

The complaint

Mr G complains about Zurich Insurance PLC (“Zurich”) and their decision to decline the claim he made on the home insurance policy affiliated to the property he was a leaseholder for.

What happened

The claim and complaint circumstances are well known to both parties. So, I don’t intend to list them chronologically in detail. But to summarise, Mr G was a leaseholder of a council-managed property. And this property was covered by a buildings insurance policy, underwritten by Zurich, in the name of the council, with Mr G listed as a lessee.

In December 2021, Mr G discovered significant damage to the property caused by an ex-tenant he had sub-let the property to previously. So, he contact Zurich to make a claim. But Zurich declined this claim, explaining why they felt the unoccupancy exclusion contained within the policy was applicable in the circumstances, based on the evidence and information they had available to them. Mr G was unhappy with this decision, so he raised a complaint.

Mr G set out why he felt this claim decision was unfair. These reasons included, and were not limited to, the advice he’d received from his solicitor assisting him in the eviction of his ex-tenant. So, Mr G wanted the claim decision to be reversed, and for him to be reimbursed for the costs he’d incurred repairing the damage to the property.

Zurich responded to the complaint and upheld it in part. They thought they had made the correct claim decision, based on the information available to them and the policy terms and conditions. So, they didn’t overturn the original claim decision. But they did think the claim had been delayed unfairly at times and so, they offered to pay Mr G £500 to recognise any inconvenience this had caused him. Mr G remained unhappy with this response and so, he referred his complaint to us.

Our investigator looked into the complaint and didn’t uphold it. They thought Zurich had applied the unoccupancy exclusion fairly. And, that the £500 offered to recognise the claim delays was a fair one. So, they didn’t think Zurich needed to do anything more.

Mr G disagreed, providing several comments explaining why. This included, and is not limited to, his dispute of what Zurich stated he told them at the time the claim was reported. And his belief that the legal documents available showed the ex-tenant was still in the property at the time of the damage and so, he didn’t think it was fair to say the property was unoccupied.

Our investigator considered Mr G’s comments, but their view remained unchanged. Mr G continued to disagree and so, the complaint has been passed to me for a 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.

Having done so, I'm not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this claim, and complaint, has had on Mr G. I don't think it's in dispute that the property Mr G was a leaseholder for was significantly damaged, and that Mr G has had to cover the costs to repair this. So, as Zurich underwrote the buildings insurance policy attached to this property, arranged through the council, I can understand why Mr G would contact them to make a claim. And, when this claim was declined, I can understand why Mr G would feel unfairly treated, as he's been left with a financial loss.

But for me to say Zurich should reverse their claim decision, I'd need to be satisfied Zurich failed to act in line with the policy terms and conditions when reaching the decision they did, based on the information and evidence they had available to them at the time. And in this situation, I don't think that's the case.

And before I explain why I've reached this decision, I think it would be useful for me to explain exactly what I've been able to consider under this complaint reference. I note Mr G has made several references to another claim he made under this policy, for similar damage, earlier in 2021. As this complaint relates to the decline of an entirely separate claim, that relates to damage caused by a separate event, I won't be commenting on or referring to the first claim in any detail. My decision will focus solely on the second claim, that Zurich chose to decline.

I've seen the terms and conditions of the policy Zurich provided. And these explain under the insured risk "*Malicious damage*" that Zurich do not insure loss or damage "*arising after the home has been unoccupied for more than 30 consecutive days*". And I can see the policy defines unoccupied as "*Not permanently lived in by you or any person authorised by you*". So, I've thought about whether Zurich were fair to apply the exclusion above, based on the information available to them.

I've seen Zurich's system notes, which detail all the conversations held with Mr G over the lifetime of the claim, whether than be notes of phone calls, or e-mail correspondence. And I note that when Mr G initially reported the claim, the claim notes state Mr G confirmed the property had been empty for two months prior to the damage being discovered in November 2021. So, I can understand why, based on this information, Zurich would feel the unoccupancy exclusion applied, as this information suggested the property had been empty for longer than the 30 consecutive days set out within the policy.

But I note Mr G has disputed providing this information on the call, saying this was never said or even discussed. Unfortunately, due to the time since the call was held, the call recording is no longer available. And Zurich themselves are under no obligation to retain call recordings for a specified period and so, I can't criticise them for not being able to provide this. But what I can see from their notes is that the information taken at the time of the call, and then a further transcription of what was said following a second review of the call when the recording was available. And both sets of notes state the same information.

They also both accurately record other pieces of information, such as a police number, which aren't disputed. So, while I recognise Mr G's dispute, on the balance of probabilities I think it is most likely this information was provided by Mr G, as I can't see why Zurich was manufacture this information.

But even if this wasn't the case, and I couldn't be reasonably satisfied this is the information Zurich were given, I think the unoccupancy clause would still have been applicable in the situation. And I'll explain why.

The definition of unoccupied also clearly states it will apply if the property isn't lived in permanently by Mr G, or a person authorised by Mr G. And in this situation, even if the ex-tenant was living in the property in the 30 days before the damage was found in November 2021, I think Zurich were fair to deem this ex-tenant to be living there without Mr G's authorisation.

I say this because eviction proceedings had been started to remove this ex-tenant in July 2021. So, at this point I don't think Mr G was authorising the ex-tenant to live in the property, especially considering Mr G had confirmed the ex-tenant was living there without an official tenancy agreement, and the council have confirmed they were also unaware of this agreement and that Mr G himself didn't hold a license to sub-let the property, under the terms of his lease.

On top of this, in an email to Zurich, Mr G confirmed he hadn't been receiving rent from July through to November 2021. So, I think this further supports Zurich's decision to view the property as being lived in without Mr G's authorisation if the ex-tenant was remaining within the property, as he wasn't receiving the payments he expected from the ex-tenant.

And in the e-mail where Mr G questioned whether Zurich would cover his loss of rent, I've seen he stated, in his own words *"moreover, I didn't get the flat rent from July 2021 to December 2021 because of this unauthorised and/or forcefully entry as well as lots of damage to the property"*. So, I think Mr G has clearly stated here that if the ex-tenant was residing in the property, they were doing so without his authorisation. And because of this, I don't think I can say Zurich have acted unfairly when deciding, based on the above, that the unoccupancy exclusion applied on this occasion.

I recognise Mr G is unlikely to agree with this. And I note Mr G has referred to advice from his solicitor, and the eviction notice and court documentation, that he feels shows the ex-tenant was authorised to stay at the property up till their removal in November 2021.

But the terms and conditions of the policy state clearly that for the property to be occupied, it would need to be lived in permanently by Mr G, or a person authorised by him. And this definition is in place to limit the risk to Zurich, as it mitigates the threat of malicious damage to the property on the basis the policy holder, or someone trusted by the policy holder, was taking care of the property while the policy was in force.

And as Mr G wanted the ex-tenant to be evicted, with the ex-tenant already having been removed once before and without the presence of any official tenancy agreement, I don't think Zurich have acted unreasonably when determining that the ex-tenant didn't have his authority to live there, as I think the situation increased the risk to Zurich significantly.

I also think it's worth noting that, if I was to say the ex-tenant was residing in the property lawfully based on the legal documents Mr G referred to, then the policy also states under the malicious damage insured event section that Zurich do not insure loss of damage *"caused by a person lawfully within the buildings"*.

So, even if I was to agree with the comments and position Mr G has provided, I think the unoccupancy clause would still apply, as it was the ex-tenant who caused the damage Mr G was claiming for.

But I do agree with Zurich that the claim took longer than it should've done to reach a

conclusion. I've seen times where no progression took place, as well as times where Mr G was asked to resend documentation Zurich already held on file. And I don't doubt the inconvenience this would've caused Mr G, needing to engage with Zurich more often than he should've, over a longer period of time than was necessary.

Zurich have already accepted the above, and offered to pay Mr G £500 to recognise an inconvenience he suffered. And I think this offer is a fair one, that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think the offer fairly reflects the length of time Mr G was impacted by Zurich's errors, and how this would've likely impacted him emotionally, through the stress and frustration it would've induced. But I think it also considers the fact Mr G would always have ended up with his claim being declined. And, that some of the delays were caused due to Zurich needing to request additional information to confirm, and at times clarify, contradictory information Mr G had provided as well as chase him repeatedly for evidence such as tenancy agreements, which Mr G didn't initially confirm he didn't hold. So, if this £500 payment hasn't already been made, I'd expect Zurich to arrange payment. But I don't think they need to do anything more on top of this.

My final decision

For the reasons outlined above, I don't uphold Mr G's complaint about Zurich Insurance PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 1 April 2024.

Josh Haskey
Ombudsman