Service that it was an oversight on his part. HCC says by not reporting the damage as soon as he was aware of it, its position has been prejudiced. It hasn't provided much detail on why it thinks this has prejudiced the claim, but ultimately, as Mr B hasn't been able to substantiate the claim, I don't think HCC has acted unreasonably in declining it.

HCC has said the wall might not even belong to Mr B. He says it does and has provided this Service with a report commenting on the boundary of his property. Mr B can provide that to HCC, but my role is to assess whether it declined the claim fairly for the reasons it did – not substantiating the claim. And because I'm satisfied it did, the ownership of the wall isn't material to the outcome of this complaint.

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 B to accept or reject my decision before 23 April 2024.

Michelle Henderson
Ombudsman