

## **The complaint**

Mr W has complained in his capacity as Director of a limited company, which I'll refer to as "B", that Arch Insurance (UK) Limited ("Arch") unfairly declined a claim made under B's policy with it.

Any reference to B in this decision includes its representatives, and any reference to Arch in this decision includes its appointed agents.

## **What happened**

In October 2023, Mr W discovered that a storm had caused irreparable damage to his business premises – a car repair garage. He made a claim to his insurer, Arch. A loss adjuster was sent to assess the damage and asked if B had made any previous claims. Mr W said two previous claims had been made in May 2018 and February 2020.

The claim was then declined on the basis that B hadn't disclosed any previous claims when the policy was taken out. Mr W complained. He said B had taken the policy out through a broker and that he'd disclosed all previous claims to his broker.

In its response to the complaint, Arch said it hadn't been made aware of the previous flood claims or the special terms that had been imposed by the previous insurer, and that if it had been, it wouldn't have offered flood cover. Mr W didn't accept Arch's response, so he referred his complaint to this service.

Our Investigator considered the complaint, but didn't think it should be upheld. The Investigator said Arch's actions were in line with what we'd expect, given that Arch was provided incorrect information when the policy was taken out.

Mr W didn't accept our Investigator's opinion, and asked for an Ombudsman to review the matter. 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.

As this is an informal service, I'm not going to respond here to every point raised or comment on every piece of evidence Mr W and Arch have provided. Instead, I've focused on those I consider to be key or central to the issue in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm not upholding this complaint. I'll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a

claim. It should also settle claims promptly once settlement terms are agreed. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

As B took out a commercial insurance policy, the relevant legislation for me to consider 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 a commercial customer has 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 what information was provided to Arch when the policy was taken out and I can see that it asked whether a previous insurer had ever "imposed special terms, conditions or risk improvement requirements". This question was answered "No" when in fact, B's previous insurer had decided not to offer flood cover, after it first increased the excess payable for flood claims. This was due to the previous insurer's assessment of the risk, following two previous flood claims. And I'd consider the terms it imposed to be "special terms", as did Arch. So Arch says a misrepresentation was made in respect of that question.

Arch has also shown that it wouldn't have offered cover had the correct information been provided about the special terms, so the misrepresentation is what is known as a "qualifying misrepresentation". The actions Arch has taken, ie. assessing the claim as if there was no flood cover (as would have been the case had no misrepresentation been made), and declining the claim as a result, are therefore fair and reasonable.

I say this because the Insurance Act allows an insurer to impose the relevant remedy depending on the situation. In this case, as Arch would've offered the policy but on different terms, the Act entitles it to treat the policy as if it had been provided on those terms. It follows therefore that Arch has acted in line with the Act and so I'm not going to require it to do anything differently here.

### **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 B to accept or reject my decision before 24 July 2025.

Ifrah Malik  
**Ombudsman**