

The complaint

Mr X and Mrs D complain that Zurich Insurance PLC has treated them unfairly when refusing to pay for lost rent following a claim made on their landlord's insurance policy.

What happened

Mr X and Mrs D made a claim in December 2022 on their landlord's insurance policy for damage caused as a result of an escape of water to a property the rent out. They've made a number of complaints to Zurich during this claim with concerns raised about its progress.

The claim was cash settled with a settlement agreed in early March 2024. This was after it had first been discussed in November 2023. This provided a payment of £42,000 for the building repairs, £2350.15 for increased utility costs resulting from the drying works undertaken by Zurich and £1691.11 for a years' worth of council tax payments.

Mr X and Mrs D feel that Zurich should have provided cover for their lost rent. They say the delays in the claim being settled increased the period of time for which they've been unable to rent the property out and it is fair that Zurich cover the cost of this lost rent. They've said the property would rent for around £1000 per month so any additional delays in the claim have resulted in this being lost each month.

Zurich issued four final responses during the claim period. These were issued on 26 April 2023, 15 August 2023, 21 December 2023 and 28 March 2024. It recognised there was delays with the progress of the claim at different points and offered £2000 in total for the impact of this, including the fact Mr X and Mrs D lost the opportunity to try and let the property out sooner.

Our investigator looked at this complaint and it was agreed with Mr X and Mrs D that the two earlier final responses and what was discussed in these could not be considered by this Service. This was because the complaints had been brought more than six months after the final response was issued.

When considering the later complaints and whether Zurich needed to cover the lost rental income, our investigator didn't think Zurich was acting unfairly. They said they didn't think the policy provided cover for lost rent when the property was untenanted prior to an insured event and claim being accepted. As there was no rent due when there was no tenant in situ, it couldn't be said the rent was lost because of the claim.

They also highlighted the lack of a tenant meant it could not be demonstrated one would have been found any sooner, even if the property was repaired. So in the absence of this, the loss was hypothetical only and it wasn't fair to ask Zurich to cover this when the rent may not have been received anyway.

Overall, they felt the awards made and offered for the distress and inconvenience added with the handling of this claim and the payment to recognise the loss of opportunity to try and rent the property out sooner was fair. They didn't think Zurich needed to increase this even though it was recognised delays had been added during the claim process.

Mr X and Mrs D disagreed with the outcome. They accepted the policy might not provide cover for lost rent. But as the delays had been added and this couldn't be denied, it was not fair and reasonable to say £750 – which was offered to recognise the impact of the delay in being able to look for a new tenant in the property – is fair. Even if it cannot be proven there is an actual loss, they feel it is unlikely the property would have remained empty for the length of time the claim has been delayed.

Our investigator's opinion remained unchanged and at the request of Mr X and Mrs D, the complaint was referred for decision.

I issued a provisional decision on this complaint and explained I was planning on reaching a different outcome to that of our investigator. I've set out what I said below:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I am planning on upholding this complaint in part. I appreciate this may stop short of where Mr X and Mrs D would like, but I'll explain why I have reached this decision.

For clarity, as Mr X and Mrs D have agreed with our investigators assessment of what we can consider, I am only considering the actions of Zurich after the August 2023 final response and anything dealt with by Zurich in its response of December 2023 and March 2024.

The crux of this complaint is, does the policy provide cover to Mr X and Mrs D for lost rent. And if the policy does not, is it fair and reasonable to expect Zurich to cover this loss or part of this loss as a consequential loss resulting from the handling of the claim. Finally, has the distress and inconvenience of the claim handling been fairly recognised.

Our investigator has highlighted the policy does provide some cover for lost rental income. But based on the circumstances of this claim and the fact that the property was unoccupied at the time of the escape of water, they don't think this applied. I've not set the terms of the policy out again as this has already been shared. However, I am in agreement that the policy cover for loss of rent does not extend to the circumstances of this claim and what happened. So what I have considered is whether it is fair to say Zurich should do more to cover any potential lost rent as a consequential loss of the overall claim handling delays.

When the complaint was raised in December 2023, Zurich acknowledged delays which had taken place after Mr X and Mrs D's property had been dried – it said this was from the 19 August 2023 but other notes indicate the drying was completed by the end of July 2023.

A loss adjuster was appointed to the claim in early September 2023 and Mr X chased after at different points for updates on the reinstatement works and questions over different things which he felt needed to be included within the settlement scope.

On 17 November 2023 Mr X highlighted more concerns with the scope of works and a cash settlement was not offered until 15 December 2023. Mr X sent in meter readings for utility bills to be considered in the scope on 27 December and this was sent to the loss adjuster to review on 5 January 2024. Some further questions were asked of Mr X but replies were often made on the same day or soon after. However, the final cash settlement was not made until 6 March 2024.

In total it has taken around 7 months for Zurich and its loss adjuster to confirm a cash settlement with Mr X and Mrs D for their property. Some back and forth with the negotiation of a cash settlement is expected and this can add some delay, but I think it is fair to say 7

months goes beyond what is reasonable to expect. There have been periods of up to a month for the loss adjuster to come back to Mr X and Mrs D with an update and this has slowed down the progress. During which time Mr X had been highlighting the frustration of their property still not being repaired and the impact of this on their health.

Although the property was not rented out ahead of the escape of water, it was a property previously rented out by Mr X and Mrs D. They have said it would have received a rental income of around £1000 per month if rented out at the time.

When additional delays were added to the claim after the property was dry, there was a loss of opportunity to rent the property out again sooner resulting in a consequential loss to Mr X and Mrs D. I accept there is an element of unknown to this in terms of the likely timeframe for a new tenant to be found once the property is reinstated. But there has been nothing provided to show this is likely to be a number of months.

In contrast, Mr X and Mrs D have said their letting agent said at the time, the letting market was very strong and it could have been as quick as two weeks from advertising to the property being tenanted.

Overall, I am more persuaded that Mr X and Mrs D have suffered a consequential loss as a result of the delay in the cash settlement being provided. And they've been unable to rent their property out again sooner than they would have, had this not been present.

I think it is fair and reasonable to expect the loss adjuster to have provided an updated scope of works to Mr X and Mrs D within 3 months. I say this because of the level of engagement and prompt responses from Mr X meaning this would likely have happened had the loss adjuster not been sick and other deadlines missed over the time.

Based on the above, I think it is fair to ask Zurich to pay Mr X and Mrs D a payment to reflect 4 months missed rent. Mr X and Mrs D have said this would have been around £1000 per month and if this can be demonstrated, either through the previous rent paid on the property, or any current rent if the property is now let again, I think this can be used as a fair benchmark. But I would expect this to be demonstrated by Mr X and Mrs D.

Zurich has made an offer of £950 in its final response of March 2024. It has said this was a further £200 to recognise the ongoing delays, in addition to the £400 paid following the December 2023 final response. And the additional £750 was for the impact of the property not being let out sooner.

It is clear from the communication Mr X had with Zurich that there was significant distress added with the delays. These have been over a sustained period of time and he has highlighted the impact of these on his health. So it is right this has been recognised by Zurich. But I think this total offer of compensation is fair and reasonable and in line with this Services approach to these awards. So I am not planning on asking Zurich to increase this.

Putting things right

On receipt of the previous rental costs or current rental costs for the property, Zurich should pay Mr X and Mrs D the equivalent of 4 months' rent. This is a consequential loss resulting from it not settling the claim sooner with it not being fair on Mr X and Mrs D losing out as a result.

If it has not already done so, it should pay Mr X and Mrs D the £950 offered in the final response from March 2024.

Zurich responded to say it had no objection to paying 4 months rent to Mr X and Mrs D. It said it would normally make such a payment based on previous rental income – which was £800 per month for Mr X and Mrs D's property. So it felt this was the fair amount to use as the benchmark for the loss.

Mr X and Mrs D have not provided a response to the provisional 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.

I've reconsidered this complaint and the comments made by Zurich. As there has been no objection to the overall reasoning, I see no need to depart from what I set out on this above.

I said when considering the consequential loss, either the previous month's rental amount or 4 month's rent at the current rate could be considered if demonstrated. Zurich has said what the previous rental income was and while there may have been an increase with any new tenants once the property was re-let, I've not been provided with the details of this. So in the absence of this, I think it is fair and reasonable to use a figure of £800 per month as the benchmark for the consequential loss resulting from the handling of this claim.

Overall, I think delays have been added with the handling of this claim and Mr X and Mrs D have lost out as a result. While the cover of their policy does not extend to loss of rent for this event, it is fair and reasonable to expect Zurich to cover the consequential loss which I am persuaded they have likely suffered as a result of this delay. So providing cover for 4 month's rental income at a rate of £800 per month is fair.

I am satisfied the awards made by Zurich in recognition of the distress and inconvenience experienced with the handling of this claim are fair and I see no reason to ask for this to be increased.

Putting things right

Zurich should pay Mr X and Mrs D the equivalent of 4 months' rent. This is a consequential loss resulting from it not settling the claim sooner with it not being fair on Mr X and Mrs D losing out as a result. This should be paid at a rate of £800 per month.

If it has not already done so, it should pay Mr X and Mrs D the £950 offered in the final response from March 2024.

My final decision

For the reasons I've set out above, I uphold Mr X and Mrs D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr X and Mrs D to accept or reject my decision before 3 January 2025.

Thomas Brissenden
Ombudsman