

## **The complaint**

C has complained about Hubener Versicherungs AG's decision to decline its claim under its Hotel, Guest House & Restaurant Package Insurance policy.

C is represented by Mr B, who is a director.

## **What happened**

C has a fish and chip shop. It insured the contents of the shop that belonged to it, along with its stock and the improvements it had made as a tenant under a policy with Hubener. The policy also provided cover for loss of profit due to business interruption.

There was a fire in the shop in November 2022, which caused damage to the insured items, as well as interruption to C's business. Hubener appointed a loss adjuster to investigate the claim. The loss adjuster eventually told C in April 2023 that Hubener had decided to decline the claim on the basis it had breached two of the policy conditions.

C was also told that Hubener was unwilling to renew its policy in February 2023. It seems C assumed this included a refusal to renew the legal expenses cover it had, although this was actually under a different policy with a different insurer.

C complained to Hubener via its MP. C's insurance broker issued a final response letter on behalf of Hubener, which said it was right to turn down C's claim for the reasons it had given via the loss adjuster.

Mr B asked us to consider C's complaint. One of our investigators did this. He said it should be upheld because Hubener hadn't done enough to show its declination of C's claim was reasonable.

Hubener didn't accept the investigator's view. So, the complaint was referred to me for a decision. Mr B agreed with the investigator's view on the claim, but thought Hubener should also cover the legal costs C had incurred in pursuing the third-party contractor who it thought failed to service its cooking range properly.

I issued a provisional decision on 2 June 2025 in which I set out what I'd provisionally decided and why as follows:

*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've provisionally decided C's complaint should be upheld for the same reasons as our investigator.*

*I should say first of all that I am surprised that Hubener has elected not to provide us with its file or the file of its loss adjuster as part of its submissions to us in respect of C's complaint. Especially, as its reason for declining the claim was based largely on what its loss adjuster*

discovered when it investigated the circumstances which gave rise to C's claim. Hubener has rejected C's claim on the basis that it failed to comply with the following policy conditions:

*Frying equipment will be installed, used and maintained in accordance with manufacturer's instructions.*

*Where ducts pass through any combustible material, it should be cut away for a distance of at least 150mm from the duct and the space filled with non-combustible insulation.*

*Despite the fact Hubener hasn't provided its own evidence to support its view, I can see from the evidence provided by C that it did fail to comply with the second of these conditions. I say this because I have seen photographs which show ducting passed through combustible material and wasn't at least 150mm away from it. And there wasn't any non-combustible insulation in the space between it and the duct. However, I do not consider it Hubener is entitled to rely on this breach due to the terms of The Insurance Act 2015. This makes it clear that Hubener is only entitled to do this if non-compliance with the condition could have increased the risk of the loss which actually occurred in the circumstances in which it occurred. And I can see from the evidence that C has provided that the fire which caused the damage did not start or spread because of the fact the duct wasn't at least 150mm from the combustible material or due to the fact there was no non-combustible insulation in place. This can be seen from the photographs C has provided which show no fire damage to the material surrounding the duct.*

*I have also considered whether C complied with the first of these conditions. The fire at C's shop originated in the frying range. So, a breach of this condition would be material to the loss, as it would most likely have increased the risk of the loss which actually occurred. Hubener hasn't provided any evidence to show that the range wasn't installed or used in accordance with manufacturer's instructions. However, Hubener has suggested it wasn't maintained in accordance with manufacturer's instructions. And, from the evidence C has provided, it does seem that it wasn't. Albeit C wasn't aware that this was the case until after the fire. I say this because C has provided evidence to show that the company it got to service the range didn't do the service properly, which means it wasn't properly maintained. So, I think technically, C did breach the first of the abovementioned policy conditions.*

*However, I do not consider it would produce a fair and reasonable outcome to this complaint, if I were to allow Hubener's declinature of C's claim to stand because of this. This is because I am satisfied from the evidence C has provided that it was not aware the service company hadn't serviced the range properly until after the fire at its premises incurred and a forensic investigation had been carried out. So, as far as C was concerned at the point of loss it had made sure the range was properly maintained in accordance with the manufacturer's instructions. This meant there was nothing it could have done to prevent the loss and that it fulfilled its obligation to make sure the range was properly maintained. So, because there is really nothing more it reasonably could have done I do not consider Hubener should be entitled to rely on C's inadvertent breach of this policy condition.*

*I appreciate Hubener – in its response to our investigator's view – has referred to a certificate provided by the servicing company after the fire at C's premises occurred, which states it had declared the range as unsafe. But I do not consider that Hubener has done enough to show that this was actually provided to C prior to the fire. Plus, the document itself has apparently been signed on different dates by the service engineer and Mr B. This doesn't really make sense and – in my opinion – casts serious doubt on the validity of this document, along with the fact that C has provided a certificate from just after the inspection by the service company, which said the range was safe.*

*In summary, I do not consider it is fair and reasonable for Hubener to reject C's claim for a breach of the abovementioned conditions. And this means I think it now needs to consider it in accordance with the remaining terms and conditions of C's policy. If it settles the claim by paying a monetary amount, Hubener will need to add interest to this at 8% per annum simple from one month after C made its claim to the date of payment, to compensate it for being without these funds.*

*I have also considered the impact on C of Hubener's decision to decline its claim. I think this was significant. But it needs to be separated from any impact financially on Mr B and his family personally, as they are not parties to this complaint. Nonetheless, it was clearly very inconvenient for C when its claim was turned down because it had to raise money it wasn't expecting to have to raise to continue trading. And I think this warrants a compensation payment of £500 for inconvenience. And, if it had other financial implications for C in its own right, then I'd expect Hubener to consider these as part of C's claim following my final decision.*

*I have also considered Mr B's view that Hubener should cover the legal costs C has incurred or might incur in pursuing a claim for its losses from the service company, on the basis it failed to carry out its obligations properly when it serviced the range. But I do not consider it is appropriate for me to require Hubener to cover these costs. This is because I consider they are too remote from the claim against Hubener. I say this because it was Mr B's choice to pursue this avenue straight away rather than wait for the outcome of C's complaint to us. And C was not under pressure of time limits for any legal action at the point it did so. It is also possible that C could have renewed its legal expenses policy through its broker and pursued a claim against the service company via this. I can see Mr B thought the insurer didn't want to renew the policy, but this wasn't Hubener's fault. So I do not think Hubener should be penalised by paying costs which C could possibly have avoided.*

### **My provisional decision**

*For the reasons set out above, I've provisionally decided to uphold C's complaint about Hubener Versicherungs AG and require it to do what I've set out above.*

I gave the parties until 16 June 2025 to provide further comments and evidence in response to my provisional decision.

Mr B responded and asked whether I would review my provisional finding on the legal expenses aspect. He said if C had renewed the legal expenses cover it wouldn't have extended to pursuing a claim against the contractor who serviced the frying equipment. And that if Hubener had accepted C's claim in the first instance it wouldn't have needed to explore alternative options. He also mentioned that since Hubener declined C's claim it has found it difficult to secure new insurance and – when it has – it has come at a significant cost. And that it has had to absorb this as well as other costs as a result of the fire.

Hubener responded to my provisional decision and mentioned what it considers to be some important facts, which are as follows:

- The risk itself, as substantiated by the loss adjuster, had warranty breaches.
- These breaches had direct effects on the fire loss.
- C is in the midst of legal proceedings against the companies installing the cooking equipment and causing the warranty breaches.
- C therefore confirmed the warranty breaches on the basis of which Hubener declined cover.
- It considers I've erred in my decision; and it has sought legal advice on how to proceed

in light of this. And it has concluded by saying it will revert as soon as possible once it has obtained this legal opinion.

### **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.

Firstly, I should make it clear that there was a typographical error in my provisional decision, which I have corrected in the section of it that I have included above. The following sentence read 'This makes it clear that Hubener is only entitled to do this if non-compliance with the condition could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.' It should have read 'This makes it clear that Hubener is only entitled to do this if non-compliance with the condition could have increased the risk of the loss which actually occurred in the circumstances in which it occurred.'

I have noted Hubener's comments in response to my provisional decision, but they do not alter my view on the fair and reasonable outcome of C's complaint. I have explained why below. Hubener has not provided the legal opinion it said it was going to provide by the deadline for further comments and evidence in response to my provisional decision, so I've only considered the comments it has actually made in response to my provisional decision.

I agree that C breached warranties in the policy. But I explained in my provisional decision why I didn't think it would produce a fair and reasonable outcome to C's complaint if I were to allow Hubener to rely on these to decline its claim. The first related to the fact that where ducts passed through combustible material it was not cut away by at least 150mm and the space filled with non-combustible insulation. But, as I explained in my provisional decision, the non-compliance with this warranty (condition) could not have increased the risk of the loss which actually occurred, as the fire did not spread out from the ducts into the area the ducts were in. It spread through the ducts into the roof space. So, even if the clearance between the ducts and combustible materials had been 150mm and the space had been filled with non-combustible material, I think the fire still would have spread in the same way and caused the same amount of damage overall. So, I do not consider Hubener is entitled to rely on this breach to decline C's claim.

The condition/warranty to maintain the frying range in accordance with the manufacturer's instructions was breached by C. However, this was not its fault. I say this because it thought the range had been properly maintained and only found out after the fire that it hadn't been. In view of this, while on a strict legal interpretation of the policy wording, Hubener would be entitled to rely on this breach to decline C's claim, I do not consider it would produce a fair and reasonable outcome if I were to allow this. This is because C did everything that could be reasonably expected to comply with the relevant condition/warranty and thought it had complied. It was let down by the contractor involved, but I do not consider it should be penalised for this. Especially, as I presume if Hubener settles C's claim it may decide to pursue the contractor for recovery of its outlay.

I do not consider the fact C has started legal action against the contractor who serviced the frying range should have any impact on the fair and reasonable outcome to its complaint, as it only did this because Hubener refused its claim.

I have also noted Mr B's comment in response to my provisional decision on the legal costs it has incurred in pursuing a claim against the contractor who serviced the frying range. But it remains my view that these are too remote from the original decision by Hubener to reject C's claim for it to be fair and reasonable for me to make Hubener cover them. And it also remains my view that it was C's choice to go down this route before it had the outcome of its

complaint to us, despite the fact it had time to wait until it had this outcome. The fact that the legal expenses policy C had that wasn't renewed may not have covered the legal costs involved does not alter my view on this issue.

I appreciate C may have had to pay a higher premium following Hubener's declinature of its claim, but I suspect this was due to the fact it suffered a loss, as opposed to the fact the claim was declined.

It also remains my view that Hubener's declinature of C's claim caused it significant inconvenience and that it should receive £500 in compensation for this.

### **Putting things right**

For the reasons set out above and in my provisional decision dated 2 June 2025, I've decided to uphold C's complaint. And I consider the fair and reasonable outcome to it is for Hubener to do the following:

- Consider C's claim in accordance with the remaining terms and conditions of its policy, i.e. it cannot rely on a breach of the abovementioned warranties/conditions to decline it and must deal with it in accordance with the other policy terms. As I only require Hubener to consider the claim, I have decided it is not appropriate for me to require it to pay interest if it actually decides to settle it.
- If Hubener settles C's claim it must also consider compensating C for any other financial loss it can demonstrate it suffered as a result of Hubener's rejection of it.
- Pay C £500 in compensation for inconvenience.\*

\* Hubener must pay the compensation within 28 days of the date we tell it C accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

### **My final decision**

I uphold C's complaint and order Hubener Versicherungs AG to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 17 July 2025.

Robert Short  
**Ombudsman**