

The complaint

Z, a limited company, represented by its director, Mr H, has complained about Zurich Insurance PLC. Zurich provides cover for the building Z leases part of and has declined a claim for Z's premises' fixtures and fittings.

What happened

Z leases premises from P – a freeholder of a building of which the leased premises are part. The lease in place said P would insure the building, but not the lessee's fixtures and fittings.

In September 2022, Z noted damage to the premises, which included ceilings and floor finishes. Z felt that water had leaked from flats situated above its premises (which were not part of Z's lease). A claim was made to Zurich under P's insurance. Zurich's appointed loss adjuster noted that the damage was to parts of the premises which the lease said Z, rather than P, was responsible for insuring – that there was no damage to items P was responsible for covering. Zurich said that the lease meant there was no agreement for P to cover fixtures and fittings. Zurich declined the claim.

When Z complained to the Financial Ombudsman Service, our Investigator noted that the policy did offer cover for tenant's fixture and fittings. But he also noted that the content of the lease, concluding that meant P had no insurable interest in those items. Overall he felt the decline was fair and reasonable.

Z didn't agree. The complaint was referred to me for an Ombudsman's decision. I was minded to uphold it and require Zurich to consider Z's claim. So I issued a provisional decision to explain my views to both parties. My provisional findings were:

"My role is to consider insurance complaints, about insurance policies. In short, has the insurer fairly applied the insurance contract, including the policy terms. Of key importance here I note that this policy does cover:

"b) tenants' improvements therein or thereon including conservatories, extensions, bicycle sheds, solar panels, bathroom suites, fitted kitchens an allowance for which has been made in the sums insured."

So that is the starting point for me in considering whether Zurich has fairly declined the claim for damage to Z's premises. Where the damage in question has been determined by its loss adjuster to affect the fixtures and fittings of Z's premises which it believes P did not install. Often, where a lessee makes additions to the property by adding fixtures and fittings, that's in order to tailor either a residential property to suit individual tastes, or in respect of a commercial premises, to suit the trading purpose of the business in question. I think it's fair to consider those kind of additions as "tenant's improvements", effectively the lessee has 'improved' upon the premises leased to them.

Zurich, in declining the claim, hasn't argued that any of the water damage claimed for was to items not fairly considered as tenant's improvements. And as Zurich's policy offers cover for exactly that, on the face of it, I can't reasonably say that Zurich has fairly declined the claim.

I note that Zurich's loss adjuster, and even Zurich in its final response letter on the complaint, made much of the content of the lease. The argument seeming to be that P was not liable for insuring the tenant's fixtures and fittings – the improvements made to the premises, that P must never have intended for there to be cover for them. However, P was responsible in the lease for obtaining some property insurance for which Z was intended and entitled to benefit from. When P arranged that insurance, whether intended or not, that insurance also offered the cover quoted above. I think it's an artificial and therefore unfair construct of the insurance situation to say Z can't reasonably benefit from that part of the cover because of the content of an unrelated and unreferenced document (the lease). I'm currently satisfied that Zurich's decline of Z's claim was unfair and unreasonable.

In the complaint to this service, Z said it had been affected financially and emotionally by Zurich's unfair decline. Z, as a limited company, doesn't experience emotions. Z might have been affected financially – if Zurich settles Z's claim it will have to consider any liability it has for Z's losses. To be clear, in this decision, I have only considered the fairness and reasonableness of the decline itself."

Z accepted the findings. Zurich said I hadn't quoted the whole policy term which starts by stating it offers cover for "a) Buildings of the premises for which the insured is legally responsible, including..." and it was the content of the lease which helped it determine what legal responsibilities there were between its insured, P, and Z. Zurich said it maintained that P was not responsible for repairing the tenant's improvements.

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 thank Zurich for its review of the policy wording. Point a) of the policy wording does give a list of examples of what items it's likely the insured might be legally responsible for that then might potentially benefit from the cover. But the cover for tenant's improvements is set out at point b) – it is not tied to whether or not the insured is legally responsible for those things.

Zurich may have a point – that P is not responsible for fixing the tenants' improvements. But I am not considering P's liability here. I am considering Zurich's under the policy. Nothing Zurich has said here makes me think that it is not liable under the policy for considering the claim from Z.

Having considered Zurich's response, it hasn't changed my view on this complaint. As such my provisional findings are now those of this my final decision.

Putting things right

I require Zurich to consider Z's claim.

My final decision

I uphold this complaint. 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 Z to accept or reject my decision before 13 August 2024.

Fiona Robinson
Ombudsman