

## **The complaint**

A company, which I'll refer to as A, complains that ERGO Versicherung Aktiengesellschaft, declined a claim it made on its commercial insurance policy for fire damage.

Reference to ERGO or A includes things said and done by their respective agents and representatives.

## **What happened**

The circumstances of the complaint aren't in dispute, so I'll summarise the key points:

- A owns a building that suffered fire damage in December 2019. It got in touch with ERGO to make a claim on its commercial insurance policy.
- ERGO thought the most likely cause of the fire was a fault in the electrical system. It accepted fire damage was covered by the policy. But this was subject to a maintenance condition which it thought A had breached.
- The condition required A, amongst other things, to be in possession of an electrical installation condition report (EICR) covering the whole system. In brief, ERGO said A had provided EICRs – but they didn't cover the whole system. It declined the claim.
- A said it wasn't unusual for a building of its size to have the EICR carried out in parts over the year to avoid having to close down the entire business for one to be carried out in full. That's why the certificates it had provided, up to September 2019, had each covered separate areas or parts of areas. But in any event, it did have a full inspection carried out in October 2019 and provided that certificate.
- ERGO wasn't persuaded the recent certificate showed a full inspection. It didn't change its position.
- Our investigator thought ERGO had unfairly declined the claim. Whilst he understood why it had initially declined the claim based on the first four certificates, he thought A had shown the whole system had been inspected in October 2019. He thought ERGO should reconsider the claim without relying on the maintenance condition.
- ERGO disagreed. It remained unconvinced the recent certificates showed a full inspection and asked for the case to be passed to 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.

ERGO accepts damage by fire is covered by the policy. It's declined the claim because it doesn't think A complied with a maintenance condition. The key part of the condition says:

*You must ... be in possession of an EIRC that ... covers the whole of the electrical installation.*

The policy says that not complying with this condition means all damage caused by fire will be excluded.

A initially provided four EIRCs covering different parts of the building. Some said only 25% of the circuits in those areas had been tested.

ERGO arranged for an investigation into the cause of the fire by H, a forensic investigator, including an inspection. H said the circuits in the area of damage would most likely have been included in those that were tested. But as the EIRCs didn't cover the whole of the electrical installation, the maintenance condition hadn't been met.

H went on to say that whilst it was *possible* there was an electrical fault, it found no evidence of a fault at the time of its inspection. As a result, it couldn't confirm that conducting a full test of all of the electrical circuits would have prevented a fire – although its possible it would.

After ERGO declined the claim, A provided an EIRC from October 2019. H reviewed it and found it didn't show any faults in the area of damage and indicated more circuits were tested than previously. However, the EIRC said it had tested 20% of the circuits, which gave the impression the entire system hadn't been inspected in line with the maintenance condition.

A said the reference to 20% was incorrect and there had been a full inspection. H got in touch directly with the electrical contractor to clarify what had happened. H recorded the contractor saying the entire installation was inspected in October and the reference to 20% was a mistake. The contractor said the same to A in an email.

ERGO doesn't think it was a mistake – it's convinced the reference to 20% is accurate and therefore A hasn't provided EIRCs to cover the entire electrical system. I've thought about what ERGO has said. But I'm not persuaded it's shown it would be fair to decline the claim. I'll explain why.

It's not in dispute the damage was caused by a fire – and that's covered by the policy. The question is whether it would be fair and reasonable for ERGO to decline the claim on the basis that A breached the maintenance condition.

The contractor who carried out the October 2019 EIRC says it conducted a full inspection – and any reference to 20% was a mistake. They're an 'approved contractor' of an industry recognised professional body. So I think it's reasonable to accept what they're saying at face value – unless ERGO can show evidence to the contrary.

I've taken into account the points ERGO has made about this, but I haven't seen any compelling evidence to challenge what the contractor has said. ERGO has suggested things which *may* cast doubt on it, but they're not supported by persuasive information. It's made a number of comments about the requirements of the contents of an EIRC and how they weren't met by the contractor. But I can't see that these comments have been raised by H or any other expert – or that they've been put to the contractor to answer or explain.

I note H said the recent EIRC showed *more* testing had been done than before. The earlier EIRCs referred to 25% testing, suggesting the amount of testing in October would be more than that figure – not less. H got in touch with the contractor, who said the reference to 20% was a mistake. I understand H had other queries to follow up with the contractor. I haven't seen any evidence to show whether further enquiries were made with the contractor or not.

Overall, I'm not persuaded ERGO has shown that I shouldn't accept what the contractor has said. And that means I'm satisfied on the available evidence that it carried out an EICR to cover the whole system. Accordingly, I consider A complied with the maintenance condition.

Even if I found otherwise on that point, I think there are other relevant points to consider in this dispute.

H has said it's not clear what caused the fire. It may have been an electrical fault, but no evidence of such a fault was found. And it's repeated to ERGO that conducting a full test may not have revealed any evidence of a fault.

So even if a full system EICR hadn't taken place, it's far from clear that carrying one out would have found a fault or prevented the fire damage. H noted that the circuits in the area of damage would most likely have been tested in the earlier EICRs. So it seems that even if a full system EICR hadn't taken place, the circuits most important in this case were tested prior to the fire. In such circumstances, I'm not persuaded it would be fair and reasonable to decline the claim, even if ERGO had shown a full EICR hadn't taken place.

For these reasons, I'm not satisfied it was fair and reasonable for ERGO to decline the claim by relying on a breach of the maintenance condition. It should now reconsider the claim, subject to the remaining terms and conditions of the policy.

### **My final decision**

I uphold this complaint.

I require ERGO Versicherung Aktiengesellschaft to reconsider the claim, subject to the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 6 September 2022.

James Neville  
**Ombudsman**