

## The complaint

T, a food takeaway business, has complained about China Taiping Insurance (UK) Co Ltd's decision to decline its claim under its commercial insurance policy after its premises were damaged by a fire. T is represented by its proprietor, Ms M, who in turn is represented by a loss assessor.

## What happened

There was a fire at T's premises which caused extensive damage to the frying range, the equipment storeroom in the basement and the main staircase, together with smoke contamination throughout the property.

Ms M, on behalf of T, made a claim under the policy. China Taiping arranged for a fire expert (who I'll call "Mr W") to carry out a forensic investigation.

Based on Mr W's report, China Taiping declined the claim. It considered that T had failed to comply with two conditions on the policy and that this failure had contributed to the spread of the fire.

Ms M appealed against China Taiping's decision. She considered that the forensic report didn't support that the fire had started, or worsened, as a result of any breach of the policy's conditions.

China Taiping wouldn't change its position. Ms M therefore referred her complaint to us.

I issued a provisional decision explaining why I was minded to uphold the complaint in part. My findings were as follows:

*"The policy is designed for shops, restaurants and food takeaway businesses. The policy provides cover for loss or damage due to fire. T had a frying range installed in its premises and the policy contained certain conditions in respect of this with which T had to comply. These conditions included the following:*

*"1. The frying range in the premises together with the flue pipe (if any) connected to it be securely fixed and well clear of and/or protected from contact with woodwork or other combustible materials.*

*2. The sump and grease traps belonging to the frying range be cleared out at least once each week and a service record maintained for inspection by the Company as required."*

*Among the other conditions was a requirement that the ducting be professionally cleaned and serviced at least once every twelve months.*

*These conditions were clearly stated on T's policy schedule and I'm satisfied that China Taiping had thereby adequately brought them to T's attention.*

*Mr W concluded that the fire was seated in the frying range's extract duct. Mr W noted that, from the frying range, the duct turned downwards through the floor and then backwards towards the kitchen, passing directly above the basement storage room. It then turned upwards through the ground floor and into the first floor where the extract fan was located. He said the direct fire damage was limited to the range, the basement storage room and the main staircase. However, he said there was smoke staining throughout the property.*

*Mr W thought the fire probably started when degraded fat which had been deposited in this duct ignited. Mr W noted T had evidence to show that the extract duct had been cleaned approximately eight months earlier so there had been no apparent breach of the policy's conditions in that respect; he acknowledged that a large amount of fat could accumulate over an eight month period.*

*However, Mr W considered that the fire had spread to the fabric of the building because the duct was in close proximity to combustible material. Mr W said the floor joists around the flue at ground floor level (separating the ground floor from the basement) were severely charred on the side adjacent to the ductwork. Mr W said one of the joists had been removed (presumably by the fire service) and had been severely charred on both sides from which he inferred that the fire had been burning quite substantially in this area. Because this joist had been removed, Mr W couldn't confirm how far away it had been from the duct and he noted the possibility that the ductwork was leaking and that fat deposits on the outside of the duct ignited. However, he also noted that where it passed up into the first floor, the duct was in contact with the floor joists. He said the timber floor in this area was charred and the expanding foam used to seal around the duct as it passed through was blacked by heat.*

*Mr W further noted that T's manager had confirmed that, contrary to the condition attached to the policy, the sump/grease trap was typically cleaned every four to six weeks and that he had last checked it about four weeks earlier. Mr W noted there were remnants of burned fat in the trap which confirmed it had not recently been emptied. Mr W considered that the fat in the unemptied trap would have helped fuel the fire.*

*It was on this basis of these findings that China Taiping declined the claim.*

*Ms M challenged Mr W's original evidence. She said that he omitted to mention that the duct pipe was enclosed within a square metal housing. She said that although this metal housing was possibly in contact with the timber floor joists, the duct pipe itself was approximately 50mm from the edge of the housing.*

*However, from the photos taken after the event it seems to me that the metal housing was only present on the ground floor between the floor and ceiling. It wasn't present where it mattered which was where the duct passed up through the timbers from the basement into the ground floor and then again through the ceiling into the first floor.*

*The condition in respect of the positioning of the flue pipe says that it must be "well clear of and/or protected from contact with woodwork or other combustible materials." I acknowledge that the term "well clear" is subjective. However, Mr W confirmed the flue pipe was in contact with the floor joists where it passed up into the first floor and although he couldn't confirm the same in respect of the ground floor (because the joist had been removed) he seemed confident it was in close proximity.*

*Mr W subsequently tried to gain confirmation from the fire officer whether the duct had been in contact with the timber joist on the ground floor. This proved difficult because it turned out there was a shift change during the fire, meaning that two different fire officers needed to be approached. Furthermore, one of the officers had since retired. The retired officer provided a*

*statement while the other officer was spoken to by Mr W but didn't provide a statement. Neither officer was able to provide any further details in respect of the positioning of the duct.*

*Despite the lack of confirmation from the fire officers, I consider it was reasonable for China Taiping to say, based on Mr W's findings, that the relevant condition had been breached and the flue pipe wasn't well clear of, or protected from, the timber. And Ms M has not disputed that there was also a breach in respect of the other policy condition, relating to the sump.*

*Although I am therefore satisfied that T breached the two conditions, I considered that Mr W's evidence implied that the fire would have started regardless of these breaches. This was a point that Ms M also made and it meant T had a valid claim under the policy. However, I accepted that the breaches may have caused the damage to be more extensive than it otherwise would have been. I asked China Taiping for evidence to show how the breaches impacted on the extent of the loss suffered by T.*

*China Taiping provided a further report from Mr W in response to this request. In summary, Mr W concluded that if the flue pipe had been kept well clear of combustible materials, he would have expected the fire to have been contained within the duct and not spread to the floor joists or the basement, particularly if there had been no additional fuel loading from the sump. Furthermore, the fire within the duct would have been less severe.*

*After receiving Mr W's further report, China Taiping concluded that if it weren't for the breaches the fire may well have been a minor incident. It therefore saw no need to change its decision to decline the claim.*

*In light of the further evidence, I consider it is reasonable to say that while the fire would probably have started even if there had been no breach of policy conditions, the level of damage was far more significant due to the breaches. If it hadn't been for the breaches, it is likely that the damage would have been confined to the duct. I consider it is therefore reasonable for China Taiping to decline the claim for any damage outside of the duct. However, given that some damage may have been caused to the duct itself even if there had been no breach of the conditions (albeit we don't know for sure how extensive that damage might have been), I consider that China Taiping should settle the claim by paying 50% of the cost of repairing or replacing the duct."*

I invited both parties to comment on my provisional decision.

Ms M, on behalf of T, didn't accept my provisional findings. She noted my conclusion that the fire would probably have started even if there had been no breach of conditions. She considered there was a lack of evidence to show the duct had been in close proximity to the timber floor joists. She considered the damage caused by the fire would have been significant regardless of the alleged breaches and to try and apportion the quantum was near impossible. She pointed out that my proposed settlement represented a very small part of her overall loss and she thus thought it was unfair.

China Taiping offered no further comments.

### **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.

I have already explained why, based on Mr W's findings, I consider it was reasonable for China Taiping to conclude that the duct wasn't well clear of, or protected from, the timber and that T had therefore failed to comply with the relevant condition.

Ms M considers it is near impossible to determine the extent to which the breaches of the two conditions contributed to the damage. However, Mr W is an expert and he has provided an opinion on this. I consider it is reasonable for me to make an award based on that opinion.

I appreciate that Ms M is disappointed that my award represents only a small part of her overall loss. However, the opinion of Mr W was that the breaches of conditions contributed significantly to the damage caused by the fire and that if it hadn't been for these it is likely the damage would have been confined to the duct. Ms M has provided no expert opinion to contradict this. I'm therefore satisfied that my award, while it is only for a small part of the damage which was caused by the fire, is nonetheless fair.

### **My final decision**

For the reasons given above, my final decision is that I uphold this complaint in part.

I require China Taiping Insurance (UK) Co Ltd to settle the claim by paying 50% of the cost of repairing or replacing the duct.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M, on behalf of T, to accept or reject my decision before 26 May 2021.

David Poley

**Ombudsman**