DRN-5466259

The complaint

M, a company, represented by its director Mr B, has complained about its property insurer Zurich Insurance PLC. Zurich has avoided M's policy and, by association, declined its claim made following incidents of burglary, vandalism and fire.

Mr B has instructed solicitors to represent M. Unless specified otherwise any comments of the solicitors will be referred to as Mr B's or M's own comments.

What happened

Mr B, using a broker, arranged cover for M's premises in 2018 with Zurich. Zurich was told the property was occupied as an office, where the business activity was building maintenance.

In 2019 there were incidents of burglary, vandalism and fire at the property. M made claims to Zurich. Zurich began investigating the claims but became concerned about whether the property was occupied, whether it had been occupied when the policy was arranged the year before. In 2020 Zurich decided that Mr B had likely not made a fair presentation to it – about the occupancy of the property and a number of other issues – when the cover was arranged. Zurich said, if a fair presentation had been made, it wouldn't have offered cover. It said it was avoiding the policy and, by association declining the claims. Zurich also said it felt the breach of fair presentation had been deliberate or reckless – so it wouldn't be reimbursing any of the policy premium paid by M.

M complained to the Financial Ombudsman Service.

Our Investigator noted the relevant legislation to consider in this matter was the Insurance Act 2015 (the Act). She thought Mr B had likely failed to make a fair presentation to Zurich which had been a qualifying breach. She noted Zurich was not returning the premium to M. Our Investigator was satisfied Zurich had acted in line with the Act, so she wasn't minded to uphold the complaint.

M was unhappy with the findings. It provided a detailed response. Within the response M discussed the quality of the questions Zurich had asked when the policy was arranged, arguing any ambiguity in them should be construed in M's favour. But also noted that the Act requires a prospective policyholder to tell the insurer of any material fact. M contended that Zurich had not shown any breach (which it refuted had in fact occurred) had been deliberate or reckless.

Our Investigator confirmed the response had been considered and it had not changed her view on the complaint. The complaint was referred for an Ombudsman's decision.

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 find I am also of the view that Zurich has acted fairly and reasonably in light of the information available and what the Act allows. I've set out my reasons for this below. The parties should note that, in line with the informal nature of our Service, whilst I've considered everything provided, I won't reference every piece of evidence or discuss all of the arguments made. My findings will focus on the core of the complaint and detail central to my findings.

The Act places the onus on the prospective policyholder, including their agents, to tell an insurer;

- 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.

It is not uncommon for insurers to want to know about whether or not a property is occupied. Zurich has shown that whether or not the property was occupied, was important to its decision to offer cover to M. M has argued the property was occupied – so it made a fair presentation in that respect.

One of Zurich's core pieces of evidence about occupancy is that the property recorded no electricity use between mid-October 2017 and mid-November 2018. Mr B has said he can't explain that, he wonders if there might have been a fault with the meter. He says he did not note the meter had stopped recording usage and electricity was being used. He says witness statements he's provided support there was electricity usage.

I'm satisfied that, if a property is occupied, it would show some electricity being used. Whilst Mr B has hypothesised about a fault, he hasn't provided a report from the utility company confirming this. I note customer readings were given to the electricity company in December 2017, June 2018, August 2018 and November 2018. These readings showed no usage. On balance I'm not persuaded its most likely there was a fault with the meter which Mr B was unaware of. Whilst, in 2024, some witnesses have offered reports which suggest electricity was being used at the premises – to make coffee, provide light etc, I don't think that evidence reasonably outweighs the usage details. I'm satisfied that, on balance, its most likely no electricity was used and the property was not occupied.

Underwriting detail provided by Zurich shows that if it is told a property is unoccupied, its agent, which holds some delegated authority, will have to fill out an unoccupancy questionnaire which is then to be shared with Zurich. The questionnaire asks for more details about the property, its use and what is intended for it. Zurich will then use this detail when considering whether to offer cover.

The questionnaire was not completed in 2018, because Mr B said the property was occupied. But Zurich says a key marker for it is if a property has been unoccupied for more than three months. Here the electricity usage, in 2018, for M's premises shows, when the policy with Zurich was arranged, that was most likely the case.

Zurich thinks Mr B should also have told it items were stored at the premises, and that there had been prior incidents involving the police on occasion. That these details, coupled with the property being unoccupied, would have made it decide to not offer cover. I think it's fair to say the Act would require that kind of detail to have been provided by Mr B. I'm satisfied that, if it had been, and Zurich had been able to fully assess the risk the unoccupancy posed to it, it wouldn't have offered cover to M.

Under the Act, because there was a breach of fair presentation and because Zurich has shown it would not have offered cover otherwise, Zurich is entitled to avoid the policy. With avoidance meaning the claims falls away.

The Act also allows the insurer, where it can show that a qualifying breach was deliberate or reckless, to keep any premium paid. The Act says a qualifying breach is deliberate or reckless if the prospective policyholder knew they were in breach of the duty to provide a fair presentation, or did not care whether or not they were in breach.

Zurich says Mr B was at least reckless when he arranged the policy. It argues that he knew the property was unoccupied, that items were being stored there and that it had been subject to prior incidents. Yet, Zurich says, he did not seek to advise it of any of this. From what Zurich says it thinks the act of the breach itself here is proof enough of deliberate or, at the least, reckless behaviour.

The Act doesn't specify what proof an insurer needs to provide to support a view of deliberate or reckless behaviour. Clearly the Act envisages deliberate or reckless behaviour will be signified either by a dishonest act or by a lack of care. I realise M believes that strong proof, even for a lack of care, must be presented by Zurich, because (it says) in this context there would have to be dishonesty behind the lack of care. But, if that were the case, I think the Act wouldn't differentiate in the first place. It wouldn't offer the lack of care definition, in addition to that where the prospective policyholder "knew" they were providing false information, thereby acting dishonestly. I'm satisfied that Zurich only reasonably needs to show that its most likely Mr B acted with a lack of care in respect of providing a fair presentation. In the circumstances here, given all of the available detail, I'm satisfied that Zurich has done enough to satisfy that the breach was most likely deliberate or reckless.

Having taken everything into account, I'm satisfied that Mr B, when arranging cover with Zurich in 2018 breached the duty of fair presentation. I'm also satisfied that the breach was a qualifying one, which was likely deliberate or reckless. As such, I'm satisfied that Zurich acted fairly and reasonably when it avoided the policy, declined the claims and refused to reimburse the premium.

My final decision

I don't uphold the complaint. I don't make any award against Zurich Insurance PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 5 June 2025.
Fiona Robinson
Ombudsman