

The complaint

Ms S has complained that Zurich Insurance Plc have turned down her claim for loss of rent under her Landlords Home Insurance policy.

In the main I've referred to Zurich throughout this decision for ease, although I realise Ms S actually dealt with Zurich's agent.

What happened

Zurich insured a house Ms S owned and rented out under a Landlords Home Insurance policy. The house was damaged when a large branch broke off a tree during a storm on 18 February 2022. The tree damaged the roof and a ceiling in an upstairs bedroom and – as a result of this – water got into the property and caused further damage to ceilings and walls.

Ms S claimed on her policy and Zurich appointed a loss adjuster to handle the claim. They agreed with Ms S that a contractor she'd appointed could repair the roof with Zurich paying for this. They then arranged for a contractor to carry out the internal repairs. According to Ms S the internal repairs were completed on 15 June 2022.

Ms S claimed for loss of rent, saying her tenants had to move out due to the extent of the external and internal damage. Not least because it simply wasn't safe for them to stay in the house, as the ceilings in the bedrooms were very wet and likely to collapse and water had affected the electrics in at least one of the bedrooms.

Zurich turned down Ms S's claim for loss of rent on the basis that the house wasn't uninhabitable. They also mentioned that they'd found out Ms S's tenants had been given notice and were due to leave the property anyway by 20 March 2022.

Ms S disputed this and complained to Zurich. They issued a final response saying that they were satisfied their decision to turn down Ms S's claim for loss of rent was correct.

Ms S asked us to consider her complaint. One of our investigators did this. In his written view on the complaint he said he didn't think it should be upheld because there was insufficient evidence to show that the insured property was uninhabitable as a result of the storm damage. He also felt a temporary repair could have been carried out and may have prevented further water ingress and meant the property would have been inhabitable. He thought there was a possibility that – regardless of the damage – there could have been a period where the property would have been untenanted and Ms S wouldn't have been receiving rental income from it.

Ms S did not agree with our investigator's view and asked for an ombudsman's decision. She maintained the insured property was uninhabitable until the internal repairs were completed. She also said that the tenants only moved out because of the storm damage and they were not due to leave anyway on 20 March 2022.

Having reviewed Ms S's complaint I asked our investigator to check with her whether her tenants had been given an eviction notice to leave the property by 20 March 2022. He also

asked her whether the property was on the market for sale around this time, as the loss adjuster acting for Zurich had suggested this was the case. Ms S explained that the property was not on the market, but they'd received an 'off-market' offer for it, which they'd accepted. And this had led to them issuing the tenant with an eviction notice. She further explained that she'd subsequently turned down the offer and retracted the eviction notice. She further explained that the property was re-let once all the repairs were complete.

I asked our investigator to ask Ms S to provide confirmation from the letting agency that the eviction notice was retracted, but she has not provided this.

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.

Ms S's policy provided the following cover:

"Section 1 – Buildings – Additional Cover

The following additional cover is automatically provided by the policy unless amended by endorsement as stated on your schedule.

...

What is covered

This section of the insurance also covers

...

C – Loss of Rent/Alternative Accommodation

i) The rent you would have received but are unable to recover while the home cannot be lived in following loss or damage which is covered under the events insured under numbers 1 to 11 in Section 1 – Buildings – Standard Cover;

Or

ii) The cost of using other accommodation substantially the same as your existing accommodation, which you have to pay for your tenants and your tenants pets and horses as the home cannot be lived in following loss or damage which is covered under the events insured under numbers 1 to 11 in Section 1 – Buildings – Standard Cover"

This means that because there was damage to Ms S's property caused by one of the insured events listed, provided her property couldn't be lived in and provided Ms S would have received rent if it was, she would be entitled to receive what she would have received in rent as part of her claim settlement.

Ms S has said that the falling tree branch made holes in the roof and a hole in the ceiling of the main bedroom at the property. This is not in dispute, as the loss adjuster's report includes photographs showing the holes. Ms S has gone on to say due to this and continuing heavy rain, water got into the ceilings, despite efforts to cover the roof. And that this caused significant damage to the ceilings and compromised some of the electrics. And it's also clear from the loss adjuster's report that the ceilings in at least two of the bedrooms were water damaged and bowed. There is no mention of issues with the electrics in the loss adjuster's comments, but replacement of sockets and a light fitting was included in their proposed schedule of works. And I have no reason to doubt what Ms S has said about the electrics, in

view of the fact water got into the ceilings. And if this happens it tends to move towards light fittings and can cause electrical issues.

With all this in mind it is hard to see why Zurich considered the property could be lived in by Ms S's tenants, who were a family with small children. It seems to me the ceilings in the bedrooms could have collapsed and this and the issue with the electrics would have made it dangerous to live in the property. So until both these issues had been addressed, which I can see from the schedule of works included replacing both ceilings, I don't think anyone could have been expected to live in the property. In view of this, I think Zurich should have accepted Ms S's claim for loss of rent in principle, as her policy provided cover in the circumstances.

In view of this, I think the fair and reasonable outcome to Ms S's complaint is that Zurich should pay her something for loss of rent, subject to evidence that she actually did lose it. However, I do not think there is sufficient evidence that Ms S lost rent for the whole period from 18 February to when the repairs to the property were completed on 15 June 2022. This is because the evidence I have seen suggests to me it is most likely Ms S's tenants were due to leave on 20 March 2022, as they were issued with an eviction notice requiring this and Ms S hasn't provided any compelling evidence to show it was withdrawn.

I appreciate Ms S has said the notice was withdrawn and the property was re-let after it was repaired. But without evidence from the letting agent or other documentary evidence to show the notice was withdrawn, I'm not persuaded that Ms S intended to re-let the property after 20 March 2022 at the point it was damaged. This is because there seems to have been good evidence the property was up for sale either formally or informally and Ms S has admitted she issued the eviction notice with the intention of selling it. Obviously, if Ms S had provided evidence that the notice was withdrawn, I might have taken a different view. But, as things stand, I do not consider Ms S has provided sufficient evidence to show her property would have been let between 21 March and 15 June 2022 when the repairs were completed.

Putting things right

In view of what I have said, I consider the fair and reasonable outcome to Ms S's complaint is for Zurich to pay her claim for loss of rent for the period 18 February 2022 to 20 March 2022. But this is subject to Ms S providing proof that she rebated any rent paid in this period and that her tenants would have paid more rent had they remained in the property until 20 March 2022.

I also consider Zurich should pay interest on any amount due to Ms S from one month after she submitted her claim to the date of actual payment¹. This is to compensate her for being without these funds. And it is from one month after the date of her claim, as I think this is a reasonable period to allow for Zurich to have investigated and validated it.

My final decision

For the reasons set out above, I uphold Ms S's complaint about Zurich Insurance Plc and order it to do what I've set out above in the 'Putting things right section'.

¹ Zurich must tell Ms S if they have made a deduction for income tax from the interest they pay. And, if they have, how much they've taken off. They must also provide a tax deduction certificate for Ms S if asked to do so. This will allow Ms S to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 21 September 2023.

Robert Short
Ombudsman