

complaint

Following a fire in an adjoining property, the handling and settlement by Zurich Insurance PLC of the claim that was made by Ms R under her Shop insurance was slow, inefficient and dishonest.

background

I issued a provisional decision in August 2013. An extract is attached and forms part of this final decision.

In response, Zurich had nothing to add. Ms R's representative's response included:

- Zurich's handling of this matter made it necessary to sleep in the houses of others for three years;
- Zurich's loss adjusters agreed that Ms R's roof would be repaired at the same time as the adjoining roof;
- the temporary roof protection was a tarpaulin which soon blew away, after which the top edge of the party wall was clearly visible from the street – therefore, the roof was damaged;
- the property was not watertight;
- the deduction because of underinsurance was not waived;
- the ingress of water occurred many months later and was, therefore, a separate claim;
- the sum insured was increased soon after the fire;
- the adjoining property's roof was replaced 15 – 18 months before Zurich settled the claim;
- compensation of £250 was inadequate to take account of the distress that Ms R suffered or her additional travel costs;
- Zurich did not provide advice about legal action;
- the guttering is solely on the other side of the property and takes water from Ms R's side via a lead valley;
- the roofers had replaced the gutter but did not connect it to the downspout;
- Ms R did not claim for alternative accommodation but for out of pocket expenses such as travel costs;
- Ms R's contents insurance made no provision for the cost of alternative accommodation;
- the payment for the claim was not accepted as a full settlement;
- the compensation amounts to £83.33 for each of the three years during which Ms R suffered stress, inconvenience, additional expense and insecurity and is inadequate.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Ms R's representative has asserted that the deduction because of underinsurance was not waived. In its letter of 13 January 2012 Zurich stated *"I've also considered the reduction we made to your claim settlement due to the underinsurance and I don't consider this to be fair. When you were made aware your sum insured was too low, your broker has confirmed you ... increased it to the correct amount. Therefore, when water started to enter the property, you weren't underinsured. As we reduced our offer by [a four-figure sum], I'll arrange for this to be sent to you"*. In addition, it said interest would be added to that sum.

The representative has confirmed the ingress of water occurred many months after the fire, and he says the sum insured was increased soon after the fire. Given this, I refer to my comments in the provisional decision:

"Even if [the increase in the sum insured] had taken effect before the first ingress of water, the significance of this is not entirely clear to me in terms of Ms R's rights against Zurich. To claim successfully under the insurance for damage Ms R must show it was caused by an insured event. Water damage in the immediate aftermath of, and as a direct result of, damage by fire might be treated as part of the fire damage, but the suggestion seems to be that the sum insured was inadequate at that time. Water damage some time after the fire is unlikely to qualify as part of the fire damage. In that case, for it to be insured it must have been caused by another insured event. Apart, possibly, from loss or damage caused by storm conditions (I am aware of none around the relevant time) or 'escape of water from fixed water apparatus', the only insured event that seems relevant is loss or damage 'from any cause which is not excluded by the terms, conditions and limitations of the policy'. The exclusions applicable include loss or damage 'caused by or happening through ... dampness, wet or dry rot ... '."

It remains unclear that the ingress(es) of water amounted to or were the result of an insured event. The only insured events of possible relevance appear to be loss or damage caused by "escape of water from fixed water apparatus" and loss or damage "from any cause which is not excluded by the terms, conditions and limitations of the policy".

I mentioned some of the exclusions in the provisional decision.

Even if the damage caused by ingress(es) of water was within the scope of the cover provided, the damage caused by the fire occurred when the sum insured was inadequate. When the deduction because of underinsurance was put to Ms R by the loss adjusters it was in connection with the claim for the fire damage.

Ms R's representative says she did not claim for alternative accommodation, although a note made by the adjudicator says the representative said Zurich should be responsible for some sort of alternative accommodation and in an email dated 2 April 2012 he said "Now Zurich says she is not covered for anything while major repairs are taking place – no alternative accommodation, expenses, nothing ... Surely, a reasonable person could expect that [Zurich] should accommodate you while major works take place?"

He told us Ms R had stayed with him and her mother while not able to live in the insured property.

I think it is clear from my provisional decision that I agree Zurich did not handle the claim well. I stated *"I consider Zurich could reasonably be required to compensate Ms R in respect of relevant costs incurred, and for distress/inconvenience, if and to the extent that it caused the repairs necessary to allow Ms R to re-occupy her accommodation to be delayed."*

In deciding whether Zurich should make a further payment, I have considered the payments it has made. In my view, those payments are fair overall.

my final decision

I make no award against Zurich Insurance PLC.

S Lilley
ombudsman

PROVISIONAL DECISION

background

In the days after the fire Zurich's loss adjusters were made aware that the damage had caused a wall in Ms R's property to be exposed to the elements. The loss adjusters said they were waiting for the loss adjusters acting on behalf of the insurer of the adjoining property to provide details of temporary measures to protect the premises from further damage.

I cannot see that any information was received from the other loss adjusters until more than five months after the fire, and even then the position regarding temporary protection was not clear.

Zurich's loss adjusters considered repairs to Ms R's property could not be carried out until the adjoining premises were no longer open to the elements.

Nearly a year after the fire the loss adjusters told Ms R a roofer had said the roof above the party wall was not damaged, but some water may have entered when temporary roof protection was put in place. Also, it seems rainwater had entered Ms R's property because guttering serving both properties had been damaged by the fire and had not been repaired. The loss adjusters wrote to the roofer acting on behalf of the other insurer and suggested temporary drainage measures were put in place.

15 months after the fire Zurich's loss adjusters said a section of roof directly above Ms R's property had been damaged and had not been repaired. Despite this, they said it was watertight, but they also said that, following the roof repairs, gaps could be seen in the roof from the ground.

Ms R objected to Zurich reducing the settlement of her claim because of underinsurance (for which she blamed her insurance intermediary). She said repairs to the adjoining property had caused damage to hers. She complained that Zurich's loss adjusters had not acted proactively and/or so as to take account of the urgency of the situation she faced.

Zurich agreed it could have been more proactive and paid £250 as compensation. Also, it waived the deduction made from the claim settlement because of underinsurance.

Ms R was dissatisfied with the compensation. Because she also lived in the property, she had had to live elsewhere until it was made watertight/repaired and she considers Zurich should have provided alternative accommodation or paid the costs she incurred in that respect. Further, she considered there had been no underinsurance as the sum insured was increased as soon as the loss adjusters identified the issue and this was before damage was caused by the ingress of water.

Our adjudicator considered Zurich was not responsible for delays as most were due to issues with the actions of the owner and/or insurer of the adjoining property. She thought the compensation of £250 was adequate in respect of distress caused by the deduction for underinsurance. She said the cost of alternative accommodation was not insured under the policy.

Ms R disagreed and considered Zurich should have taken legal action against the other insurer if that was necessary to get it to remedy the damage within a reasonable time.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Unless it had the agreement of the owner of the adjoining property, it is my view that Zurich may not have been entitled to take measures to protect Ms R's property that would involve work to (or affecting) the other property, even if it was minded to do that.

Strictly, legal action against the owner of the adjoining property to obtain a more effective and/or timely response would have had to be taken by Ms R. Having said that, under the policy (according to the copy supplied to us) Zurich had the right to *"take the benefit of your rights against another person before or after we have paid a claim"*. This suggests it could have taken legal action on behalf of Ms R (probably in her name), although it was not obliged to do so.

Despite the complications caused by the issues with the adjoining property, I consider Zurich did not handle the claim well. Almost from the outset it was aware a wall in Ms R's property was exposed to the elements. While, strictly, it was Ms R's responsibility, as owner of her property, to take whatever steps were necessary to protect the property against further damage, I think it is understandable that as a layperson, and as this situation arose following an insured event, she may have thought Zurich would deal with it. My view is that Zurich should, at the least, have explained carefully what, if anything, it was prepared to do to minimise any further loss and that, beyond that, Ms R should take whatever action was necessary.

As far as I am aware, Zurich (and its agents) did not provide an explanation. In fact, its loss adjusters appear simply to have waited for the other insurer to take action.

Things may have been different if Ms R had had legal expenses insurance, but (at least as concerns Zurich's policy) I understand this cover did not apply.

The loss adjusters said rainwater had entered Ms R's property because guttering serving both properties had been damaged by the fire and had not been repaired. Assuming some of it was on Ms R's side of the property, Zurich should, in my view, have made a payment to Ms R in this respect – for example, the cost of repairing her section of guttering. She could then have chosen whether to use the payment to arrange temporary drainage measures, as suggested.

It seems that a section of roof directly above Ms R's property had been damaged by the fire and had not been repaired. The loss adjusters did not identify this until around 15 months after the fire. I cannot see why Zurich could not have done that, and paid the cost of the necessary repairs, at an early point in the claim.

The loss adjusters said the ingress(es) of water had caused dampness in the property.

Zurich accepted that Ms R was not underinsured when water entered the property. It is not clear to me when water ingress first arose, but, given that the fire occurred in winter months,

I would have thought this would have been happening from around the time of the fire. It is also not clear when the increase in the sum insured took effect.

Even if it had taken effect before the first ingress of water, the significance of this is not entirely clear to me in terms of Ms R's rights against Zurich. To claim successfully under the insurance for damage Ms R must show it was caused by an insured event. Water damage in the immediate aftermath of, and as a direct result of, damage by fire might be treated as part of the fire damage, but the suggestion seems to be that the sum insured was inadequate at that time. Water damage some time after the fire is unlikely to qualify as part of the fire damage. In that case, for it to be insured it must have been caused by another insured event. Apart, possibly, from loss or damage caused by storm conditions (I am aware of none around the relevant time) or *"escape of water from fixed water apparatus"*, the only insured event that seems relevant is loss or damage *"from any cause which is not excluded by the terms, conditions and limitations of the policy"*. The exclusions applicable include loss or damage *"caused by or happening through ... dampness, wet or dry rot ... "*.

Some buildings insurances (particularly Home insurance) include cover for the cost of alternative accommodation when the insured property has been made uninhabitable as a result of insured damage. Ms R's Shop policy did not include such cover.

It is not entirely clear whether the contents of Ms R's accommodation within the property were included in the cover purchased – the contents cover was for *"trade contents"*, although that was defined to include *"all other contents including ... your pedal cycles, clothing, and personal effects ... up to £500 any one person"* and it excluded *"personal belongings comprising jewellery and furs ... [and] property more specifically insured"*. It is possible Ms R had separate Home insurance elsewhere, including contents cover, and it is possible it included some provision for the cost of alternative accommodation.

Despite the absence of cover for alternative accommodation under the Shop policy, I consider Zurich could reasonably be required to compensate Ms R in respect of relevant costs incurred, and for distress/inconvenience, if and to the extent that it caused the repairs necessary to allow Ms R to re-occupy her accommodation to be delayed.

Having said this, I understand the settlement of the claim (after this complaint was made) has been accepted.

Taking into account everything I have said above, and having regard to the deficiencies in the handling of the claim and their consequences, I am not persuaded the payments made by Zurich are unreasonable, overall.

my provisional decision

I make no award against Zurich Insurance PLC.

S Lilley
ombudsman