

The complaint

G, a company, complains about a claim it made on its Zurich Insurance PLC (Zurich) trades and professions business protection insurance policy, which Zurich declined.

G's complaint is brought by a representative on its behalf, but I shall refer to all submissions as being G's own for ease of reference.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

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.

Having done so, I agree with the conclusions reached by the investigator for these reasons:

- Whilst the policy terms do offer protection in respect of a number of circumstances, they exclude *"the cost of repairing, replacing or rectifying any:*
 - a) *contract works which are in a defective condition due to a defect in design, plan, specification, materials or workmanship of such contract works or any part of them but this will not apply to other contract works which are free of the defective condition but suffer damage as a result."*
- In this case the evidence Zurich considered to determine the cause of the damage to the rendering on the new build home G constructed, which formed the basis of G's claim, was inconclusive. The supplier of the rendering system said the cause was because the product hadn't been applied correctly. Conversely the plasterer who applied the rendering said the product had been applied correctly but that the primer and topcoat was past its use date, so the materials were defective. The supplier of the rendering system disputes this. An architect determined that the failure of the topcoat was most likely as a result of unsatisfactory materials rather than the application process by the plasterer.
- G wanted Zurich to do more to establish the cause of the problem before turning down cover. But Zurich's role isn't to prove there's a claim that's capable of cover under the policy- the onus is on G to establish that. The evidence I've seen is inconclusive on who is responsible here but in both cases the claim G is seeking to make is excluded. Whether the cause of the problem was as a result of defective materials or workmanship, the claim itself would not be covered. So, unless G can establish, with reference to expert evidence from someone suitably qualified to determine the cause of the problem, that the problem is as a result of something not set out within the exclusion I've noted above and falls within policy coverage, then I don't think Zurich need to do anymore in this claim.
- G has said the policy exclusion was not made clear to it. In this complaint I'm not considering what information was provided to G at the time the policy was sold to it or whether that information was enough to allow G to decide whether to take out the policy

as it was- that's a matter for the seller of the policy who I understand was a broker. In this decision I'm looking at whether it was fair for Zurich to decline the claim under its policy terms and for the reasons I've set out above, I think it was fair for them to do so.

- In reaching my conclusions I've noted that G doesn't dispute that the policy exclusion is applicable to its claim but rather that the information it was given wasn't enough to allow it to decide whether to amend the cover it was taking out. As such I understand G is now pursuing its complaint against its broker.

My final decision

For the reasons set out above, I don't uphold G's complaint against Zurich Insurance PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 23 April 2024.

Lale Hussein-Venn
Ombudsman