

## **The complaint**

Mr and Mrs S complain about Zurich Insurance PLC's handling of a claim on their home insurance policy.

Mr and Mrs S have been represented by agents in this complaint, but for ease of reference I shall refer to anything their agents said on their behalf, to have been said by Mr and Mrs S. The same applies for agents representing Zurich on the claim and complaint.

## **What happened**

Mr and Mrs S had a home insurance policy with Zurich, to insure a property, which I shall refer to as T.

In February 2019, they discovered damage caused by an escape of water (EOW) and they made a claim with Zurich. The claim was accepted and paid.

In August 2019, they discovered fire damage to T and submitted a new claim to Zurich.

Based on concerns around T being unoccupied at the time of the EOW loss, Zurich investigated and avoided Mr and Mrs S's policy from the date of renewal in April 2019.

An Ombudsman issued a final decision on another complaint in February 2023. They said Zurich acted unfairly in avoiding the policy from April 2019, based on alleged misrepresentation at renewal. They directed Zurich to reinstate the policy, remove avoidance markers and consider the claim for fire damage.

In May 2023, after considering further, Zurich made a provisional decision that Mr and Mrs S were in breach of the policy fraud condition in relation to the EOW claim. It invited them to submit any further information, and respond to its points, so it could investigate further and reach a decision. It didn't agree to pay the fire damage claim. Mr and Mrs S were unhappy so they complained.

Zurich issued a complaint response in September 2023. It maintained its provisional decision that Mr and Mrs S had breached the policy's fraud condition, based on T being unoccupied at the time of the EOW loss.

Mr and Mrs S referred their complaint to the Financial Ombudsman Service. They felt Zurich was declining cover for the same reasons that were addressed in the previous final decision.

The Investigator looked into the complaint. They said there wasn't enough evidence for Zurich to reach a final conclusion the fraud condition had been breached, but they also said there wasn't enough evidence to say Zurich should accept and pay the claim. They said it was fair for Zurich to make further enquiries to validate the claim, including requesting information from Mr and Mrs S.

Zurich agreed. It was happy to consider matters further and reach a decision if Mr and Mrs S provided further information. This was in line with its provisional decision of May 2023.

Mr and Mrs S didn't agree. They said they wouldn't allow Zurich to carry out further investigation, that some information was no longer available, and other comments and information had already been provided. They wanted Zurich to be instructed to accept their fire damage claim.

Because the complaint couldn't be resolved, it's been passed to me to decide.

### **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 should first set out that I acknowledge I've summarised Mr and Mrs S's complaint in a lot less detail than they've presented it. Mr and Mrs S have raised a number of reasons about why they're unhappy with Zurich. I've not commented on each and every point they raised but, instead I've focused on what I consider to be the key points I need to think about. I don't mean any discourtesy by this, but it simply reflects the informal nature of this service. I assure Mr and Mrs S, however, that I have read and considered everything they've provided.

#### *Previous final decision*

An Ombudsman issued a final decision on a previous complaint in February 2023. I won't be considering the conclusion reached under that decision. We also can't enforce a final decision, so if Mr and Mrs S feel that Zurich didn't adhere to the direction in that decision, and they wish to take steps to enforce it, they would need to do so through the courts.

#### *This complaint*

In this decision, I'll be considering whether the conclusion Zurich reached in its final response of September 2023 was fair in the circumstances.

Mr and Mrs S's policy with Zurich contained a fraud condition which said:

*"If you or anyone acting on your behalf have intentionally concealed or misrepresented any information or circumstance ...or made any false statement relating to this insurance, we will...Terminate the policy with effect from the date of any fraud which occurred during the period of insurance...and... we will...not pay...a claim which relates to a loss suffered after any fraud.."*

I've kept the above in mind when considering the complaint.

#### *Fraud*

Zurich has provisionally decided that Mr and Mrs S made a false claim. It said Mr and Mrs S made false statements about the circumstances of a loss that would otherwise not have been covered.

Specifically, Zurich believes T was unoccupied from around August 2018, to the date of the EOW loss in February 2019 – this is contrary to Mr and Mrs S's assertion that T was occupied and was their main home.

Because the policy defines unoccupied as *"not permanently lived in...for more than 60 days in a row..."* and because it excludes cover for loss or damage caused by EOW when the insured property is unoccupied, I consider it was fair for Zurich to investigate the matter of unoccupancy.

In considering the evidence, my role isn't to assess or decide the claim, as Mr and Mrs S have requested. My role is to establish whether or not Zurich had reasonable grounds to believe T was more likely than not to have been unoccupied at the time of the EOW, and to therefore request further information.

To be clear, the test for whether or not Zurich had reasonable grounds isn't whether Zurich can prove this was the case beyond reasonable doubt. Instead, the test is whether or not it can show it was more likely than not that T was unoccupied. This can be based on one piece of very strong evidence, or a series of inconsistencies that individually wouldn't be enough, but when put together, are sufficient.

Having reviewed the evidence, I'm satisfied that Zurich had reasonable grounds to believe T was more likely than not to have been unoccupied at the time of the EOW loss. So I won't direct it to settle Mr and Mrs S's subsequent fire damage claim, and I consider it fair for Zurich to request further information and co-operation from Mr and Mrs S, before it reaches its decision.

I've come to this conclusion because having considered all the evidence, I'm satisfied there are a series of inconsistencies, and bits of evidence that when put together, show Zurich had reasonable grounds to believe T was more likely than not to have been unoccupied at the time of the EOW loss. I've outlined some of these below.

#### *Oil supply to T for heating*

I've seen statements to show payments for the oil supply to T from January 2018 to June 2018, with no further orders since July 2018. I've also seen an email from the supplier to Zurich to confirm the account was closed and no oil was supplied since June 2018. This supports Zurich's position that T was likely unoccupied from August 2018.

Mr and Mrs S said 2018 was unusually hot so they didn't use much oil and there was sufficient oil in their tank. But I've not seen supporting evidence, such as previous years' statements, to show the usual pattern of usage/supply, or to demonstrate there was enough oil to last between June 2018, to February 2019.

#### *Landline phone bill for T*

I've seen statements showing no calls were made after August 2018, despite evidence of calls using the landline regularly in each month from January 2018 to August 2018.

Mr and Mrs S said they stopped using their phone and used other methods such as mobile. This may be plausible in isolation, but when put together with the oil supply evidence, I think it amounts to reasonable grounds for Zurich to believe, on balance, that T was unoccupied in February 2019.

#### *Inspection April 2019*

I've seen images taken when Zurich first attended on the EOW claim in April 2019, and I consider they do show rooms like the dining room and living room to be lacking in the usual amount of contents for a main residence.

Mr and Mrs S said concerns weren't raised at that point in April 2019, but I don't consider this means Zurich is precluded from doing so later on.

#### *Burst pipe*

The EOW claim in 2019 was as a result of two pipes that burst on around 2 February 2019. Zurich said it's unlikely two pipes would burst in separate locations in a single night, and they most likely burst at different times, only to be discovered later, due to T being unoccupied. In light of the above evidence, I think this is a reasonable conclusion in the circumstances.

Mr and Mrs S provided an email from what appears to be a plumber, suggesting it was possible for the pipes to have burst at the same time, but this comment is based on information Mr and Mrs S provided, and it's not clear what information they did provide. The comment also doesn't appear to be based on a physical inspection. So I don't consider this evidence sufficiently persuasive as to make Zurich's position unreasonable.

#### *Insurance cover at another property*

Mr and Mrs S had another property, which I'll refer to as SR.

I've seen evidence to show they took out a home insurance policy with another insurer, for SR, in May 2018.

The broker notes for the sale of that policy state Mr and Mrs S advised they were "*not moving for two to four weeks*" with it also being noted that unoccupancy from inception (May 2018) was acceptable to the insurer, so long as it was no more than 60 days.

Mr and Mrs S said the note refers to moving in furniture, but there is no express confirmation from the broker to support this. Mr and Mrs S said cover for SR was taken out in preparation for their sons to occupy SR short term, when they visited from abroad. But there's no confirmation from the broker or insurer to support this. So overall, I'm not persuaded by Mr and Mrs S's comments.

Instead, the policy documents for cover at SR show Mr and Mrs S told that insurer they would occupy SR as the permanent home from May 2018, with a total of two adult occupants. This contradicts what Mr and Mrs S have said about the purpose of cover for SR.

I can also see that Mr and Mrs S took out additional cover for their personal belongings when they took out cover for SR, but they didn't take out the same cover for their policy with Zurich to cover T.

I think the above supports Zurich's belief that T was not occupied at the date of the EOW loss in February 2019. I say this because I consider it's reasonable for Zurich to conclude, based on the above, that Mr and Mrs S occupied SR as their home, instead of T, from at least August 2018.

Zurich also spoke to the gas and electric provider for SR and was told the utilities were used consistently and usage indicated someone was living there for some time. This doesn't support Mr and Mrs S's suggestion that SR was only occasionally occupied, including by their sons short term when they visited from abroad. I think this also amounts to reasonable grounds for Zurich to believe, on balance, that T was unoccupied in February 2019.

#### *Claim delay*

Mr and Mrs S first notified the loss on 4 February 2019 and it was agreed they would progress the claim on return from their holiday. They returned around 19 February 2019, but despite this, they didn't make contact to progress their claim until 1 April 2019. I don't consider this delay in keeping with the suggestion that T was their main residence at the time of the loss, as I'd expect they'd likely be keen to progress the claim as soon as possible, to allow for a quicker return to their home.

Mr and Mrs S provided evidence of an injury sustained by Mr S around 28 February 2019, but this was still more than a week after their return from holiday, so I consider there was time between these dates to make contact to progress the claim.

For the reasons outlined above, I consider it reasonable for Zurich to say Mr and Mrs S's delay in progressing the claim is inconsistent with their assertion that T was occupied as their home.

### *Repair delays*

On inspection in April 2019, Zurich noted Mr and Mrs S still hadn't arranged repair of the damaged pipes or cleared the debris.

Mr and Mrs S submitted an invoice for the works in August 2019, for £14,610. The invoice was dated 29 July 2019 and read as though it was an invoice for the agreed works. I've reviewed the schedule of works following Zurich's visit and I can see the settlement Zurich agreed to pay Mr and Mrs S, was based on works including removal of flooring as well as removal, disposal and repair of plasterboard ceilings.

But in August 2019, Zurich only noted some skirting boards as having been replaced, and some wall plasterworks in the lounge undertaken. Zurich also noted that the contents it had paid Mr and Mrs S for (written off due to contamination by asbestos) were still at the property and hadn't been disposed of.

Mr and Mrs S said they intended to extend hardwood flooring from another room at T, over the damaged softwood flooring, and they intended to remove the damaged contents on the final clean up before moving back in. But the invoice they sent to Zurich didn't indicate it had omitted any works, and the statement Mr and Mrs S signed in October 2019 confirmed their contractor had carried out all the works quoted for. I think this is an inconsistency that adds to reasonable grounds Zurich had, to believe T was unoccupied at the date of the EOW loss.

### *Information requested*

I've outlined above why I consider Zurich had reasonable grounds to believe T was more likely than not to have been unoccupied at the time of the EOW, and why it is fair for Zurich to request further information before it reaches a decision.

The further information includes:

- Evidence to show the source of the cash payment Mr and Mrs S made to their contractor, including evidence to show where the cash was withdrawn from or paid into.
- Explanations for the inconsistencies between the statements Mr and Mrs S made to Zurich and the evidence it obtained.
- Oil supply statements for T for 2016 and 2017.
- Updated mandates to allow Zurich to review the evidence for SR, including phone usage.
- Motor insurance documentation to show where Mr and Mrs S's vehicles were declared as being kept overnight from August 2018 onward.

I consider the above information to be reasonable in the circumstances, for the reasons outlined above.

I consider it is for Mr and Mrs S to demonstrate to Zurich that this information is not available, or otherwise co-operate with Zurich (including provide updated mandates), or confirm to Zurich directly they are unwilling to provide any further information. This will allow Zurich to reach a final conclusion on any breach of terms under the EOW claim, the policy cover, and consequently, the fire damage claim.

For the reasons outlined above, I agree with the Investigator that there's insufficient evidence, in the circumstances, to say Zurich should pay the fire damage claim without any further investigation.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 18 April 2025.

Monjur Alam  
**Ombudsman**