

## **complaint**

Mr and Mrs V, trading as SN, say Zurich Insurance plc unfairly restricted a claim they made on their shop insurance policy.

## **background**

In March 2016 Mr and Mrs V's shop was impacted by a third party's lorry. This vehicle had itself been hit by another car which was being pursued by the police. This major incident caused substantial damage to their property, which as well as being their business premises was also their home.

Mr and Mrs V made a claim on their shop insurance policy. Zurich accepted the claim and most matters were settled. But Mr and Mrs V had a number of outstanding concerns. They wanted:

- The cost of replacing some carpets and curtains to be reimbursed
- The policy excess and other uninsured losses to be recovered
- The administration cost of pursuing their claim to be covered, as well as recognition of their trouble and upset

Zurich disagreed. It didn't think the carpets, curtains or administration costs were covered by their policy. It says there's no prospect of recovering uninsured losses, such as Mr and Mrs V's excess. And it said it had handled this significant claim in an appropriate manner.

The investigator didn't uphold this case. Mr and Mrs V disagreed so their complaint was passed to me. I issued my provisional decision in November. Neither party agreed with all of my conclusions. I'll address any significant new arguments or evidence in this final decision.

## **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this case. I'm partially upholding Mr and Mrs V's complaint. I'll explain why.

### *the curtains and carpets*

First I'll consider Mr and Mrs V's claim for the cost of replacement curtains and carpets. My starting point is what their shop insurance cover provides for. There's no dispute that the policy covers the main peril which they suffered – material damage caused by the impact of a vehicle.

Zurich said Mr and Mrs V's claim for replacement carpets and curtains should be assessed under contents cover. And it noted their policy only covered items related to their business. It said even if it classed the curtains and carpets as personal effects or landlord fixtures and fittings, these were specifically excluded.

The investigator thought the policy definition for contents was unclear. While Zurich argued contents cover only relates to the business, she thought although this may've been its intention the way the term was written could be interpreted with a wider scope.

I've thought carefully about this. I think the following policy definitions are important:

*“Buildings - the buildings of the premises for which you are legally responsible including residential accommodation and outbuildings used in connection with the business or for domestic purposes...”*

*“Contents - trade fixtures and fittings, machinery, equipment and any other contents... all contained in or on the buildings at the premises and belonging to you or for which you are responsible.”*

I think the contents definition is unclear. Especially as the meaning for buildings and contents are closely interrelated. The former allows for business *and* domestic cover. While Zurich's argument is contents cover only relates to the business. This may've been the intention but it's written in a way - *and any other contents...all contained in or on the buildings...* - that suggests wider scope.

Another problem is there's no definition of tenant or landlord for the purposes of the policy. Strictly speaking Mr and Mrs V were neither, I understand they owned the premises and as well as running their shop also lived there. Zurich seems to have tried to shoehorn the policyholders into certain categories to suit its own argument.

On balance, I agree with the investigator. There's ambiguity here about what's in and what's out for contents cover in Mr and Mrs V's insurance. And it's long been our approach to give the policyholder the benefit of the doubt, and the more favourable interpretation, in such cases.

Although the investigator thought the policy wording should allow for Mr and Mrs V's contents claim, she didn't think the claim for carpets and curtains should succeed. At this point I depart just a little from her recommendations.

Zurich says the loss adjuster reported that Mr and Mrs V's carpets hadn't been damaged and didn't need replacing. It says they could've rolled back the carpets while works were undertaken. And it says that in the lounge there was a join in the carpet at the bay window where the major works were required, so only that section required lifting.

Mr and Mrs V told us they needed to replace carpets in the upstairs rooms, the hall and stairs because of the remediation works. They obtained a quote to show that it was less cost effective to remove and store the carpets than replace them.

I still think the telling evidence here is the structural engineer's report which said to understand the full extent of the damage in the lounge, furniture and carpets would need to be removed. And we know that significant structural works were required in this room. I've seen photographs which show the extent of the disruption in the lounge – unsurprisingly it wasn't contained neatly to the bay window area.

I accept there are complications. Mr and Mrs V didn't follow the proper procedure because it seems they'd already disposed of their old carpets before making the claim. So strictly speaking Zurich has grounds to decline the claim. But I think Mr and Mrs V were acting in good faith with regards the lounge carpet. And I don't think it would be fair not to meet some of their costs here.

From the photos I've seen of the lounge carpet it didn't appear to have been damaged by the impact. But Mr and Mrs V were faced with major works – the carpet needed uplifting, storing and refitting. And they found the cost of this exceeded the cost of a replacement carpet and acted accordingly. The proximate cause for all this was the collision to Mr and Mrs V's home, which was an insured peril.

I don't think Zurich needs to meet the cost of the new carpet. It wasn't damaged and Mr and Mrs V's failure to make their claim before taking action meant it didn't have a chance to seek the advice of its agents or negotiate a more cost effective outcome. Had things happened as they should've its liability would've been capped at the cost through its agents for lifting, storing and refitting the carpet. And so that's the basis I think it should work from for settling this particular matter.

With regard to the works required in other rooms of Mr and Mrs V's property, I've not seen sufficient evidence the carpets in those rooms needed to be uplifted, stored and refitted. The same major works don't appear to have been carried out. So I think it's more likely than not any minor works and redecorations required in these areas could've been completed by contractors covering the carpets to ensure proper protection.

Mr and Mrs V's policy had a contents limit of about £5,000. Zurich has made an argument that if it accepted the policy was meant to cover all contents in the building then it's likely they were underinsured. I understand their policy was sold through a broker. I don't know what questions they were asked when they bought the cover. For example whether they were asked about the total value of contents held at their property or about how much cover they required?

The answer to these and other questions posed during the sale would be important in Zurich's consideration of any underinsurance it calculates, should it decide to take this path. Its approach to underinsurance and how this impacts on the claim I've directed it to consider - for example a proportionate payment - will need to bear in mind our expectation that the policyholders are fairly treated in light of how the sale happened.

Mr and Mrs V also told us they needed new curtains because the replacement windows in the upper floor have different dimensions to the windows they had prior to the incident. They say Zurich didn't stipulate the design and dimensions they had to have. And they say they've saved money by procuring UPVC units.

Zurich note the contractor for the replacement windows was selected by Mr and Mrs V. So it can't be held responsible for the final design and delivery of the windows. It says the need to buy new curtains was a consequential loss and not covered by the policy.

Where a consequential loss isn't covered by a policy, we don't usually require insurers to pay for it unless we're satisfied that the loss was a reasonably foreseeable consequence of either the claim or an error in handling the claim.

Based on what I've read, I think the need for replacement curtains is too far removed from the insured event to qualify for reimbursement. Crucially Mr and Mrs V had control over how this work was done – it was their choices and decisions that led to the need for new curtains. I can't reasonably hold Zurich responsible for this.

*the policy excess and any other uninsured losses*

Mr and Mrs V continue to raise the issue of certain costs they've incurred through no fault of their own, which they want to recover. This includes items such as their policy excess and other damages arising from the collision with their shop.

Zurich explored the potential for recovering its own costs related to the insured event from the third party responsible. It also agreed to include Mr and Mrs V's uninsured losses in that claim. Unfortunately although the third party was identified, Zurich's advisers found there wasn't a realistic prospect of recovery from the individual who had no means and was in prison.

I can see how Mr and Mrs V will be incredibly frustrated by this outcome and will feel the situation is deeply unfair. I agree. But this isn't Zurich's fault and I can't hold it responsible for what's happened here. Ultimately Mr and Mrs V could pursue their own claim against the third party, but that's a matter for them to consider.

*administration costs and inconvenience*

Mr and Mrs V's legal representative has made a claim on their behalf to recover the costs associated with making their claim. For example, to cover postage, photocopying, photograph printing, stationary, and the time they spent pursuing matters.

I think the policy sets out clearly what fees and costs are covered, and those which aren't:

*'...architects', surveyors', legal and consulting fees reasonably and necessarily incurred in the reinstatement or repair of property resulting from its damage **but not fees for preparing a claim** [my emphasis]'*

So, I'm afraid I can't agree this element of Mr and Mrs V's claim should be covered.

Finally, when I'm deciding how to sort out a complaint, I will always consider whether it's fair to award compensation for trouble and upset. This isn't intended to fine the business or make an award for punitive damages.

In thinking about an award it's important to acknowledge that some events will inevitably have a detrimental impact, whether or not other things go wrong later. The fact that a vehicle collided with Mr and Mrs V's property undoubtedly caused them considerable inconvenience and distress. But this wasn't Zurich's fault.

Mr and Mrs V's business was up and running again in October 2016. Given the scale of what happened, drawing on my experience of other major works claims I think overall things seem to have progressed reasonably.

While there have been some handling issues, and I can see there's a lot of debate on both sides about how the payments process worked, I don't think these matters caused substantial additional disruption, reputation damage or inconvenience to Mr and Mrs V.

That said I do require Zurich to pay Mr and Mrs V £100 in recognition of the delay in settling this claim satisfactorily.

### **putting things right**

For the reasons I've set out I'm partially upholding Mr and Mrs V's complaint. I require Zurich Insurance plc to:

- Consider the costs that Mr and Mrs V would've incurred for uplifting, storing for the period the works were ongoing and then refitting the lounge carpet using its own contractors.
- Pay Mr and Mrs V £100 in recognition of the for the trouble they've experienced in finalising their claim

### **my final decision**

For the reasons I've explained, I'm partially upholding Mr and Mrs V's complaint. I require Zurich Insurance plc to put things right in the way I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs V to accept or reject my decision before 31 January 2019.

Kevin Williamson  
**ombudsman**