

## **The complaint**

Mr M is unhappy with Zurich Insurance PLC's (Zurich) handling and settlement of a claim made under his commercial landlord property insurance policy.

## **What happened**

Mr M owns a property which he lets out to tenants. In March 2014, damp and water ingress was reported to Mr M's letting agent by the tenants. The agent informed Mr M, as he lives abroad, and the tenant who was living at the property moved out. In March 2015 this was reported by Mr M to his insurer, Zurich.

A complaint was previously considered by this service regarding a loss of rent claim made by Mr M under his policy. There was a dispute surrounding when the loss of rent period and claim should start from. One of my ombudsmen colleagues issued a final decision, directing Zurich to pay backdated loss of rent from an earlier point in the claim, with interest added.

Mr M brought further complaints to this service about issues with his claim.

Zurich had previously issued a final response in October 2019 in relation to some issues Mr M had raised. These related to his flooring, rot and damp and delays to the contents claim (pre-October 2019). One of my ombudsmen colleagues said that complaint wasn't in our jurisdiction as Mr M had brought it to us outside the six-month time limit which he had to do so.

Zurich issued a new final response in April 2021 and addressed some of the new complaint points. But they also didn't comment on several complaint points which Mr M had raised.

As Zurich had exceeded the eight weeks allowed under the complaint handling rules to respond to the full complaint raised, our investigator considered the complaint points not addressed by Zurich, along with those that had been responded to in the April 2021 final response.

Ultimately our investigator didn't ask Zurich to do anything further to resolve Mr M's complaint.

Mr M didn't agree with the investigator and asked for a final decision from an ombudsman.

## **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.

As mentioned, two previous complaints have already been brought to this service.

The first related to a loss of rent claim, and an ombudsman issued a final decision on that case in October 2018.

A second complaint about the flooring, rot and damp and claim delays pre-October 2019, was considered by an ombudsman in November 2021. They said it had been brought too late, and therefore decided it was outside our jurisdiction to investigate.

As these have already been considered (separately) by this service, I won't be commenting on them here in my final decision.

In this final decision, I'll be considering the following complaint points which Zurich have either addressed in the April 2021 final response, or failed to do so within the eight weeks they had to do so:

- Roof works settlement
- Window repairs and replacement
- Prelims, factoring, professional and management costs and fees
- Loan interest incurred
- Ad-hoc additional costs
- Contents claim delays (post October 2019) and rejection

### Background to the claim

Firstly, I'll briefly recap the claim made, and how Mr M's insurance policy with Zurich links to that.

Mr M's property insured with Zurich is a flat, which is in a block with other flats and commercial premises. They all proportionately share responsibility for some of the shared parts of the building, such as the roof.

A claim was made for subsidence to the building and a number of properties, including Mr M's flat, were impacted by damage, either directly, or as part of their shared responsibility for the costs of the repairs. The block's managing agent organised and led on the repairs, and a factoring agent was appointed to project manage matters.

Mr M has explained that each of the property owners has been responsible for contributing their proportion towards the subsidence (and other non-subsidence) repairs. So, Mr M made a claim under his own property landlord insurance policy with Zurich.

It's Mr M's individual policy that he's complaining about, and his insurer Zurich. He says Zurich should be responsible for the proportion of costs he's now claiming, which he'd otherwise be responsible for under his shared responsibility.

## Roof works settlement

The building factor and managing agent determined the works required to the property and roof following the discovery of subsidence. And they asked each property owner jointly responsible, including Mr M, for their contribution towards these. Mr M is unhappy that Zurich hasn't paid the full cost of works required to the roof that he is proportionately responsible for. He'd like Zurich to pay the full amount.

Mr M's policy covers a number of insured events, and this includes subsidence. But it also contains a number of exclusions, and this includes damage caused gradually, deterioration, wear and tear and maintenance.

Zurich has only paid 50% of the costs Mr M is responsible for towards the roof repairs. They say that only subsidence related works are covered under Mr M's policy and claim, and some of the works and costs being claimed for are general maintenance works or unrelated to the subsidence issue or repairs.

A surveyor report was commissioned by the managing agent and property factor which outlined the issues and damage to the roof. I've considered the report in order to decide whether this shows all the problems are subsidence related, as that's the insured event Mr M is claiming for. And consequently, whether Zurich should contribute the full amount of Mr M's proportionate repair costs.

Having looked at the report, I don't think it supports Mr M's view that all the works required and damage to the roof is solely subsidence related. Instead it highlights multiple issues with the roof, including slipped, cracked and broken slates. And it notes there were historic repairs, and a rudimentary bird deterrent system which had been installed and was allowing water ingress. And it commented the cement was in poor condition, with broken chimney pots and there was historic excessive debris and possible split lead valleys. And it also said all rainwater goods were in poor condition.

Whilst Zurich has said there is maintenance related work, which the report does appear to support, there is also reported damage too. But it doesn't appear to be, and there's no evidence in support of concluding, it is solely subsidence related. As I said, Mr M's claim under his policy is for subsidence damage, and based on the report, I don't think this demonstrates all the damage (and consequently proportionate costs being claimed by Mr M) is subsidence related.

Zurich has made a 50% contribution towards the roof repairs. They've identified at least some of the repair works *could be* subsidence related. But they weren't involved in assessing the damage or completing the relevant reports (as Mr M's managing and factoring agent handled matters), so they've needed to decide this based on the information provided. Having considered things, and in the absence of any expert evidence concluding *all* the damage is subsidence related (or due to another insured event under Mr M's policy), I don't think Zurich has acted unreasonably by contributing 50% towards Mr M's proportion of the overall repair costs.

However, if Mr M believes the damage is due to another insured event (or is subsidence related), and has any evidence in support of that, he should submit that to Zurich for consideration. But based on what I've seen, I don't think Zurich has acted unfairly at this stage by providing a 50% contribution towards the roof repairs Mr M is responsible for.

### Window repairs and replacement

Mr M believes his windows need replacing as he says they were damaged by the subsidence. Zurich say they are suffering maintenance issues, rather than subsidence damage. Zurich have noted there is decay and general signs of deterioration more widely.

Both parties have opposing views on the windows. However, unlike the roof, an expert report hasn't been provided on the cause of damage. So, I need to decide, on balance, what's the most likely cause of damage to the windows and whether Zurich is responsible for the costs under Mr M's subsidence claim.

Having considered all the information provided, I can't see any evidence of subsidence related damage. And in the absence of any expert opinion or report showing an insured peril (such as subsidence) under Mr M's policy has caused damage to them, I'm not able to conclude Zurich has acted unfairly by declining to pay for the window replacement.

Mr M also provided a report from another homeowner early in the claim (some years prior to the roof report), which mentions damage to lintels, but not subsidence damage to the windows themselves. However, as with the roof, if Mr M believes the damage is subsidence related (or any other insured event under his policy), and has any evidence in support of that, he should submit it to Zurich for consideration. But based on what I've seen, I don't think Zurich's position is unreasonable here.

### Prelims, factoring, professional and management costs and fees

Mr M has incurred costs during the claim for prelims, factoring, professional and management costs and fees. He wants all these costs reimbursed by Zurich.

Zurich has said they will pay a proportion of costs which relate to the subsidence works covered under Mr M's policy only. But they say they won't cover costs not incurred solely due to the subsidence claim and insured repairs.

Mr M has a valid subsidence claim under his policy and that's why Zurich has paid a contribution for those insurance related repairs. Given Zurich has agreed to consider the costs associated with those insured works and repairs specifically, I don't think their position is unreasonable. It wouldn't be fair or reasonable here for me to direct Zurich to cover costs which weren't incurred because of the claim and/or repairs covered under Mr M's policy with Zurich.

But as I said, with the roof and windows, if Mr M believes another insured event has caused that damage, he'd need to approach Zurich with evidence of this. And if Zurich then accept the remaining works as part of an insured event under Mr M's policy, then he'd need to present any costs associated with that to Zurich for consideration too. But at this stage I'm not going to direct Zurich to pay for more than they've already offered – those costs and fees associated with the subsidence claim and repairs.

### Loan interest incurred

When the subsidence was discovered and the managing and factoring agent were appointed to manage things, they asked Mr M for his proportion of the repair costs upfront before they would start works. Mr M has said he needed to take out a loan in order to pay his proportion upfront. He'd like Zurich to cover the interest he's incurred in taking out the loan.

However, the funds upfront was something required by Mr M's managing and factoring agent, separate to his insurance agreement or claim with Zurich. It was the managing and factoring agent that required all the money upfront, rather than something which Zurich required Mr M to do. And Zurich weren't handling the claim, or deciding on the repair works, instead the managing and factoring agent were in control of things and how the repairs would be carried out.

Mr M's policy covers the subsidence related damage. And Zurich have paid towards this under the policy. And they've agreed to cover the fees associated with the works as I've outlined above. But the interest fees Mr M has incurred in taking out a loan in order to pay the funds upfront to the managing and factoring agent is separate to those costs, damage repairs, and his insurance policy and claim with Zurich.

So it wouldn't be fair or reasonable here for me to direct Zurich to cover the interest, as this was only incurred due to way in which Mr M needed to fulfil his obligations with the managing and factoring agent, who had been appointed by the property owners to manage things.

#### Ad-hoc costs

Mr M wants Zurich to reimburse ad-hoc costs he's incurred. This includes council tax and utilities at the property. Mr M says he's not been able to rent the property out, so he's incurred these costs himself which would've otherwise been paid for by a tenant.

I've looked at Mr M's policy terms and they don't cover this type of costs which is the responsibility of the property owner, if a tenant isn't paying them. The terms cover either loss of rent, or alternative accommodation. And Mr M made a claim for loss of rent under his policy. He brought a complaint about the duration this should start from to this service and an ombudsman here issued a final decision in October 2018. This directed Zurich to backdate the loss of rent. It also noted Mr M was either approaching, or had already exhausted, the policy limit for loss of rent back in October 2018. So even if there was cover under loss of rent, which there isn't, my understanding is that this limit has been exhausted in any event.

I can direct Zurich to pay costs outside of the policy terms if it is fair and reasonable in all the circumstances of the complaint to do so. And here I'd needed to be persuaded that it was solely due to Zurich's actions, or inactions, that led to Mr M incurring those costs.

Mr M says the property wasn't in a suitable condition to be let out. But Zurich argue that they carried out temporary repairs so Mr M could rent it out. So, Zurich say Mr M could've done so, and consequently wouldn't have incurred those costs.

Mr M provided further information on this point which he says supports his position.

However, having considered all the information, I'm not persuaded by this. Mr M has provided an email from a letting agent suggesting the property would let at a much lower rate than previously - based on the current property rental market, not the condition. They also said new legislation meant a tenant didn't need to commit to a fixed term and could vacate at short notice. Therefore, they said the property having the overall works complete (which was outside Zurich's control) would increase the possibility of a longer tenancy. So, they suggested Mr M could await overall repairs being completed to increase those chances.

But they didn't say it couldn't be let. And they didn't say the condition of it meant that it couldn't be let.

Mr M has also said to this service that it would've cost him several thousand pounds in order to engage a rental agent, obtain landlord registration and other certificates required in order to rent out the property. And he's highlighted that even if he went ahead with this, and paid all those significant costs, which he chose not to, there would be no guarantee it would've been rented out due to the local property market at the time.

Having considered everything, I'm unable to conclude the property wasn't let out solely due to the actions (or inactions) of Zurich, so I'm not going to direct them to cover these costs outside the policy terms.

#### Contents claim delays (post October 2019) and rejection

Mr M is unhappy with the delays in the contents part of his claim. Delays up until October 2019 were addressed in Zurich's final response issued at that time. And my ombudsman colleague decided that complaint was outside our jurisdiction. So, I can't consider that (or any delays before that) here.

But I can consider delays which have occurred after this time as this was addressed in Zurich's April 2021 final response – and they offered £250 compensation for this.

I've considered the information provided by both parties. The claim has been ongoing for a number of years, and this mainly relates to the subsidence claim and repairs taking a significant amount of time (for circumstances outside Zurich's control). I agree that Mr M has been inconvenienced by the delays and poor communication in his contents claim. But I think the £250 compensation Zurich already offered for this is fair and reasonable in the circumstances, so I'm not going to direct them to increase this amount.

Mr M claimed for furniture and other items which he says were damaged by mould and damp in his property. He says this was as a result of the subsidence. He gave Zurich a list of items he was claiming for.

Zurich asked Mr M to provide evidence the items were in the property at the time of loss, and that the damage caused to them was related to the subsidence. But all the items were already disposed of, several years prior to making a claim for them. So, Mr M's been unable to provide any proof or evidence of this.

Instead, Mr M has provided some historic information the items existed at some point, such as a letting agent inventory to show which items were in the property historically, and an invoice from when some items were purchased on Mr M's behalf by the letting agent.

However, the information Mr M has provided is from ten years or more ago. There are no photographs of any of the items, the condition of them at the time, or any evidence to support the items have been damaged by the insured loss, or an insured event, that would be covered under Mr M's policy.

In the absence of sufficient proof of the contents items, or damage to them being caused by an insured event covered under Mr M's policy, I'm not going to direct Zurich to pay the amounts being asked for by Mr M.

If Mr M is able to provide any further proof of the items, and/or damage to them being caused by an insured event, he should submit this to Zurich for consideration.

### Other points

Mr M is also unhappy that damp and rot in his property, alongside a claim for flooring, haven't been considered as part of this complaint. However, these complaint points were deemed to be out of jurisdiction when the ombudsman reviewed things in November 2021, so they don't form part of this complaint or final decision.

### **My final decision**

Zurich Insurance PLC has already made an offer to pay £250 compensation to settle the complaint and I think that offer is fair in all the circumstances.

So, my final decision is that Zurich Insurance PLC should pay the £250 compensation offered previously if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 June 2022.

Callum Milne  
**Ombudsman**