

The complaint

Mr Y, the director of the limited company S, complains that Ecclesiastical Insurance Office Plc were unfair in rejecting S's insurance claim on the basis of fraud. Mr Y is the director and nominee for S, for ease of reading reference to him can be seen as reference to S.

What happened

Mr Y submitted a claim to Ecclesiastical following damage caused by an escape of water. This was for a property which he rented out. Mr Y was assisted with this by a management agent, who I will refer to as Mr C.

Ecclesiastical initially accepted the claim, however, upon receipt of invoices they were concerned the claim hadn't been presented in an honest manner. In particular, they felt Mr C had provided forged invoices for costs greater than those which had been incurred.

Mr C accepted he had submitted falsified documents, but he said this wasn't in an attempt to claim any additional benefit, to which the parties weren't entitled. He apologised for the way he had gone about things and said it had been a mistake on his part – he said he hadn't realised there were more acceptable ways of presenting the claim and had been lazy in what he had done.

Ecclesiastical maintained their rejection of Mr Y's claim on the basis of fraud. Mr C said he regretted his mistake, but reiterated that he wasn't trying to exaggerate the claim. So, the case was brought to our service to consider.

An investigator here looked into the matter. They said they felt Ecclesiastical had provided sufficient evidence to support the claim rejection. Mr C didn't agree, he accepted that he had been naïve in his presentation of the claim but maintained this wasn't an attempt to obtain payment to which he, or Mr Y, were not entitled.

Agreement couldn't be reached, so the case has been passed to me to decide.

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.

It may be helpful for me to set out that my role isn't to decide whether or not Mr C has acted fraudulently in a legal sense, nor is it for me to decide whether Mr Y may have in any way endorsed or encouraged Mr C's actions. I am here to assess whether or not Ecclesiastical were reasonable in relying on their 'fraud clause' to decline Mr Y's claim. So, while Mr C has provided information of a legal judgement that is not what I am here to provide – my remit is different from that of the courts.

Having considered everything very carefully, I think they were. I'll explain why.

The main point of contention is the invoice from the repair company. The original invoice that had been provided to the claimants was handwritten, for the sum of £7,183. However, when submitting the claim, Mr C provided a typed invoice totalling £9,080. Ecclesiastical asked for an explanation and he said the higher invoice wasn't the right one. He said it'd been issued with a revised amount to include some further work but that the further work was never done.

He said the reason it had been typed by the managing agents was because the handwritten one wasn't clear and the larger of the two invoices was typed up by mistake.

At that point, it seems Mr C had never actually received an invoice for £9,080, and so he asked the repairers to write one up for him (to help legitimise the typed one). They said they didn't have the figures to hand but trusted him and so hand wrote an invoice for £9,080. The repairers have since said the original invoice of £7,183 is the correct one – and that was the only payment they received.

The repairers have said they were misled by Mr C into writing the invoice for £9,080.

The repairers say that happened around mid-July 2022. Yet, the typed invoice was dated 6 June 2022, so I don't see how the typed copy could have truly been based on a handwritten one at £9,080, as that hadn't yet been produced. Mr C also said in June 2022 that £7,183 was only an interim payment. He later confirmed, in early-July, that the correct invoice was £7,183, so obtaining a higher one at a later date to try and explain how it had all been a mix-up gives further doubt on matters.

Furthermore, I also note the typed invoice submitted as part of the claim *appears to be* on the repairers' letter headed paper – but on close inspection the headers and footers aren't the same, so it seems to me the management agents were going to some lengths to make it look genuine. Surely it would've been easier, and more open, to have submitted what they were claiming to be the handwritten invoice of £9,080. However, it seems that wasn't possible to begin with because it hadn't yet existed and the higher typed invoice had simply been created by someone other than the repairers.

There was some confusion as to the amounts charged by the repairers, given the differing invoices. When questioned on this Mr C confirmed the correct invoice was the one for £7,183 – which is what was paid. Although he later suggested that was only an interim payment and the further balance was due, something the repairers say is not true. And Mr C has also said the actual cost incurred in relation to the repairer was £7,183. Mr C said the invoice of £9,080 was submitted in error, as it had been based on additional work which was never completed.

However, Mr C has also alternatively suggested the typed invoice, for £9,080, was intended as a way of including professional fees charged by the management agent, which he considers to be claimable under the insurance contract. Hence his assertion that he wasn't exaggerating the claim. I'm not persuaded by that because the invoice doesn't include any professional fees, despite being itemised. And they would be properly invoiced to Mr Y, rather than being added to the repair costs and presented as additional works which were never carried out.

I appreciate why Mr C is now saying he didn't realise that was wrong, but given what the repairers have said, I can see why Ecclesiastical consider him to have tried to cover it up by asking the repairers to issue a revised invoice that matched his typed version.

Furthermore, the bank statement transaction matches the amount on the £7,183 invoice rather than the amount on the more expensive invoice. I am not persuaded by the explanation that that was an interim payment – as has been suggested – because it matches

the amount on the original invoice. And that had been settled in full so there appears to have never been any further sums due to the repairers.

Any fee due to the managing agents were nothing to do with the repairers, that was a matter between Mr Y and Mr C.

For completeness, there was also an issue with regard to the alternative accommodation costs incurred, but I believe the crux of Ecclesiastical's concerns relate to the repair invoices so that's why my focus has been on those.

Turning to the policy term which Ecclesiastical relied upon in rejecting the claim, it states:

"If the Insured or anyone acting for the Insured or with the Insured connivance makes a fraudulent claim under the policy the Insurer(s)

a. Have the right not to pay the claim..."

As explained earlier, it is not for me to say whether or not Mr Y, or Mr C acting for him, have committed fraud. That would be a matter for the courts. Likewise, I don't consider Ecclesiastical to have to prove either party committed fraud in order to rely on the clause. It is well established that we work on the balance of probabilities as opposed to the higher bar of beyond reasonable doubt.

Overall, I'm satisfied that Mr C provided falsified documentation which suggested payments owed to the repairers were greater than they actually were.

I've considered this matter very carefully, and I've taken into account what Mr C has said about not trying to claim more than would have been due in the end anyway – even without all the issues with the invoices.

As I've said, I'm not here to decide whether or not someone is guilty of having committed fraud, but the evidence shows the claim has certainly not been presented in good faith.

While I understand Mr C may have thought it was ok to add professional fees to the repairers' invoice by inflating it, the evidence doesn't suggest it's as simple as that, especially as there appear to have been several steps involved in obtaining and creating falsified documentation in support of greater repair costs than had been incurred.

I say that because the inflated invoice didn't contain any reference to professional fees and the original explanation was that there was additional work required that wasn't subsequently done, so it should be the lower one the claim is settled on. But that wasn't what had been presented initially.

Furthermore, the process for claiming for professional fees is subject to its own terms and conditions so they may not have been covered – it was presumptuous of Mr C to think he could simply inflate the repairers invoice to account for that and then try to pass it off as a mistake. Especially as that would have potentially allowed the opportunity for furthering the claim at a later date – to include professional fees on top of the already inflated invoice.

All things considered, I believe Ecclesiastical were reasonable in relying on their 'fraud clause' bearing in mind the significant discrepancies in the presentation of Mr Y's claim. While I appreciate Mr C has provided an explanation, Ecclesiastical gave fair consideration to that before reaching their final judgment on the claim.

In closing, I understand Mr C has raised concerns about his professional standing and career, and the effect this matter may have on him. I would like to reiterate that I am not making a decision as to whether or not he has been fraudulent, in a legal sense, because that is not within my remit. I am simply saying I don't think Ecclesiastical were unfair in rejecting the claim, bearing in mind the way the way it was presented.

My final decision

It is my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 3 July 2024.

Will Weston
Ombudsman