

The complaint

Ms D complains about how China Taiping Insurance (UK) Co Ltd ('CTI') handled a claim she made against a commercial buildings insurance policy. CTI are the underwriters (insurers) of this policy.

Much of this complaint concerns the actions of their appointed agents. As CTI accept they are accountable for the actions of their agents, in my decision, any reference to CTI should be interpreted as also covering the actions of their appointed agents.

What happened

The background to this complaint is well known to Ms D and CTI. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

Ms D made a claim against a commercial buildings insurance policy after flooding to the block of flats in which she lived in 2021. CTI accepted the claim. Ms D moved into nearby alternative accommodation to allow the repair works to take place.

Ms D was later unhappy and complained to CTI about how long the repair works took to complete and wanted to be reimbursed for additional alternative accommodation costs and council tax costs. She also felt that the use of her property for storing building materials contributed to delays.

CTI didn't uphold her complaint and said that the delays were primarily caused by Ms D choosing to have her own private refurbishment works carried out at the same time as the insurance claim works.

Unhappy with CTI's response to her complaint, Ms D referred her complaint to our Service for an independent review. Our Investigator considered the complaint and didn't recommend that the majority of the complaint be upheld, but did say that Ms D should be reimbursed for paying council tax at the alternative accommodation address. As neither party accepted the Investigator's assessment, the complaint has been referred to me for a final decision.

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.

Although a number of issues have been raised, this decision only addresses those issues I consider to be materially relevant to this complaint. This isn't meant as a discourtesy to either party – it simply reflects the informal nature of our Service as an alternative, informal dispute resolution Service. I'm making an 'on balance' finding based on the evidence. That's different to the test applied by the Courts.

The time taken

It's not in dispute that this claim didn't progress as smoothly as either party would have liked. Ms D says that the use of her property by CTI's builders and the lack of sufficient numbers of

contractors caused the delays she's experienced here. In support of her position she's provided a statement from a Chartered surveyor.

I note that throughout her complaint Ms D referenced having a key witness (a contractor who worked on the job) she'd be able to call upon in support of her complaint. I'm satisfied that Ms D has had ample opportunity to provide any evidence she wanted to - notwithstanding she told us she needed to wait until after August 2023 to do so. Ms D let us know in June 2023 that she may be able to provide the further evidence within 4-6 weeks and has been in contact with our Service since - but nothing has been provided.

On the other hand, CTI say that the delays were due to Ms D having various refurbishment works carried out alongside the insurance claim repairs. They say 'but for' Ms D's private works being carried out, their own claim related works should have taken a maximum of around 16 weeks.

I find that it's almost inevitable that Ms D having refurbishment works (for example; an en suite added, additional rewiring and underfloor heating) will have contributed to the overall claim repair taking longer. I note that Ms D used CTI's appointed agents for some of these works. Unless that agent sent extra tradespeople to her property, the time spent on the refurbishment works will invariably have taken away from the time they'd have been spending on the claim repair works.

I've placed appropriate weight on the professional opinion of an experienced Chartered surveyor who lived in the same block of flats as Ms D and had attended various site meetings, but I've to balance this against them being known to Ms D and it's unlikely they'd submit evidence that didn't support her case. Different variables - such as the actual works being completed will impact the overall time taken.

I've then considered Ms D's points about the work taking place on two other flats at the same time as hers. I don't find it unusual or irregular that CTI (their agents) would have treated the three properties as 'one site'. Given I've seen no persuasive evidence to allow me to fairly conclude this negatively impacted the time taken or caused other detriment to Ms D (as she wasn't living in the property at that time), it follows that I won't be asking CTI to pay Ms D any storage costs for the use of her property or garage.

It's generally accepted that there is a skills shortage within the UK construction industry due to a range of macro-economic factors. I'm not persuaded that CTI were negligent in appointing the chosen contractor or that this is the proximate cause for the delay in Ms D returning to her property. Builders will take holidays and this may mean less gets done during that period of time.

Briefly, I'm also not at all persuaded that Ms D has lost out by not having use of her garage. Various emails have been provided by Ms D which she says showed third party interest in renting her garage. But it remains that no informal or contractual arrangement was in place prior to the loss - so this is a hypothetical loss that wasn't realised, in my opinion.

The alternative accommodation offer

CTI have shown how long their scheduled works should have taken and I note they've made an additional allowance when calculating the alternative accommodation settlement. Overall, I'm satisfied that the offer of £24,000 is fair, reasonable and proportionate. They don't need to bridge the alternative accommodation gap that Ms D is claiming for.

Other costs – council tax

CTI have rejected our Investigator's recommendation that they cover Ms D's council tax bill at the second address whilst repair works were happening. They are correct that the policy doesn't specifically mention council tax. For clarity I'm following our Service's fair and reasonable remit here. I'm satisfied that if council tax costs were incurred at the alternative accommodation address then this is a consequential loss suffered by Ms D. This can be traced back to the insured peril that the policy has responded to here – the flood.

CTI will have needed to take steps to approve the alternative accommodation. Normally in these scenarios (where AA is being provided), the insurer will either incorporate these costs into any settlement, directly arrange payment themselves or reimburse the customer subject to reasonable proof of payment. What CTI may have done (or not done) for other policy holders in this block is irrelevant to my decision. CTI are not liable for council tax costs at the insured address – as these were payable by Ms D regardless of the claim event or not. However, she has incurred an additional cost of council tax at a second address as a result of an insured peril.

Subject to Ms D providing reasonable proof – either copies of the relevant council tax bills (at the second address) being in her name, or (as is often the case) a contract or other paperwork that clearly supports she incurred these costs, CTI need to reimburse her for her costs for the same length of time they've recognised the repair works would have taken. 8% simple interest per annum should also be added from the date Ms D can show she made payment until the date that any settlement is paid to her.

My decision will likely disappoint Ms D, but it brings to an end our Service's involvement in informally trying to resolve her dispute with CTI. She has mentioned legal action throughout this complaint and retains all other dispute resolution options. However, Ms D should consider her next steps before deciding whether or not to accept my decision:
<https://www.financial-ombudsman.org.uk/who-we-are/make-decisions>

Putting things right

Subject to Ms D providing reasonable proof of her additional council tax costs at the alternative accommodation address, China Taiping Insurance (UK) Co Ltd now need to reimburse her for these costs. This is for the same time period that China Taiping Insurance (UK) Co Ltd agreed to pay for alternative accommodation.

China Taiping Insurance (UK) Co Ltd should also add 8% simple interest from the date Ms D made payment (subject to reasonable proof) until the date any settlement is paid to her.

My final decision

My final decision is that I partially uphold this complaint. China Taiping Insurance (UK) Co Ltd now need to follow my direction as set out under the heading 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 28 December 2023.

Daniel O'Shea
Ombudsman