

## The complaint

Mr D, a landlord, has complained about his let property insurer Zurich Insurance PLC.

## What happened

Mr D arranged cover with Zurich starting in July 2020. In February 2023, Mr D made a claim to Zurich. This was because, after his tenant had vacated the property, he discovered water damage. During the course of its claim enquiries, Zurich became unhappy with some details Mr D gave it.

Ultimately Zurich decided it wasn't going to pay the claim. It said Mr D had committed fraud, so it was cancelling the policy back to the claim date and declining the claim. Or, in the alternative, if it was wrong about fraud, that it thought Mr D had not made a fair presentation to it when the policy was arranged – in that event it would be avoiding the policy to its start date (treating it as though it had never existed), thereby declining the claim. Finally Zurich said, if it was wrong about fair presentation, meaning the policy remained in place, there was a policy condition for reasonable care – it thought Mr D had breached that, so said it would decline the claim on that basis.

Mr D complained to the Financial Ombudsman Service. After our Investigator considered the complaint, it was referred to me for an Ombudsman's decision.

Having reviewed everything I felt that Zurich had not proven fraud. But I also felt that Zurich's position, that Mr D had not made a fair presentation to it equating to a qualifying breach under the Insurance Act 2015, was reasonable. I thought it should be refunding the premium though as it hadn't shown Mr D had acted deliberately or recklessly. I wasn't minded to award compensation for upset and I explained why that was. My provisional findings were:

*"That said, I'll note at the start that the entire file Zurich submitted ran to some 90,000 pages. That is not a submission that suits the informal nature of our Service. Within that file Zurich provided a summary of its case. Having read that I noted the detail it referred to as being key to Zurich's decision and I gathered that detail – including a copy of the video interview with Mr D. In keeping with the informal nature of our Service, it is on the basis of Zurich's summary and its relevant detail, along with any comments Mr D has made, that I've considered this complaint.*

*Zurich has presented what is known as a layered argument. First and foremost it is seeking to rely on a position that Mr D acted fraudulently. So I will consider that in the first instance. I'll only move on to Zurich's second and third stated arguments if I find its position in respect of the preceding argument was unfair and unreasonable.*

### Fraud

*Zurich raised three points, in its 3 October 2023 and 1 December 2023 letters, in respect of why it felt Mr D had acted fraudulently. Those three points were:*

- That Mr D had not registered with the national landlord registration scheme – but had said he had. And that when queried about this he had tried to cover up that he had never been registered.
- That he had said he'd been unable to contact his former tenant – but Zurich had managed to. And that the former tenant said she had told him about the leak before she left the property – whereas he said he only knew about it after.
- That he had said there were two leaks – but Zurich had spoken to the plumber who had confirmed there had been three, with three leaks having required three excess payments.

As Zurich will be aware, this Service, where an insurer raises arguments of fraud, expects the insurer to support such arguments with strong evidence. I've reviewed each of Zurich's fraud arguments to see if I think it has acted fairly and reasonably when saying Mr D likely acted fraudulently.

I'm going to discount the second and third arguments from Zurich – regarding Mr D's knowledge of the leaks and the number of leaks – quite swiftly and briefly. Zurich has not presented a call recording of the conversation which it's reported took place with the former tenant – as I understand it the call was not recorded. And the fact that the tenant answered Zurich's call says nothing about Mr D's comment that she did not reply to his text messages. As for the plumber – the invoice says "Repairs to pipework toilet and shower tray" – which to me suggests two leaks. It could be read as three, but I don't think that's clear. The call with the plumber was not recorded. But even the call log does not suggest the plumber had told Mr D there were three leaks. I'm simply not persuaded that, in respect of these two issues, Zurich has reasonably evidenced Mr D likely acted fraudulently.

The registration issue is a little more finely balanced. And for this I've paid close attention to what Zurich asked Mr D and the answers he gave.

Zurich interviewed Mr D. I've reproduced the below from that interview:

Z – "Is it registered with the council as landlord property".

Mr D – "Yeah, yep...Well, I think, well, I think so, I don't, how do you even register, I pay, how do you register as a landlord,"

Z – "Normally you have to register the property".

Mr D – "Oh yeah no its registered".

Z – "And yourself?".

Mr D – "Yeah that's grand yeah".

The interview concluded with Zurich's interviewer confirming she would write to Mr D regarding what documents she needed him to provide. In her following emails to Mr D she asked him to provide proof that "you have registered" and "you are registered". Mr D subsequently provided evidence of registration.

Zurich noted the evidence Mr D had provided was of a current registration – it was something recently applied for by Mr D, not evidence that he/the property was registered at the time the policy was arranged, the claim was made or the interview took place. Zurich saw the current registration as evidence of Mr D trying to subvert its enquiries and hide, what it thinks is the true position – that there had not been any prior registration.

My difficulty with this part of Zurich's argument is that whilst Mr D was less than clear with some of his answers given in his interview, Zurich's interviewer did not really push him or flesh out those answers. And when the interviewer then asked Mr D for evidence post interview, the registration was spoken about in the current tense. As I've said, post-interview, Mr D was asked to show "you are registered" and "you have registered" – which arguably is exactly what he did.

*Now, there is one key part of Zurich's argument which I haven't mentioned so far. Zurich says that Mr D was definitely not registered before the interview took place. But it can't evidence this. Seemingly the registration scheme in question will only show 'live' data. Zurich says it ran a search of the scheme's details before the interview with Mr D. And it found he was not registered. But it did not keep any record of that search. Later, Mr D did obtain the registration – and that meant that all/any past history for him disappears from the scheme's records. So Zurich cannot now reproduce evidence of a lack of registration being in place prior to the interview.*

*I bear in mind that Mr D has said a variety of things about the scheme – all of which Zurich thinks is evidence of him lying about the registration. Such as that at one point he recalled making some payments for the scheme – more frequently Zurich says than the scheme would actually have required. So Zurich thinks that means Mr D must have made that up to try and cover up that he had not registered. That's a possibility. But I also think it's clear from the interview that Mr D is not a particularly organised or sophisticated landlord and I think it's just as likely that he's been a bit muddled about all of this and is not recalling things in a very accurate way.*

*To try and summarise my thoughts on this part of the complaint: Zurich has some reasonable concerns, but it has no clear, strong evidence that Mr D lied about the registration. So I'm not persuaded that Zurich has shown Mr D likely acted fraudulently in this respect. As such I think Zurich acted unfairly and unreasonably regarding fraud and that means I now need to go on to consider Zurich's position regarding fair presentation.*

#### *Fair presentation*

*Mr D is a landlord. As a landlord there are certain rules and laws which apply to him in the area the property is let. For example, any deposit taken by a landlord for a tenant letting a property in this particular vicinity must be placed in a deposit security scheme. This safeguards the tenant's money. Mr D told the interviewer that he had not placed the deposit taken from his former tenant into a scheme – he was of the understanding the rule only applied for larger sums of money than the value of the deposit he had taken. I detail this here because there is no dispute between the parties that Mr D did not place the deposit in the scheme. And this is one of the reasons Zurich cited in respect of Mr D not having made a fair presentation to it.*

*This was only one of a number of arguments Zurich raised. But as the fact of this point is not in dispute, it is the argument I'll focus on first – only moving on to look at the others if I think Zurich acted unfairly and unreasonably regarding this argument.*

*There is legislation, the Insurance Act 2015 (the Act), which applies to contracts of insurance – specifically covering the duties of the prospective or renewing policyholder (PRP) and what the insurer can do if it thinks the PRP failed in those duties. The Act says the PRP must make a fair presentation of the risk they present to the insurer. With "fair presentation" meaning the PRP must tell the insurer:*

- everything they know, or ought to know, that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms; or*
- enough information to put an insurer on notice that it needs to make further enquiries about potentially material circumstances.*

*It's worth noting here that the Act explains that the phrase "ought to know" encompasses anything the PRP could find out by undertaking a reasonable search of available information.*

*So Mr D knew that he had not put the tenant's deposit into a scheme. He chose not to put it in the scheme because he did not think he was required to. He was wrong in that respect. If he had checked he would have realised he was wrong.*

*Zurich's underwriters have satisfied me that Zurich would not want to offer cover where a landlord has not complied with relevant laws. So if it had known Mr D had not complied with the tenancy deposit requirement, that would have influenced its judgement on offering cover. And from what Zurich has shown, I'm satisfied that would have meant it would not have offered cover to Mr D.*

*Considering the broad requirements set out above, and the situation regarding the tenancy deposit scheme alone, I think it's fair to say that Mr D did not make a fair presentation to Zurich. As I've said the Act then sets out what Zurich can do on account of Mr D's failure.*

*Because Zurich has shown it would have done something differently – that it wouldn't have offered cover – Mr D's failure becomes what the Act refers to as a "qualifying breach". The Act says that, for a qualifying breach, if the insurer would not have offered the cover, it can avoid the policy. And, unless the insurer can show that the breach was deliberate or reckless, it will have to refund any premium.*

*I bear in mind the specific definition the Act gives in this respect:*

*"A qualifying breach is deliberate or reckless if the insured —*

*(a)knew that it was in breach of the duty of fair presentation, or*

*(b)did not care whether or not it was in breach of that duty.*

*It is for the insurer to show that a qualifying breach was deliberate or reckless".*

*I haven't seen anything from Zurich, or indeed any argument from it, that when arranging this policy Mr D likely acted deliberately or recklessly. So that would mean that whilst Zurich could avoid Mr D's cover – because it wouldn't have offered cover if he'd made a fair presentation – it must return his premium.*

#### *Policy condition*

*I won't comment on this aspect of Zurich's position. As I explained above, I'd only need to do that if I found Zurich's other arguments were flawed. Whilst I have not found in Zurich's favour regarding its allegation of fraud, I have found that its argument that Mr D did not make a fair presentation to it was fair and reasonable. The effect of that finding is that Zurich can reasonably treat the policy as not having existed at the time of the claim. In turn that means that any liability for the claim Zurich may have had, and any terms of the policy which may have applied, fall away.*

#### *What does all of this mean for the parties?*

*Zurich, on account of its fraud argument had cancelled the policy back to the date of the claim and had withheld the premium Mr D had paid. As noted, I've found that Zurich's allegation of fraud was not fairly and reasonably made. So Zurich will need to strike the record of fraud from its own and any industry database. Its actions regarding the policy and premium will also need amending – but what it reasonably needs to do regarding these aspects is driven by my fair presentation finding.*

*As I noted above, the qualifying breach which I'm satisfied occurred, means the policy can be treated as though it didn't exist. I see the policy began with Zurich in July 2022. I think it's reasonable for Zurich to mark its own and any industry records to show the policy as having been avoided at that point. And Zurich will need to reimburse any premium Mr D has paid*

*since the policy commenced. As part of our standard approach, Zurich will have to add interest to the premium sum to be reimbursed. It should apply interest from 22 January 2024, the date of its final response letter, until settlement is made.*

*I think this has been a complex liability and claim position for Zurich to navigate. I have found that it didn't act fairly and reasonably regarding its primary argument of fraud. But I have also found that its second argument reasonably allowed for avoidance of the policy. With that result leaving Mr D in pretty much the same position as he was based on the fraud allegation. Both an allegation of fraud and a policy being avoided will have negative effects on a policyholder and they both mean the policy, from a certain point, did not exist. In both instances Zurich's liability for the claim fell away.*

*The only real difference is the premium reimbursement I've found Zurich should pay. Clearly Mr D has been without those funds. In some instances, a policyholder in this type of situation might have needed funds like this to assist with any repairs needed following the loss. So, in that type of situation, being unreasonably without those funds would likely cause distress and inconvenience. However, here, within a few weeks of Mr D having notified his claim to Zurich, Mr D had found new tenants, happy to live in the property without any repairs being done. And pay rent at a similar rate to that Mr D said he'd received from the former tenant.*

*I explain all of this because I have to consider whether any failings of Zurich caused Mr D distress and inconvenience. Given what I've set out above, I'm not persuaded that Mr D has been caused any distress or inconvenience by Zurich failing him. As such I don't intend to make Zurich pay any compensation to Mr D."*

Zurich said it accepted my decision.

Mr D said he didn't agree with my decision in its entirety. In terms of how Zurich had handled the claim he said it shouldn't have contacted the tenant and he didn't appreciate being called a fraud. He said the latter, including how he was spoken to during the interview, had been very upsetting. Mr D said he hadn't spoken to the plumber about what work had been done. He said he'd been quite ill when all this happened. Mr D said when his tenant had moved in, he'd felt sorry for her, so only taken £100, with the tenant having "paid the rest when she could". He said that whilst he got replacement tenants in quickly, he used his own money and did work himself to "sort the house out". Mr D said Zurich should settle the claim in full.

### **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 seen nothing that makes me think Zurich acted unfairly in contacting Mr D's former tenant. I would expect that to be an investigatory tactic utilised by most insurers investigating similar claims/similar claim issues.

I appreciate that it was upsetting for Mr D to be accused of fraud. And I did find that Zurich had not supported its allegation of fraud with strong evidence. But I accept that Zurich had a number of concerns and I think it was reasonable for it to investigate them, including by conducting an interview. As I said provisionally, I listened to the interview. Mr D was asked a lot of questions, but I think the tone was polite and cordial – I don't think Zurich's investigator acted unreasonably.

I'm mindful that an allegation of fraud is not dissimilar in nature to one of not making a fair presentation. I'm not persuaded Mr D was caused additional, isolated upset only because of the specific fraud allegation. Particularly when one thinks that the misrepresentation

argument from Zurich, which I've found was reasonably made, effectively related to Mr D not having been open and honest with Zurich when the policy was arranged.

I note Mr D says he did not speak to the plumber. I have not upheld Zurich's claim that Mr D made a fraudulent statement to it about the plumbing.

I note Mr D says his original tenant paid him just £100 when she moved in. But in the interview Mr D had with Zurich's investigator, Mr D seemed to recall that his tenant had paid him around £300 in deposit. I'm mindful that Mr D has said he wasn't well around that time. I acknowledged he may have had difficulty remembering certain things when I made my provisional findings. But even if I now take it that the tenant only paid £100 in deposit, there is still no suggestion that this was placed within a scheme, in line with the requirements which Mr D was meant to abide by.

I note Mr D now says the house was repaired before the new tenants moved in, at a cost in time and money to him. But that is not what Zurich's loss adjuster found when it attended the house in February 2023 and spoke to the new tenants. Nor is it what Mr D suggested to Zurich's investigator during the interview. I suspect Mr D must be mistaken in this respect.

I've considered Mr D's response to my provisional decision. It hasn't changed my mind about what I said provisionally. As such my provisional findings, along with my comments here, are now the findings of this my final decision.

### **Putting things right**

I require Zurich to:

- Remove any record of fraud from its own and any industry database.
- Amend its records to show that the policy was avoided from inception in July 2022.
- Reimburse any premium paid since inception, plus interest\* applied on the reimbursement sum from 22 January 2024 until settlement is made.

\*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Zurich to take off tax from this interest. If asked, it must give Mr D a certificate showing how much tax it's taken off.

### **My final decision**

I uphold this complaint in part. I require Zurich Insurance PLC to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 April 2025.

Fiona Robinson  
**Ombudsman**