

The complaint

Mr F complains Zurich Insurance PLC unfairly handled a claim he made for an escape of water on his landlord's insurance policy and declined a claim for malicious damage.

What happened

In March 2023 Mr F's tenant vacated his rental property. Mr F discovered the tenant had left damage. He made a claim on his landlord insurance policy for the repairs he said were needed, but Zurich said Mr F's policy didn't provide cover for malicious damage, so it couldn't consider the claim. Mr F said there had also been an escape of water at the property. Zurich said it would consider this claim, but Mr F didn't receive any further communication on it, so he made a complaint.

In August 2023, Zurich responded to the complaint. It accepted nothing had been done to further the escape of water claim since it was raised around four months earlier. It offered £500 compensation for the unnecessary distress and inconvenience this had caused. It also said its contractors would be in contact with Mr F to discuss the next steps on the claim. Shortly after, Zurich said it had reviewed Mr F's photographs and didn't agree the property was uninhabitable, so it wouldn't consider his claim for loss of rent. It also reviewed Mr F's repair estimate and noted that the cost to repair the damage caused by the escape of water was £320, which once his excess had been removed left a settlement of £70.

Unhappy with Zurich's response, Mr F asked the Financial Ombudsman Service to look into his complaint. He said he'd been unable to rent out the property as a result of the damage, so he'd incurred a rental loss from March 2023 to date. He'd also had to pay council tax and utility bills from this time, which he felt Zurich should cover.

An Investigator at this Service considered the complaint. By that time, Mr F said he'd sold the property at auction for less than its market value. He calculated his losses - which he felt should be covered by Zurich - to be £16,000. This included the loss in market value, as well as four months of lost rent and council tax payments.

Our investigator thought Zurich's poor handling of the claim meant it should cover two months lost rent and council tax for Mr F. He said he couldn't consider Mr F's claim for the loss of value of the property as the sale had happened after Zurich had issued its final response letter.

Zurich didn't accept the outcome of the Investigator. It said Mr F did receive some payment for lost rental under another provider's policy. It said this was done prior to March 2023. It didn't accept its delays since March 2023 meant it should pay more than the £500 it had offered. It said whilst there were delays in dealing with the escape of water claim, it had told Mr F in April 2023 that most of the damage to the property wasn't covered by his insurance. So, it didn't feel it was responsible for Mr F not being able to rent out the property.

In June 2024 I issued a provisional decision on this complaint. A copy of what I said is below:

As this is an informal service, I'm not going to respond to every point or piece of evidence Mr F and Zurich have provided. Instead, I've focused on those I consider to be key to determining the complaint. But I would like to assure them I have considered everything provided.

Having reviewed matters, I'm minded to reach a different outcome to that of our Investigator. I'm currently persuaded that Zurich has made a reasonable offer of compensation for the delays it caused. And it doesn't need to pay Mr F's lost rental income or council tax bill for the two months our Investigator set out. I've explained why below.

Mr F says he had issues with his tenants from October 2022, when they stopped paying rent. He was provided some rental cover protection linked to his landlord policy but which was underwritten by a separate insurer. But he says when that ended – when the tenants moved out – Zurich should have provided cover for his loss of rent as the property couldn't be rented out again due to the damage left by the tenants.

Mr F's policy does cover him for lost rent if the property is uninhabitable due to an insured event. However, for this to apply two things need to happen. First, the damage must be covered by the policy and second, that insured damage must make the property uninhabitable.

Having considered Mr F's policy document, I agree that damage caused maliciously by tenants is excluded under the policy - so that isn't an event Zurich is willing to provide cover for. So even if the damage caused by the tenants had left the property uninhabitable, Zurich wouldn't cover Mr F's lost rental income. Because that loss is specifically excluded under the policy.

Zurich accepts however, that there was a different insured event, an escape of water, which is covered by his policy. But it says the lost rental income still isn't covered because the escape of water only caused minor damage, mostly redecoration works, and so the property wasn't uninhabitable, so the second part hasn't been met.

Having reviewed the photographs of the damage, and Mr F's repair schedule, I agree that the escape of water damage hasn't made the property uninhabitable. Whilst 'uninhabitable' isn't defined in the policy, we'd generally consider a property uninhabitable if there was no cooking or washing facilities, as a result of an insured event. In other words, it's not fit to live in. That isn't the case for Mr F's property. The escape of water hadn't damaged the kitchen or bathrooms to an extent where they couldn't be used. In fact, there is no evidence of damage to either room as a result of the escape of water from what I can see. So under the terms, I think Zurich has acted fairly in declining his claim for lost rental income.

Our Investigator's view was that given the poor handling of the matter by Zurich, it should reimburse Mr F two months of lost rental income, as well as covering his council tax payments for those two months. I have a different view, and I don't think a fair resolution to this complaint is to ask Zurich to cover these payments, because I don't think it was responsible for a delay in the repairs taking place.

Mr F provided a quote for the repairs needed to the property in April 2023, it listed various repairs needed which totalled £3,500. He was told within about two weeks of the claim being raised that he wasn't covered for any damage caused by the tenants. Zurich said malicious damage by tenants was excluded, and in any event, much of the damage wasn't necessarily malicious damage, it was more a sign of a lack of care for the property, which isn't an insured event under the policy. So, I consider Mr F was reasonably aware from April 2023 that the majority of the damage left by the tenants, i.e. the scuff marks, damage to floor and doorframes, would have to be rectified by him. And from his own quotes, I think he'd have

been aware that those would amount to at least £3,000 of the needed repairs and cleaning. I accept Zurich didn't decline his claim for loss of rent at this time, but neither did it say it would cover any lost rental payments. Zurich said most of the damage wouldn't be covered, so I don't think it was reasonable, at that point, for Mr F to assume Zurich would cover his lost rental income.

Having reviewed the escape of water claim, Zurich said the only damage covered was the £320 quoted for the stripping and replacement of wallpaper on the stairs.

As Zurich didn't attend the property, it hasn't provided its own report of the damage. But I have seen the check out report carried out when the tenants left. That confirms there was water damage from a leak to the ceiling in that area that required redecoration.

There are other ceilings also listed as having damage, as part of my review I asked Zurich why these weren't covered. It said there was no evidence these had been damaged by an escape of water, and they couldn't have been caused by the escape of water that affected the stairs. So, in the absence of any other evidence, I think it made a fair offer to repair the damage that would be covered under the policy. Once Mr F's excess was taken into account, the amount owed to him was £70 for this damage.

I accept that it took a long time for Zurich to progress the escape of water element of the claim. It seems this had been missed, having told Mr F it would be considered. Zurich has offered £500 compensation to recognise the impact of its delays, which I think is fair and reasonable given the timeframe involved. But I don't think that Zurich's delay in settling for a few hundred pounds means it should therefore contribute to the rental income Mr F lost for a further two months.

The fact remains that most of the damage needed to have been rectified by him. And there's no evidence Mr F had undertaken any repairs to the property by August 2023, when he complained to Zurich about delays in the escape of water claim. So, I'm minded to conclude it's not reasonable to ask Zurich to cover any additional lost rental payments, or council tax, to resolve this complaint.

Mr F says he had to sell the property because Zurich hadn't carried out repairs, and he says he then sold the property at a loss, for around £12,000 less than the market value. Our Investigator said this would have to be raised separately with Zurich as a complaint first, before this Service could consider it. But given that I'm minded to decide Zurich wasn't responsible for the main cause of delays in repairing the property, it follows that I wouldn't hold it responsible for any loss of value in the property when Mr F sold it. Apart from the small amount of water damage, Mr F was responsible for all of the other repairs. If he sold the property rather than carrying them out, I can't reasonably expect Zurich to cover any losses he incurred as a result.

My provisional decision

Zurich Insurance PLC has already made an offer to pay £570 (that being £500 compensation and £70 for the claim) to settle the complaint and my provisional decision is that I consider this offer to be fair in all the circumstances.

So my provisional decision is Zurich Insurance PLC should pay £570, less any amount already paid.

Response to my provisional decision

Neither party provided a response to my provisional findings.

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.

As neither party has provided a response to my provisional decision, there is nothing further to consider. And having reviewed matters again, I see no reason to depart from the provisional findings I set out. As such my provisional findings are now those of this, my final decision.

My final decision

My final decision is that Zurich Insurance PLC has already made an offer to pay £570 to settle the complaint, and I think this offer is fair in all of the circumstances.

Zurich Insurance PLC must pay the compensation within 28 days of the date on which we tell it Mr F accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

If Zurich Insurance PLC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr F how much it's taken off. It should also give Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 2 August 2024.

Michelle Henderson
Ombudsman