

## **The complaint**

The estate of Ms A complains about how Zurich Insurance PLC handled its claim on its leaseholder insurance policy.

As an executor of the estate, Mx D brings this complaint on behalf of the estate.

## **What happened**

Ms A owned a property that was covered by a leaseholders' insurance policy provided by the council and underwritten by Zurich. In July 2020 Ms A sadly passed away. As executors of her will, the responsibility for the property fell to Mx D and their brother.

In November 2021 there was a leak of water into the property that caused significant damage. Mx D made a claim on the insurance policy.

Zurich appointed a loss adjuster to inspect the damage and commence the stripping and drying out of the property.

By January 2022 the contractor said the property was dry and repairs should begin. However Mx D wasn't happy with how the property had been left. They said floorboards were missing leaving exposed pipes and electrical wiring on the ground. They also said the toilet was disconnected with the waste pipe left exposed to the open air. There were also various items of furniture and some of sentimental value that had been left in the property and had been damaged due to the damp conditions and were now difficult to remove due to the missing floorboards.

Mx D raised this with the contractors however no further action was taken by them or Zurich in the months that followed.

Due to the issues, Mx D decided to sell the property. Because of the poor state it had been left in they were unable to sell it through an agent. So instead agreed a sale to the local council based on a 2020 valuation.

Mx D subsequently made a complaint to Zurich about the delays and poor service. It responded and agreed it had provided a poor service. It offered £800 compensation to apologise for this. It also offered to reimburse Mx D £575.36 for the gas bill they'd paid during the time they'd been waiting for repairs to start. And offered a cash settlement of £5,117.51 for the repairs that weren't carried out. It also agreed to consider any evidence to show that the property was sold at a lower value due to its condition and if this could be provided, it would consider reimbursement of this loss.

Mx D wasn't happy with this offer. They said they'd lost a number of items of sentimental value due to Zurich's handling of the claim and the compensation offered wasn't enough to recognise the distress this had caused. They also said they had intended to rent the property but the length of time the claim had taken, and the poor state it was left in meant they were unable to do so which meant they lost out on that income. They also said the property was accruing interest owed to HMRC that amounted to £60 a day which should be refunded. And

it was their intention to donate the items of furniture in the property to charity, which would have represented some inheritance tax benefits. But they were unable to do so as the property became inaccessible due to the lack of floorboards so they'd missed out on this benefit too. They brought the complaint to this service.

Our investigator considered the issues and recommended the complaint be upheld. He thought Zurich should pay an additional £200 compensation to apologise for the distress caused by the poor service.

Zurich agreed to pay the additional compensation, however Mx D didn't think this was sufficient and asked for the complaint to be reviewed by an ombudsman.

### **My provisional decision**

After the complaint came to me, I wrote to each side to explain why I would be unable to uphold the complaint. I said that while I agreed Zurich had caused some significant delays and undue distress and inconvenience, I couldn't ask it to pay any additional compensation to Mx D.

I explained that the rules for how we handle complaints are laid out by the Financial Conduct Authority (FCA), in the 'DISP' rules. The rules state that we can only make awards for distress and inconvenience to 'eligible complainants'. The rules go on to explain who is eligible to complain to this service. In the circumstances of this complaint, the eligible complainant is the late Ms A, as she owned the property and therefore was the beneficiary of the insurance policy that covered it. Further the complaint was brought in the name of the estate of Ms A, with Mx D bringing the complaint as a representative. As Ms A is the eligible complaint, then I only have the power to make an award for distress and inconvenience to her or her estate. And as the issue arose after she had passed away, this wouldn't be appropriate in the circumstances.

Therefore as Mx D is acting just as a representative for the complainant, I am unable to award any additional compensation for distress they experienced.

I also considered Mx D's other points regarding the financial losses they felt the estate had incurred due to the delays and poor service provided by Zurich.

In regards to the daily interest that was accrued while the property was unable to be sold, I didn't think it was reasonable to require Zurich to pay this. I said in order to say it was, I'd need to be satisfied that Zurich caused this loss directly. And the claim itself caused the sale to be delayed, so I couldn't say any delay caused by the need to claim was Zurich's fault. And while I accepted Zurich did delay the claim for a few months, it is not possible to calculate what the timescale would have been for the sale of the property if it hadn't delayed the claim. The property was also sold before the repairs were carried out, so it may have been sold at a similar time even if Zurich hadn't delayed it.

Further, as Zurich had said it would consider any proof of losses from selling the property in its non-repaired state, I said I think that's fair in the circumstances.

I also considered Mx D's comments about the items they wished to donate to charity and the impact not being able to do this had on inheritance tax. I said I didn't think there was enough evidence to show that these would have been donated to charity or the exact impact this would have had on inheritance tax compared to them being damaged and not donated. Further, I said I understood the property had been empty for some time before the flood and the items weren't donated in this time. So I didn't think it reasonable to ask Zurich to cover this cost.

Finally, I considered Mx D's request for loss of rent to be covered, as they were unable to rent out the property while the claim was ongoing. I said I'd only expect an insurer to pay this where a loss can be proved. And as there was no tenant in place before the flood, there wasn't enough evidence to say that rent would have been received if it wasn't for Zurich's actions.

I noted that Zurich had already offered to pay the gas and electricity bills, to pay the cash settlement for the repairs that weren't completed and to consider any reduction in value of the property when it was sold and I thought that was fair in the circumstances. However, I suggested that as Zurich had accepted our investigator's original recommendation of £200 compensation it may agree to honour this informal agreement and said I would put this to Zurich as an alternative way of resolving the complaint.

### **Response to my provisional decision**

Zurich responded to say it wouldn't honour its original agreement to pay an additional £200 compensation. It said it had only agreed that as a gesture of goodwill to resolve the complaint but didn't agree the extra compensation was warranted.

Mx D didn't agree with my provisional decision. They said that as they are a beneficiary of the estate, they should be considered an eligible complainant in their own right and didn't agree our rules prevented this.

They also said that the estate was going through probate in the time before the claim, which is why the furniture wasn't removed or given to charity at that stage.

Finally they wanted confirmation that the offer previously made by Zurich in its final response to their complaint would still stand. In particular that I would require it to:

- Pay £800 in compensation.
- Pay a settlement amount of £5,117.71.
- Pay the latest gas bill.
- Consider any loss in value of the property.
- Re-issue the cheque for the electricity bill as the name had been incorrectly entered.

Mx D also wanted reassurance that this would be without prejudice to their rights to pursue any court action against Zurich as a beneficiary.

### **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 Zurich hasn't agreed to offer the additional compensation as a gesture of goodwill, my previous position on this remains. I am unable to require Zurich to pay any additional compensation.

I considered what Mx D said about being a beneficiary of the estate and I'm not disputing this. However this complaint wasn't brought by Mx D as a beneficiary. Instead it was brought by the estate with them as the executor. This means Mx D is acting as a representative. As such the eligible complainant is the estate and not Mx D. And for that reason I'm unable to make an award of compensation to them as a representative.

In regards to Mx D's request that the previous offers from Zurich still stand. In my consideration of this complaint, it's my role to consider what Zurich has already offered in order to determine whether it's done enough to put things right. And here I've found its previous offer is fair in the circumstances. Therefore, while I'm making no further award, I would expect Zurich to fulfil what it has previously offered in response to the complaint which includes:

- Pay £800 in compensation.
- Pay a settlement amount of £5,117.71.
- Pay the latest gas bill.
- Consider any loss in value of the property.

Mx D has also raised that a cheque for the electricity bill included an incorrect name as the recipient. As this was part of the settlement offer, I'd expect Zurich to re-issue the cheque once its satisfied itself that the cheque hasn't been cashed.

Finally Mx D has asked for reassurance that their legal rights won't be impacted by this complaint. It isn't for me to offer legal advice so I suggest he seeks this from a legal professional. In relation to this complaint, Mx D is able to decide whether they accept this final decision on behalf of Ms A's estate. If they do, then it is legally binding, but means the estate is unable to pursue the issue further through the courts.

### **My final decision**

For the reasons I've given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mx D, on behalf of the estate of Ms A, to accept or reject my decision before 24 April 2024.

Sophie Goodyear  
**Ombudsman**