

## **The complaint**

Mr and Mrs S have complained in their capacity as directors of a limited company, (which I'll refer to as "M") about Zurich Insurance PLC's decision to decline their claim following a fire.

Any reference to Zurich, M, and Mr and Mrs S in this decision include their appointed representatives and/or agents.

## **What happened**

In June 2023, a fire broke out at the insured property. It had originated in the roof space above the flats and ground floor offices, but it affected the entire building. As a result, the building became uninhabitable.

Mr and Mrs S made a claim to Zurich, but it was declined on the basis that the property didn't have the type of locks Mr and Mrs S had initially said it had when they took out the policy.

Mr and Mrs S didn't accept Zurich's decision. They said the locks were compliant and obtained a letter from a locksmith to support their claim. They said the damage was so severe they couldn't afford to pay for the repairs and had lost rental income as well as suffering other substantial financial losses. So, they made a complaint to Zurich, asking it to reconsider the claim.

In its response to the complaint, Zurich said the Statement of Fact document, which confirmed the information that had been provided by Mr and Mrs S about the property, referred to clear questions about the locks which, if answered correctly, would've resulted in an additional security condition being added to the policy.

Mr and Mrs S didn't agree with Zurich's response, so they referred their complaint to this service. Our Investigator considered the complaint, but didn't think it should be upheld. He said Zurich hadn't declined the claim unfairly, because the evidence showed the locks weren't compliant and that, on balance, this had most likely led to unauthorised people entering the property and causing the fire.

Mr and Mrs S didn't accept our Investigator's view, so the complaint has now come 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.

Having done so, I'm afraid I'm not upholding this complaint. I'll explain why.

In deciding this case I've taken into account the relevant law – which, because Mr and Mrs S took out a commercial policy, is the Insurance Act 2015. Under the Act, commercial policyholders have an obligation to volunteer the right information to an insurer when taking out a policy, i.e. they have a duty to make a fair presentation of the risk. This means they

have to disclose either:

- Everything they know, or ought to know that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms; or
- Enough information to put an insurer on notice that it needs to make further enquiries about potentially material circumstances.

The Act also says that a policyholder ought to know information that should reasonably have been revealed by a reasonable search of information available to them. I've checked the Statement of Fact to understand what information was provided and in this document, I can see that the policyholders were asked the following:

*"Security Details*

*Are final exit doors secured by mortice deadlocks with at least 5 levers or a rim deadlock conforming to British Standard 3621 or, if the door(s) are UPVC or double glazed, a multi-point locking system with either a lever or built-in deadlocking cylinder?*

*Are all other external doors secured by a mortice deadlock or a deadlock conforming to British Standard 3621 or by a multi-point locking system with either a lever or built-in deadlocking cylinder or key-operated security bolts fitted internally to the top and bottom?"*

Both questions were answered "Yes". So I've looked at what the evidence indicates about the type of locks at the insured property, and what Mr and Mrs S ought to have known.

The information provided by Zurich, which includes evidence from its loss adjuster, shows that the locks on the ground floor of the property did not comply with BS3621. It indicates that the main door to the property comprised two wooden door frames with single-glazed panels that had been covered with vinyl sheet. The evidence suggests the door was not UPVC or double-glazed, and therefore the first part of the first question would be relevant here, i.e. whether the door had at least 5 levers or a rim deadlock conforming to BS3621.

Given the information available, I'm satisfied that answering "Yes" to whether the final exit door had a BS3621 compliant lock was not accurate, because the information shows that the door was secured by a cylinder lock which was compliant with certain standards, but not BS3621. The reason BS3621 is generally referred to in some policies is because the testing includes simulations of drilling and picking of the lock to ensure maximum security.

I think Mr and Mrs S ought to have known what type of locks the building had. They should've taken reasonable steps to check the information available to them and I don't think they did, because the information they'd have needed is relatively straightforward to check online or with a locksmith. Mr and Mrs S's locksmith says in his letter that the door complied with PAS24 standards. But he doesn't specifically confirm that it met BS3621 – which as I've said is a different and higher security standard for locks. So I'm persuaded that Mr and Mrs S didn't give a fair presentation of the risk, because their answer would only have been accurate if the lock met BS3621 which it didn't – or if the door was UPVC or double glazed, which it was not.

Although I've concluded that Mr and Mrs S breached their duty of fair presentation, I've seen no evidence to suggest that their breach was deliberate or reckless. So I've considered what Zurich would've done differently if Mr and Mrs S had made a fair presentation of the risk. Zurich has provided information from its underwriters to show that it would've offered the

policy on different terms had it been made aware that the locks at the property weren't compliant with the relevant standards. It's said that it would've added the following condition to the policy:

*"2036 – MINIMUM SECURITY UPGRADE CONDITION*

*We will not pay any claim for loss or damage from unauthorised entry to the home unless the following security protections are fitted by <ENTER DATE> OR within 30 days of inception:*

*- Final exit doors must be secured by a mortice deadlock with at least 5 levers or a rim deadlock conforming to British Standard 3621 or, if the door(s) are UPVC or double glazed, a multi-point locking system with either a lever or built-in deadlocking cylinder*

*- All other external doors must be secured by a mortice deadlock or a deadlock conforming to British Standard 3621 or by a multi-point locking system with either a lever or built-in deadlocking cylinder or key-operated security bolts fitted internally to the top and bottom.*

*- All opening sections of the basement, ground floor and easily accessible windows, fanlights and skylights to the buildings secured by key-operated window locks."*

As Zurich has demonstrated it would've acted differently and entered into the insurance contract on different terms had a fair presentation of the risk been made, I consider the breach to have been a qualifying one under the Insurance Act. This means Zurich was entitled to treat the insurance policy as if it had been entered into on those varied terms – with the minimum security upgrade condition added to the policy. This condition says if the security provisions weren't met then there would be no cover for any loss arising from unauthorised entry.

I consider this relevant because of the evidence that's been presented in relation to the cause of the fire. The fire report dated 17 July 2023 says both the external door and the internal access door leading to the roof space were not secure. But as Mr and Mrs S have said, this could have been due to tenants escaping quickly following the discovery of the fire, which I accept is a reasonable explanation.

However, the report goes on to say that the cause of the fire was, on the balance of probabilities, most likely "deliberate ignition by person(s) unknown". The report also says that focussed sunlight, self-heating, a fault condition, animal activity, or accidental misuse of electronics were all "highly unlikely". The report is also supported by testimony evidence, such as the reference to two witnesses having stated to the fire service that they heard unauthorised access into and antisocial behaviour within the roof space by person(s) unknown shortly before the fire was discovered.

I've considered what Mr and Mrs S's representative has said in relation to higher temperatures creating the conditions conducive to combustion, particularly in an enclosed space such as the roof. But the expert evidence I've seen confirms, with sufficient reasoning, why this was highly unlikely – based on the time of day, the items stored in the area and the witness evidence. Whilst Mr and Mrs S's representative says she also consulted an expert, the information she's provided is general and not specific to the fire at the insured property. So I find the fire report more persuasive as the fire department visited and inspected the premises on the same day, and its conclusions are based on those first-hand inspections.

In light of everything I've seen, I consider it most likely that the fire was caused by deliberate

ignition from an unauthorised individual or individuals and that the security of the building was a relevant factor. The condition Zurich would've applied to the policy confirmed there would be no cover arising from unauthorised entry to the property, if the security provisions weren't met. Whilst it has been disputed that tenants could've heard and mentioned noises coming from the roof area, I've found the fire report provides more detail on this point – because it identifies from which flats occupants had confirmed they had heard noises in the roof space. Because of this, I find the fire report to be more persuasive than the email that was sent to tenants asking if they heard any noises, which none of the tenants appear to have responded to.

Insurance policies aren't designed to cover every eventuality; exclusions, limitations and conditions exist for that reason. So whilst I have a great deal of empathy for Mr and Mrs S's circumstances and I know they will be understandably disappointed with my decision, I'm afraid I don't consider Zurich to have acted unreasonably in declining the claim for the reasons it did.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 10 January 2025.

Ifrah Malik  
**Ombudsman**