

## **The complaint**

A small business which I'll refer to as R, complains Zurich Insurance PLC has unreasonably declined a claim it made on a business protection policy.

Mr A brings this complaint on behalf of R but has also chosen to be represented. However, for ease, in this decision, I will simply refer to R and Mr A where needed.

## **What happened**

What follows is only intended to be a summary of the events that led to this complaint. It does not therefore provide all the detail. This is intentional in order to avoid disclosing too much information about the circumstances of the underlying matter.

In June 2018 R discovered a potential loss of money from the business. It undertook an investigation and the employment of the employee concerned was ended. The employee agreed to pay back the loss that had been identified.

R however had concerns that the wrongdoing by the employee went back further than the dates it had originally considered, so it started to investigate further. It also informed the police of what had happened.

R had informed its insurance broker, (C), of what was happening however it appears this information was not passed onto Zurich as notification of a potential claim. R also did not contact Zurich directly to let it know what was happening.

The employee concerned then became subject to a police investigation with other interested agencies becoming involved in that investigation. The police worked with R to identify and establish its outstanding loss.

In February 2020, C contacted Zurich to notify it of a claim. Zurich considered the circumstances but said the claim wasn't covered as it was made aware of it too late. Under the policy terms it says claims must be made within 45 days of the end date of the policy year in which the loss is first discovered. It says as the claim wasn't raised with it, within that time, there was no cover in place.

R disagreed with this and complained to Zurich. It said it had made the broker aware of what was happening however the initial loss that was discovered was repaid by the employee meaning there was no reason to make a claim. When the further losses were established, but not fully quantified, it realised it would need to make a claim. And so, it contends its claim should be covered as it was raised within the policy year the (further) loss was discovered. Zurich didn't agree and so R brought the complaint to this service.

An investigator looked at the complaint but explained to R she didn't think it should be upheld. She said the policy did include a term regarding timely notification from first discovery of the loss and she thought that was June 2018.

However, she said that on a fair and reasonable basis, this service would usually expect an

insurer to demonstrate how it had been prejudiced by late notification of a claim.

Here Zurich explained that had it been made aware of the loss sooner, it could have, among other things, cooperated with police enquiries, used its own resources to establish R's loss and explored potential routes to recovering the money from the employee. It also pointed out that it was denied the opportunity to correctly account for the potential loss for reporting purposes and that this was information that should have been taken into account when renewing R's policy.

The investigator accepted that Zurich had been prejudiced by the late notification of the claim and therefore she thought it had acted fairly when declining the claim.

R disagreed with the investigator and asked for an ombudsman's decision. It provided further information regarding the litigation that had taken place concerning the employee and actions that were being taken to recover funds. It said the police had been made aware that an insurance policy was held with Zurich.

### **My provisional findings**

I issued my provisional findings on 21 April 2023. I said I intended to uphold the complaint for the following reasons:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*When considering what is fair in the circumstances, I need to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the time.*

*The relevant policy terms say as soon as reasonably practicable upon the discovery of a loss the insurer must be notified. And that this must be done no later than 45 days after the end of the period of insurance. The policy also sets out that where more than one loss arises from one act of fraud or dishonesty or a series of acts, they will be treated as one and will be attributed to the period of insurance where the first loss arising from the series was discovered.*

*I think it is accepted here that Zurich wasn't made aware of the loss when it was first discovered. And that the notification would be considered late as it wasn't notified within 45 days of the end of the 2018/2019 policy year. I accept there are issues around the notification to C and its role in the relationship between the parties, however here I must consider the point at which Zurich itself became aware of the potential claim.*

*I also note the arguments put forward about the different loss periods, however given the policy wording regarding a series of losses, I would take that reasonably to mean the date of discovery would still be brought back to June 2018.*

*So, based on this information I do consider there has been a breach of the claim notification terms on the policy and that the claim was notified late. On a strict interpretation of the policy terms Zurich would therefore be entitled to decline the claim.*

*However, on a fair and reasonable basis I wouldn't expect Zurich to decline the claim if it hasn't been prejudiced by the late notification. When looking at prejudice our service would usually look to see if things like the following have been compromised: the preservation of evidence, ability to trace witnesses, legal time bars or interest and costs building up. Or, if the insurer has lost the ability to do things such as seeing if the case has reasonable*

*prospects of success, agreeing terms with a policyholder's solicitor or trying to negotiate legal rights.*

*I've considered how Zurich has said it would have been prejudiced but I don't agree what it has identified shows that would have been the case.*

*Given the complexity of the litigation that was taking place and the agencies that were already involved in that investigation. I think it is more likely than not there would have been little Zurich would have been able, or permitted to do, to influence those proceedings. I think more likely than not it would have undertaken a watching brief on the matter.*

*Zurich may have been able to use its resources to help R establish the loss suffered, and had it not declined the claim, it could have become involved like it suggests, as the matter was far from concluded. However, I note that R was able to do that of its own accord and it has said the police were made aware of the presence of an insurance policy. I also note a forensic analysis was part of the underlying police investigation. So again, in any event I'm not sure here exactly what Zurich believes it would have been able to establish over and above what was discovered by other parties.*

*I understand what Zurich has said about reserving the value of the potential claim, and while I accept it hasn't been able to do this. I don't think this is an overriding factor which means it was unable to accept or deal with the claim at a later point in time.*

*I intend to uphold the complaint and direct Zurich to accept the claim and deal with it in line with the remaining terms and conditions of the policy."*

## **Responses to my provisional findings**

R responded saying it accepted my provisional findings.

Zurich said it disagreed. It commented that I had said it was entitled to decline the claim and i'd outlined how it had been prejudiced. There was no way of knowing now what influence Zurich could have had on matters. And it didn't think it was fair for me to concentrate on the extent that it had suffered prejudice.

## **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.

I explained in my provisional decision what things we would usually look for to see if an insurer has been prejudiced in its ability to deal with a claim. And I set out why I didn't think Zurich had been.

Zurich is right, there is now no way of knowing what influence it could have had. But I think that is due to its own actions of declining the claim unfairly. At the time Zurich was notified, wider events, relatively speaking, were still at early stages. And there was ample opportunity for Zurich to get involved. So, for the same reasons as set out in my provisional decision, I'm not persuaded it was prejudiced, by the late notification, in its ability to deal with the claim.

I've reconsidered Zurich's point about reserving the potential claim value, but again, for the same reasons as set out in my provisional decision I'm not persuaded this would have prevented Zurich being able to accept or deal with the claim at a later point in time.

For the reasons above, and those set out in my provisional decision, I uphold this complaint.

**Putting things right**

Zurich should accept the claim and deal with it in line with the remaining terms and conditions of the policy. It cannot use the late notification of the claim, or the consequences of its initial decision to decline the claim, as reasons to decline the claim further.

**My final decision**

My final decision is that I uphold R's complaint against Zurich Insurance PLC. It should put things right as I have set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 8 June 2023.

Alison Gore  
**Ombudsman**