

The complaint

Mr M complains about the response of Zurich Insurance Company Ltd to a claim he made on buildings insurance policy.

Much of Mr M's dissatisfaction relates to the actions of Zurich's agents when responding to the claim. As Zurich accept they're responsible for the actions of their appointed agents, in my decision any reference to Zurich includes the actions of any of their appointed agents.

What happened

The background to this complaint is well known to Mr M and Zurich. Rather than repeat in detail what's already known to both parties, in my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

In October 2023, Mr M reported that water was entering his property to Zurich. Zurich arranged for the leak to be investigated. It took several months for the cause of the leak to be identified and rectified.

Mr M was unhappy with Zurich's response to the claim and raised several complaints. One complaint was previously referred to our Service. In May 2024 Mr M raised a third complaint about claim delays, the financial impact and a report carried out by one of Zurich's agents. In that response dated 10 July 2024, Zurich offered £850 for service received (claim delays).

They also stated that they hadn't further considered loss of rent as that had been addressed in a previous complaint (which Mr M had previously referred to our Service).

As Mr M remained unhappy with the final response, he referred it to our Service for an independent review. Our Investigator considered the complaint and recommended that it be partially upheld. He found that £850 was fair compensation but that Zurich should reimburse Mr M for three months where he received reduced rent from his tenants. As neither party fully accepted the recommendations, the complaint was referred to me for a decision.

I recently sent both parties a copy of my provisional decision and as the deadline for responses has now passed, I've considered the complaint for a final 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

Responses to the provisional decision

Only Mr M responded. He provided a detailed response. I won't respond to each point made.

- Mr M has said this was not a commercial insurance policy. But the policy being claimed against *was* a commercial policy as the policy terms make this clear and I note Mr M had tenants in the property. The policy was called a '*real estate insurance policy*'. The policy definitions refer to '*You, your...the business that has taken out the commercial policy...*'
- Mr M is correct that our Service has a remit to consider losses where we find that a businesses' failing is responsible for that loss. I've only considered Mr M's loss of rent after the tenancy agreement came to an end – and I'm not persuaded he took reasonable steps to mitigate his losses, for example by letting out part of the property after the tenancy agreement ended.
- Mr M has stated: '*Had Zurich handled my claim competently from the outset, my damages and losses would have been significantly mitigated.*' But my finding remains that, notwithstanding any issues with the response to the claim by Zurich - he's not mitigated his own losses. The emails Mr M has provided support that it was an option to partially rent out the flat. In addition, the previous tenants were seemingly able to live in the flat safely after negotiating a rent decrease.
- The later Zurich report Mr M has referred to identified a different source for the cause of the damage. Mr M says this was professional negligence on the part of Zurich that has resulted in a direct financial loss to him. I'm not persuaded by this. As previously outlined - complex claims and investigations of this nature, particularly where more than one property is involved, can take longer than either party would like as investigations progress. I'm satisfied Zurich accept there were delays and the £850 offered for the non-financial impact of delays is in line with the relevant guidelines I've referred to in my provisional decision.
- The final response letter I'm considering didn't respond to any complaint point about contents damage and therefore I've not considered any contents claim in my decision. Our Investigator also outlined in their assessment why we weren't considering the contents claim.
- The insurance excess here was payable as the first part of any claim, in line with the policy terms.

As no new evidence has been provided that materially changes the outcome I'd intended to reach, I find no fair or reasonable reason to deviate from my provisional decision and those findings form the basis of this, my final decision.

The scope of my decision

As outlined above, Mr M has raised several complaints, and this is the second which he's referred to our Service. In a previous assessment by a different Investigator dated 7 August 2024, that Investigator recommended that a complaint which addressed loss of rent not be upheld. Events that had been complained about and addressed in a final response letter dated December 2023 were considered in that assessment. For ease, these were the main points that assessment addressed:

"To put things right, Mr M [redacted by Ombudsman] would like Zurich to make the following payments:

- *Reimburse the insurance excess.*
- *Provide cover for damaged contents.*
- *Cover the rent reduction granted to tenants until the end of February 2024.*
- *Cover loss of rent in the four months when the flat couldn't be rented until repairs had taken place."*

Specifically on loss of rent, she found (I've redacted Mr M's full name when quoting):

"When thinking about whether Zurich should be reimbursing the loss of rent... I've considered Mr M's terms and conditions.

These state that in the event of damage that makes the insured building uninhabitable, Zurich will pay rent receivable, cost of accommodation, or cash allowance until the property is habitable. Mr M has raised issue with the policy not specifying what is considered as uninhabitable...

...As the policy doesn't mention that the property must be fully uninhabitable for a full loss of rent, Mr M also says a partial loss of rent must be reimbursed when the property is partially uninhabitable. I'm not persuaded by this as Mr M policy doesn't make provision for circumstances of full or partial uninhabitability.....

Based on what I've explained, I won't be asking Zurich to do anything further on this point."

That referenced complaint closed on 22 August 2024, following a fair and clear deadline being communicated to both parties in line with the relevant DISP rules and no response being received to the assessment by Mr M.

I've also kept in mind that in the final response letter relevant to this complaint, Zurich stated:

"In relation to the loss of rent, this is something that was addressed in your previous complaint, and I am therefore unable to consider this as part of complaint reference:..."

Zurich have told our Investigator here that the loss of rent point was considered in another final response letter. I've thought very carefully about this.

- I'm satisfied our Service have already addressed the loss of rent point around the deduction Mr M's tenants made for ongoing repair works in a previous complaint. I won't be addressing that again in this decision. To allow closed complaints/complaint points to be latched onto further/later complaints referred to our Service, or to revisit complaint points we'd previously made findings on as part of another complaint would seriously impair the effective operation of our Service.
- However, our Service hasn't made findings in the earlier complaint about Mr M's loss of rent after the tenancy agreement ended. This point was raised with Zurich, but they chose not to address it in their final response letter. Both parties will note that the earlier Investigator acknowledged the loss of rent after the tenancy agreement ended - but didn't make any findings specifically on it. Therefore, my decision will consider that point.

I'll also consider whether the £850 offered by Zurich (final response letter dated 10 July 2024) goes far enough to recognise the impact of the claim delays on Mr M.

Loss of rent after the tenancy agreement ended

Mr M says he was unable to rent out the property after his tenants left due to the ongoing claim/repair. He estimates a total loss of rent figure of over £36,000. As already explained, I won't be considering the impact of any Zurich error on Mr M's negotiated reduced rent (by £1,000) for three months or any contents claim.

I've then carefully considered the evidence Mr M has provided around his communication with a lettings agent. An email to Mr M dated 15 March 2024 highlighted that there was less demand for short term lets relative to the year previous, and they recommended advertising based on £750-£800 per week. Mr M responded to say that seemed low and he suggests putting a sign on the bedroom door that needed work carried out on it.

Mr M hasn't shown any persuasive evidence that he took reasonable steps to mitigate his losses following his tenants leaving the property and, in any case, at least part of the property was still in a habitable condition. It follows that I won't be directing Zurich to cover his claimed loss of rental income.

The offer of compensation

As Mr M was the eligible complainant here, I can't consider any impact on his tenants. With any insurance claim of this nature, there will almost always inevitably be some level of inconvenience caused. Here, it took some time for Zurich to identify the source of the water leak and I note various methods were deployed to try and ascertain where it was coming from. In their email to Mr M dated 10 July 2024, Zurich said: *'the leak was coming in from the waste pipe from the flat above and on the 22nd of the May 2024 the leak was determine and the repairs had been completed... I do agree that the delays caused by [redacted by Ombudsman] report has caused the delays on your claim'*

In summary, Zurich have acknowledged (by way of their offer) and recognised that the referenced report error caused this claim to take longer to reach settlement than it would otherwise have taken.

Mr M says:

"Zurich failure of to identify the source of the leak have caused me extensive losses and damages (estimated at £34,918.49 plus interests) which cannot be compensated by their £850 payment."

However, Mr M has not provided any persuasive evidence of other losses directly, or indirectly accrued because of the error in Zurich's report causing the claim to take longer than it otherwise would have. For example, he's referred to the insurance premium (which was owed regardless), policy excess (as agreed under his policy terms) and his mortgage commitment (a separate legal obligation due regardless). As already outlined above, I'm not considering the reduction in rent that Mr M agreed with his tenants and in any case - the property wasn't uninhabitable or inaccessible.

On balance, I find the £850 offered by Zurich goes far enough to broadly recognise the impact on Mr M. I don't direct Zurich to take any further action, other than to pay Mr M the £850, if they've not already done so. I note that Zurich have told us they raised payment to Mr M on 24 June 2024 but no confirmation has been provided by either party that payment was received by Mr M.

Putting things right

If they've not already done so, Zurich Insurance Company Ltd need to pay Mr M £850 compensation to recognise the impact of their actions.

If they've already paid this offer, I don't direct them to do anything further.

My final decision

My final decision is that I partially uphold this complaint, but only for the purposes of ensuring the offer £850 is paid to Mr M.

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

Daniel O'Shea
Ombudsman