

The complaint

Mr N has complained about the way Zurich Insurance PLC handled a claim he made under a buildings insurance policy.

What happened

In May 2020 Mr N contacted his insurer, Zurich to make a claim for damage to a bedroom in a property he rents out. Mr N said the damage was caused by damp from a neighbouring property. Mr N was dealing with the third party to establish the cause and obtain their agreement to carry out the repairs - in order for him to be able to claim for repairs to the property he rents out.

Mr N said the damage occurred in May 2018. He had tenants living in the property until the end of April 2020. In October 2020 Mr N told Zurich a neighbour advised him the third party had carried out the repairs – but he was still seeking clarification and asked Zurich if it could contact the third party as well. Zurich didn't respond on this point.

In January 2021 Mr N provided details about his claim. He didn't have confirmation from the third party that they had carried out the repairs. Zurich didn't deal with the information. In April 2021 Mr N chased for an update. Zurich instructed a Loss Adjuster (LA) to inspect the property and proceed with the claim without confirmation of the completed repairs from next door.

Mr N complained to Zurich about the handling of the claim. He said it had caused undue delay. He said he'd asked it to assist in contacting the third party to find out when the repairs would be completed. Mr N thought Zurich should have contacted the third party to assist with progressing his claim.

Mr N wanted Zurich to reimburse him for loss of rental income and associated losses. Zurich accepted that it had poorly handled Mr N's claim and caused some delay. It said it could have been clearer in advising Mr N it wouldn't contact the third party on his behalf under the claim. For the inconvenience caused it paid Mr N £150 compensation. But it said it wouldn't reimburse him for loss of rental income. Zurich said the policy doesn't provide cover for these losses unless the property was uninhabitable. The LA told Zurich the property was habitable.

Mr N remained unhappy and asked us to look at his complaint. Our investigator didn't find anything to show the property was uninhabitable. One room was affected and although this may have made the property less desirable to rent out, he didn't find this was something Zurich was responsible for. The investigator didn't think Zurich was responsible for chasing the third party. He thought this was for Mr N to do as the landlord and policyholder looking to make a claim.

Although he agreed that Mr N's policy didn't provide cover for loss of rental income in these circumstances, he thought that Zurich should have been clearer in July 2020 and October 2020 with Mr N that it wasn't contacting the third party during the claim. He thought if Zurich had properly dealt with the claim, it would have been resolved and repairs completed around

five months earlier.

While the investigator thought Zurich had no obligation to chase the third party, he thought its failure to tell Mr N it wasn't doing this contributed to the delay. Mr N said he was able to arrange repairs from Zurich's cash settlement in August 2021 and rent out the property in September 2021. So the investigator recommended Zurich pay Mr N the equivalent sum of five months rental income – subject to Mr N providing the most recent rental agreement. He clarified that he understood the policy doesn't provide cover for loss of rental income – but the investigator thought Zurich should pay this as its delay caused an indirect loss to Mr N. This was in addition to the £150 compensation it already paid.

Zurich didn't agree it should pay anything more than it has. It said it had compensated Mr N for the delay it caused from January 2021 to April 2021. It didn't agree it caused an additional delay earlier on during the claim. It said Mr N was aware of the damage for two years before he registered his claim. He was aware of the need to establish the cause of damage and for the repairs by the third party to be completed before Zurich could consider his claim.

Zurich said if it had told Mr N it wasn't going to contact the third party, it wouldn't have made a difference to the outcome. Mr N told it he was regularly chasing the third party a year before and during the life of the claim – but didn't receive confirmation when the repairs were done. So Zurich says its failing here didn't cause any detriment to Mr N.

Zurich said it agreed to proceed with the claim in April 2021 without confirmation of repairs by the third party to avoid further delays. Zurich said Mr N had a part to play in following up with it between January and April 2021 when he hadn't received an update.

Mr N said Zurich as the insurer handling the claim should have managed it and resolved it much sooner. He said it wasn't realistic for him to rent the property out with a room damaged by damp and with the future disruption of repair works taking place.

Mr N believes Zurich should reimburse him for loss of rental income from May 2020 to August 2021 and his associated losses including utility bills and service charges.

I issued a provisional decision on 21 January 2022. I didn't think the associated losses Mr N was claiming for sat with Zurich. But I thought Zurich should pay compensation for the inconvenience caused by some delay in dealing with the claim. I intended to ask Zurich to pay Mr N a total of £500 compensation, so £.350 in addition to the £150 already paid.

Mr N didn't agree with my provisional decision. He says he has shown that Zurich always contacted the third party on claims such as this one. Mr N says his complaint has been understated and distorted. He says the information he's provided hasn't been properly reviewed.

Zurich didn't reply to my provisional decision.
So the case has been passed back to me to decide.

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.

In my provisional decision I wrote:

In particular, I've considered the following:

Mr N says there is legislation which meant that he was at risk of being sued by a tenant if the property he rented out wasn't safe. However, the property was rented out up to and including the end of April 2020 with a known damp problem since May 2018.

The first time Zurich became aware of the issue was at the end of May 2020 when Mr N contacted it. At this time Mr N said the third party had accepted it was responsible for the damage and repairs. He said he would let Zurich know when the repairs had been done so that his claim could succeed.

Mr N said that he had been chasing the third party responsible for the damage before he contacted Zurich – and that he knew Zurich wouldn't be able to consider the claim until the cause of the (damp) damage was established and repaired by the third party.

Mr N's policy with Zurich clearly says it provides cover for loss of rental income in a limited number of circumstances –the only possible one applying here being if the property is uninhabitable. There isn't sufficient evidence to show that the property was uninhabitable.

Neither party has been able to provide confirmation of the date when the third party completed the repairs.

There's no dispute that Zurich failed to deal with the claim promptly and proactively. And I don't agree with Zurich that Mr N had a part to play in its delay dealing with his claim. It was for Zurich to manage and progress the claim as his insurer when he provided information. However, I don't think Zurich is responsible for Mr N's losses from May 2020. He didn't contact it until the end of May 2020 – and before Mr N's update in October 2020, it seems the third party hadn't confirmed or carried out the required repairs in order for Zurich to progress Mr N's claim.

I agree with the investigator's view that – had the claim been better managed – it would have most likely been resolved within three to four months. And I understand Mr N strongly believes that, had Zurich chased the third party too, it's more likely that confirmation of when the repairs were completed by them would have been received.

However, the issue with the third party was something outside of the control of Zurich. In October 2020 Mr N told Zurich a neighbour advised him the third party had carried out the repairs. But Mr N didn't have confirmation from the third party. I understand that there were delays in the repairs being carried out as described by Mr N due to skeleton staff for the third party working during the pandemic. There isn't anything to reasonably show that the outcome would have been any different even if Zurich had agreed to chase the third party for an update on the repairs.

So I think the earliest date Zurich might have been able to instruct a LA was October 2020. And so I think a reasonable date for the claim to have been resolved in my view would have been February 2021.

I also agree that Zurich is responsible for periods of delay in its handling of the claim – in particular from January 2021 to April 2021 when Mr N provided details of his claim and it wasn't followed up until he contacted it again three months later for an update.

As Zurich decided to proceed with the claim without confirmation the third party had completed repairs, I think the fairest approach to take is to rely on the update Mr N gave in

October 2020 confirming the same. Zurich failed to follow up or progress the claim between October 2020 and December 2020 – and again from January 2021 to April 2021. Although there were further negotiations in relation to the scope of works and final cash settlement, I don't think Zurich was responsible for further delays between April and August 2021.

Mr N has raised a separate complaint about the cash settlement and Zurich's decision to settle on this basis. So I won't comment any further on this in my decision.

So the remaining issue for me to decide is whether what Zurich has done to put things right is fair and reasonable. Having done so, I don't think it has.

The investigator recommended Zurich pay compensation equivalent to five months' rent - subject to Mr N providing the latest rental agreement. However, I've kept in mind that the policy clearly excludes cover for loss of rent unless – in this case – the property is uninhabitable. And given that the property was habitable for two years with a known damp problem, and was habitable as the damage was limited to one room after the existing tenants left; I don't think an appropriate compensation award is to cover the equivalent of loss of rent for the period of delay. As the investigator explained, the property may have been less desirable to tenants but that isn't the same as being uninhabitable. So I don't think Mr N's claim for associated losses sits with Zurich. He may wish to seek further advice as to the possibility of seeking recovery of his losses from the third party.

I think a fair and reasonable outcome is for Zurich to pay compensation for the inconvenience caused by its delay. I don't think £150 is enough given the period of delay, so I intend to increase the compensation award to £500. I think this is a fair reflection of the inconvenience caused to Mr N by Zurich's delay.

In response, Mr N provided a further copy of an email from Zurich dated 25 November 2021 to him. This reads that Zurich contacted the third party and checked its notes to see if it had confirmation of when the leak was repaired – but it appeared not to have received this.

I can only consider the evidence provided in relation to this complaint. And having done so, my view remains that Zurich's error was failing to be clear to Mr N that it wouldn't chase the third party – and even if it had, the outcome would have been the same. I don't think the claim would have settled sooner even if Zurich had agreed to contact the third party. The email copy provided by Mr N confirms that Zurich proceeded with the claim without confirmation from the third party. It doesn't show me that Zurich always contacts the third party.

Emails from Mr N to Zurich dated 11 July 2020, 29 August 2020 and 4 October 2020 provided updates of the difficulties he had in receiving a reply from the third party in relation to repairing the leak. Mr N's comments at the end of the emails are along similar lines – in that he asks as an alternative if Zurich could contact the third party. I don't think these emails show that Mr N had an expectation that Zurich were in contact with the third party for this claim.

Mr N says he could not rent the flat out where one of the rooms couldn't be used. And in the highly unlikely event that he could rent the property out, it would have been at a reduced rate. He says he provided an email from the previous tenant explaining why they moved out – due to the issue with damp.

I can assure Mr N that I read the documents he provided as part of my original assessment. However, my view remains that Zurich isn't responsible for any associated losses Mr N is claiming for. Mr N was aware of a damp problem within the property while tenants were

living there for two years – and while he was aware of the claims process and chasing the third party in order to progress his claim for repairs.

So I'm upholding his complaint in part and my recommendations are as set out below – in line with my provisional decision.

My final decision

My final decision is that I uphold this complaint in part. I require Zurich Insurance PLC to increase the compensation it pays Mr N from £150 to £500 for the inconvenience its delay caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 23 March 2022.

Geraldine Newbold
Ombudsman