

## **complaint**

This complaint relates to the rejection by Zurich Insurance PLC of Mr B's claim under his Narrow Boat Policy.

## **Background**

Mr B's boat sank and he claimed for the costs of raising the boat and repairing the damage caused by the sinking. Zurich rejected the claim on the basis that the water had entered the boat via a rotten silencer and the policy said:

*"We will not pay loss or damage for claims for wear and tear, depreciation, deterioration, and mildew,"*

Zurich also cited the fact that the damage to the silencer pre-dated the inception of the policy as a reason for rejecting the claim.

Our adjudicator said that in her opinion the exclusion for wear and tear on which Zurich was relying did not apply to this case. Zurich disagreed with that interpretation and also sought to rely upon a general condition in the policy as to maintenance and seaworthiness. Our adjudicator felt it would be unfair to allow Zurich to rely upon a condition now that had not been raised with the policyholder when the claim was rejected. Zurich asked for the matter to be passed to an ombudsman.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I agree with our adjudicator about the exclusion Zurich relied upon. As it's worded the exclusion says that Zurich will not pay claims for wear and tear – it does not say that Zurich will not pay for damage which is the result of, or is caused by, wear and tear; it says Zurich will not pay for wear and tear. I take that to mean the costs of putting right wear and tear. Here Zurich is not being asked to pay for the costs of repairing the wear and tear (the rotten silencer), it is being asked to pay for the costs of raising the boat after it sank and the damage caused by the boat being under water.

It may be that what Zurich intended to do was to exclude damage caused by wear and tear but that is not what the policy says. As the insurance company gets to write the policy the way it wants, I think it is only fair to the policy holder that where there is a dispute about what it means, the policy can be interpreted strictly in accordance with what it said, even if that may not be what the insurance company intended it to say.

Similarly, whilst the wear and tear may have existed before inception of the policy, the damage being claimed for (the boat sinking) clearly occurred after the policy had started.

I also agree with the adjudicator about the condition Zurich tried to raise after the adjudicator's first view. We consider complaints made by consumers. Here the complaint is about the rejection of Mr B's claim. My job is to consider whether Zurich behaved reasonably when it rejected Mr B's claim. In doing so, I need to look at the grounds on

which the claim was actually rejected, not grounds which might subsequently have occurred to the insurer.

In addition, we take the view that it will usually be unfair to allow an insurer to rely upon policy terms and conditions which were not raised with the policy holder, and could not be considered by the policyholder, before the complaint was brought to us.

### **my final decision**

My final decision is that Zurich Insurance PLC should settle Mr B's claim in accordance with the remaining policy terms and conditions and should pay interest at 8% simple per annum from the date of loss to the date of payment. If it considers it is legally required to deduct income tax from any interest, Zurich should send Mr B a tax deduction certificate so that he can reclaim the tax if he is able to.

Jonathan Coppin  
**ombudsman**