

complaint

Mr C is unhappy that Zurich Insurance PLC avoided his building insurance policy following a fire at two of his properties. He is also unhappy with the length of time Zurich took to reach this decision.

background

I set out the background to and my findings about this complaint in my provisional decision issued in May 2013. The document is attached below and forms part of this final decision.

Briefly, in October 2010, two adjoining properties owned by Mr C were damaged by fire and claims were made to Zurich for the repair of the damage. Eighteen months after it began investigating Mr C's claims (and after the matter had first been reported to this service), Zurich told him that it was avoiding his policy (which covered a number of properties) and, as such, would not be dealing with either of his claims. Zurich said it felt it was entitled to do this because Mr C had not told it about the state of repair of one of the fire damaged properties when he renewed the policy in 2010, had he have done, it would not have accepted the renewal. Zurich listed a number of other concerns too and reserved its right to return to some aspects later, if it was found to be liable for Mr C's claims.

Mr C said that the property had not been in a poor state of repair prior to the fire and that in any event, what was considered to be a 'good state of repair' was subjective. He felt that the property was merely affected by maintenance issues, the like of which were commonly found in rented accommodation. Mr C went on to say that as Zurich had known it was offering cover for a rented property it had, effectively, accepted its condition would reflect this. It had failed to take the opportunity it had had to ask further questions about the state of the property and he would have answered these fully had they been asked. Mr C also said that the reports made by the Local Authority, which Zurich had relied upon regarding the state of the property, were flawed and not entirely accurate. Overall, Mr C said that Zurich had delayed so much over this matter; he felt it should be deemed that it had affirmed the contract and by so doing could not then avoid it.

In May 2013, I considered the points raised by Mr C and issued my findings on them in my provisional decision. Mr C needed to hear my view on these points before receiving my final decision on the matter because the content and considerations dealt with had not previously been covered by our adjudicator. However, having done this, I felt the correct outcome for Mr C's complaint was that Zurich should backdate its avoidance to 2008, thus giving Mr C a greater premium refund and that it pay him £150 compensation because it had caused him upset by not handling his claim as well as it might.

In reaching this conclusion I, briefly, said:

- Mr C was a commercial customer.
- Zurich had asked him a clear question about the state of repair of each of the properties subject to the policy.
- That I felt the Local Authority reports could be relied upon.
- In my opinion, rotten woodwork on the scale present at the property was not indicative of a property in a good state of repair.
- I was satisfied that the available evidence showed that one of the fire damaged properties had been in a poor state of repair, most likely as early as 2008.

- That there was a dispute with at least one of the properties regarding ownership and Mr C should have told Zurich about this.
- Zurich could have investigated its concerns about Mr C's other properties better.
- However, overall, I was satisfied that if Zurich had known about the one property that I was satisfied had been in a poor state of repair and the ownership dispute of another, it would not have offered cover at all.
- I said there was no evidence to show that Zurich had failed to act quickly enough on the evidence received. Therefore, in my view, Zurich had not affirmed the contract by allowing time to merely pass without action during its investigations.
- However, I felt that Zurich could have communicated better with Mr C throughout the course of his claim and that its failure to do so had caused him distress and inconvenience, warranting I felt, an award of £150 compensation.

Zurich responded to my provisional decision. It said it had nothing further to add.

Mr C responded in detail over a number of different correspondences, including via a claims management company. I have summarised the responses below but can confirm that I have read and considered each in full. Briefly:

- Only one of Mr C's properties had been owned by someone else, this was not one of the fire damaged properties and ownership was in name only.
- He had never said Zurich had not returned information to him.
- It was unclear whether I had taken into account the fact that Zurich knew of the type of tenants he was letting to.
- There were several defects listed in the Local Authority report which he believes are incorrect.
- These were not drawn to the Local Authority's attention at the time in order to maintain relations.
- He repaired the building as and when he could/knew of damage.
- Proof of DIY purchases evidences this, the fact of repairs does not mean he believed the property was in a poor state or that he agreed with the whole list issued by the Local Authority.
- The tenant was happy with the property and a witness statement to that effect has been provided.
- He always believed the property was in good order.
- The later Local Authority report does not contain photographs evidencing that repairs have not been done.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I remain satisfied with my findings as stated in my provisional decision.

I apologise for any confusion caused by my comment that ownership of one of the fire damaged properties was in dispute. One of the properties listed on Mr C's policy was owned by someone else but this was not one of the fire damaged properties. This inaccurate comment was regrettable but does not change my findings. Regardless of which one of the properties on Mr C's policy was owned by someone else, Zurich would still have been interested in this.

On page 11 of Mr C's letter sent to this service on 10 May 2013, he said:

"We have not been provided with full information from Zürich in relation to this matter that would shed light on whether Zürich would have made a decision to avoid the policy. Her [sic] a significant amount of information that was provided to Zürich has also not been returned and accordingly could not be submitted to the adjudicator for consideration."

I considered Mr C's point raised about the type of tenant he lets to and Zurich's knowledge of this but I remained satisfied that at the very least the four items that Mr C accepted from the Local Authority list as needing repair are not types of damage that might normally be related to tenant misuse. I can foresee situations where this argument might have some merit but I find that is not the case here.

I gave my view on the reliability of the Local Authority report in my provisional decision; I do not find it appropriate to go over that again. Suffice to say, while I have considered Mr C's latest responses, I do not find anything in them compels me to doubt the provisional conclusion I previously reached. Therefore, I find that the Local Authority report can be relied upon as evidence that the property was, most likely, not in a good state of repair when the policy was taken out.

The bank statements provided by Mr C do show purchases being made from DIY stores. However, they do not show what was purchased or for what end. Therefore, I do not find they are persuasive proof that the property was in a good state of repair, or could reasonably be considered to be in a good state of repair when the 2008 policy was taken out.

Finally, I find that the witness statement provided is not compelling or persuasive evidence of the property's state of repair in 2008. I say this not least because the tenant in question states that he did not move into the property until October 2009. Furthermore, I do not find the tenant's view of the property's state could be considered to hold the same worth as an expert, such as that of the Local Authority officer who visited, inspected and reported on the property a year and a half before this tenancy began.

my final decision

My final decision is that I uphold this complaint in part. I say uphold in part as Zurich Insurance PLC has agreed to 'roll-back' its avoidance to 2008 which I believe to be fair and reasonable. This means that Zurich Insurance PLC must reimburse Mr C a further two years premium (if it has already paid that going back to 2010, if not it will have to pay this as well).

I also award £150 compensation to Mr C. This is in respect of the distress and inconvenience that Zurich Insurance PLC caused him during this claim by failing to properly communicate with him.

I make no other award against Zurich Insurance PLC.

Fiona Robinson
ombudsman

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PROVISIONAL DECISION

I have carefully considered the relevant information about this complaint. Having looked closely at the evidence, I am considering departing substantially from the conclusions reached by the adjudicator.

Subject to any further comments and evidence that I receive by 24 June 2013, I intend to issue a final decision along the following lines. Final decisions will be published. To prevent the consumer being identified, they will be referred to as Mr C.

complaint

Mr C is unhappy that Zurich avoided his buildings insurance policy following a fire at two of his properties. He is also unhappy with the length of time Zurich took to reach this decision.

background

In October 2010 a property that Mr C rents caught fire. The fire quickly spread to the property next door, also owned by Mr C. A claim was made to Zurich for both properties which, along with several others, were covered by the same policy. Zurich began investigating the claim but during the course of this it found out that one of the fire damaged properties had most likely not been in a good state of repair at the point Mr C took the policy out and with all likelihood, not during several renewals since either. Zurich's enquiries also raised concerns about Mr C's ownership of one of the fire damaged properties and the validity of gas safety certificates submitted to it. Given these concerns it also felt it needed to investigate the ownership and condition of all the other properties on the policy. In May 2011 Mr C chased Zurich for a response, it told him it was still investigating his claim and would provide an answer to him soon. In July 2011 Zurich asked Mr C for further information but in September 2011, when his claim still remained unresolved, Mr C made a complaint to this service. In March 2012, while the complaint was waiting for allocation to an adjudicator, Zurich provided its final response to Mr C.

Zurich advised Mr C that it had elected to avoid his policy (and, therefore, would not be considering his claims) on the basis that he had not told it about the state of the property at renewal in 2010. It said that if he had it would not have continued to offer cover. It said it had established that one of the fire damaged properties had been in a poor condition from 2008, and in all likelihood, earlier. It also said it had had concerns with the condition of some other properties on the portfolio and that there had been an ongoing legal dispute over ownership of all of Mr C's properties at the time of renewal in 2010. It also noted that the gas certificates that Mr C had supplied were most likely fraudulent and it advised it was reserving its rights in respect of the submission of these in support of the claim.

Our adjudicator reviewed the complaint and was of the opinion that Mr C's properties could be considered to be in a poor state of repair and that this had not been disclosed to Zurich. As a result she was satisfied that Zurich was entitled to avoid the policy.

However, she also believed that Zurich should avoid the policy from the 2008 renewal as it had sufficient evidence that the non-disclosure occurred at that point. She also asked Zurich to pay Mr C £150 compensation for the delay that had occurred in it coming to that decision.

Zurich agreed with the adjudicator's recommendations and did not have anything further to add.

Mr C did not agree. He felt that the property was not in a poor state of repair, that in fact, the state of repair of a property is a subjective matter; the insurer does not provide a definition of what meets this criteria. He did not think that he had failed to disclose relevant facts to Zurich at the outset.

Furthermore, Zurich knew of the type of tenants Mr C was letting too and the fact damage will often be caused. Mr C said he continued to maintain the property by fixing such damage whenever it occurred and he found out about it. As such, he did not non-disclose at renewal either. Mr C quoted

case law arising out of the Marine Insurance Act in support of this argument. In addition, as he viewed this work as routine maintenance, because it happened so often, he had no need to disclose under other similar questions asked by Zurich either. That being said, if Zurich had other questions it wanted to ask (but did not because Mr C said all the properties were in a good state of repair), it should have asked them regardless because it knew of the type of tenant the property being insured was being let to. Finally, in respect of the condition of the property, Mr C said that the photographs taken and reports made about the property could not be entirely relied upon. Mr C said this was because;

- some of the matters reported were not evidenced in photographs
- the property did look like a “building site” because it was being renovated
- no photographs were taken of the new items being installed in the property
- no actual testing of the electrics occurred
- the Environmental Health Officer was prone to exaggeration and inaccuracy, as has been shown
- at all times he did his best to keep on top of the “tenants wanton repeated attacks on the property”

However, he said that even if one of the fire damaged properties had been in a poor state of repair, the other had not and Zurich’s underwriting guide said each property should be dealt with separately. He also said that the properties were only placed under one number for administration purposes; they could not be considered as being a ‘block’ policy as Her Majesty Revenue and Customs (HMRC) had given this a specific definition.

Regarding the ownership of properties, Mr C said that he knew he had always owned all of the properties. While it was true there was a period of transfer from a family member to him, this did not mean he, in his eyes, did not own the property(ies).

In respect of the gas certificates Mr C said he had been the victim. He had no idea they were not genuine.

Overall, Mr C said that Zurich had delayed so much over this matter; he felt it should be deemed that it had affirmed the contract and by so doing could not then avoid it. Mr C stated that Zurich had had the reports on the property’s condition since December 2010 and yet it allowed cover to continue until the following renewal in July 2011. It then did not avoid the policy for a further eight months.

Mr C felt it was unreasonable for it to have taken so long, especially when Zurich’s own underwriting guide says that properties not in a good state of repair are dealt with on a basis of strict decline. Consequently Mr C felt that Zurich could be said to have affirmed the contract.

Furthermore, Mr C reported that a crack has appeared in the structure of his property. Mr C said this was directly related to Zurich’s delay; he believes that the delayed repairs have resulted in this more significant damage.

Finally, Mr C said that it has been difficult for him to fully defend his position as he is unsure of the extent of Zurich’s submissions. He also said that some evidence submitted to Zurich has not been returned to him and so it could not be forwarded to us. As such, Mr C felt the adjudicator’s ability to present his views had been prejudiced.

my provisional findings

I have considered all the evidence from the outset in order to decide what is fair and reasonable in the circumstances. Having done so, I am satisfied that Zurich’s action in avoiding Mr C’s policy, and, therefore, paying his claims, back to 2008 is fair and reasonable. I am also satisfied that the suggested compensation of £150 is appropriate here. However, Mr C submitted a detailed response following our adjudication of his complaint and it is only fair that I deal with the issues raised therein before I issue a final decision. I am, therefore, issuing this provisional decision to allow both parties chance to respond to my findings.

I consider that Mr C is a commercial customer. He has been a landlord for many years and he owns several properties. As such the Financial Ombudsman Service takes a stricter position on non-disclosure than it would if he were considered a consumer. However, when establishing whether a non-disclosure occurred, we still consider it good practice to establish that the insured was asked a clear question about a material fact and that the question was answered incorrectly.

From what I have seen Zurich asked a clear question for each of the properties Mr C insured under the policy. For each one he was asked *“is the property well maintained and will it continue to be maintained in a good state of repair?”* Mr C answered this question *“yes”* for all of his properties.

From the evidence I have seen I am currently satisfied that it would be fair to conclude that one of the fire damaged properties was not in a good state of repair, that it had not been for sometime and that Mr C should reasonably have been aware of this. I understand that Mr C disputes that the council reports show that the property was in a poor state of repair. However, I have considered the items on the list that the council reported as needing repairing and note that Mr C has agreed to at least four items, which I would consider to be wear and tear issues, rather than damage by tenants. I have considered Mr C's argument that the list has been exaggerated but I only have his word on this. In contrast I have noted that he did write to the council on more than one occasion, advising it of work he was undertaking to improve the property. Furthermore, I can see no good reason why a professional, working under legal statute, compiling reports that may well have to be relied upon in court, would be prone to recording exaggerations or making inaccurate findings.

Given that Mr C has said he accepts that at least four items, which could be considered as wear and tear issues, needed attention in 2008, I am also currently satisfied that he should reasonably have considered the property to not be in a good state of repair.

While owning a property means that maintenance is a constant requirement I do not believe that a property which has at least one rotten window frame, rotten floor joists in the kitchen, a garden fence which has bits missing and wiring to the fuse box which needs rectification, could be said, overall, to be in a good state of repair. I would emphasize that I have only taken here the items from the report that Mr C accepts were reported correctly. That is not to say that I do not believe the rest are correct but, even setting those aside, I believe Mr C could not reasonably have answered the question honestly, having had sight of the council's report.

I do not believe that the HMRC definition is particularly helpful here. Rather, it may be the case that the use of the phrase *“block policy”* was not ideal in this context. I am satisfied though that these properties were covered under one policy of insurance. While separate questions were asked of each one, Zurich has confirmed that the decision of whether to cover or not was based on the portfolio of properties as a whole. It may well be that if only one property had been in a poor state of repair (and this had been the only issue) then cover would have still been granted but this does not seem to have been the case.

The evidence that Zurich has in respect of the other properties owned by Mr C is vague. However, it is clear that Mr C's local council had concerns with several of his properties. It is not entirely clear why further information was not gathered about the other properties but I am aware that Mr C was, at the very least, reluctant to grant permission for data on these properties to be disclosed. However, given that in two years Mr C failed to carry out much in the way of repairs for the one property we do have detail on and it is known that at least some of the problems at this property were wear and tear related, I am satisfied that, Zurich's conclusion that the others were most likely in an equally poor state of repair, is fair and reasonable.

I also note that Zurich's underwriter has confirmed that the ownership of the properties was also a concern for it. Again the evidence regarding these disputes is scarce and Mr C would have me believe that only one property was affected. Even so, I am satisfied that if Mr C had been honest with Zurich about the ownership situation of this property and the state of repair of even just the one of the other properties, then it would most likely have declined to offer cover as a whole.

Regarding the gas safety certificates, I have seen no evidence, at this stage that Mr C knew or most likely knew that these were false when he submitted them. Therefore, I am satisfied that Zurich cannot hold their fraudulent nature against Mr C. I find that they do not support Zurich's attempt to avoid Mr C's policy in any way.

Mr C has argued though that all of these issues should be set aside. Regardless of these problems, Mr C says, his complaint should be upheld because Zurich affirmed the contract by taking so long to decline it. Whilst time may sometime be an issue in affirming, I do not believe it would be fair to say that is what has happened here. If Zurich had allowed time to pass for no reason then it might be said that it was acting in a way that was inconsistent with its later decision to avoid the contract. However, I am satisfied that this was not the case. Zurich is entitled, in fact has a duty, to investigate claims fully.

Having considered Zurich's file it is clear to me that the investigation here was complex, often involving third parties and ongoing. There were a number of issues to consider, the reports about the condition of one of the fire damaged properties being just one of them. Zurich is aware it must investigate matters fully and not just jump to a conclusion; this is even evident from its internal emails.

Furthermore, while its enquiries were ongoing it took action to instruct Mr C's broker not to offer renewal in 2011. Seventeen months from the incident to the date of final response was a long time but I have seen no evidence of any unnecessary delay (time when no action was occurring for example). Therefore, I find that it would not be fair to say Zurich affirmed the contract by failing to act quickly enough on the evidence it had received.

Consequently, I find, albeit provisionally, that Zurich's decline of Mr C's claim and avoidance of his policy was fair and reasonable. Now, Zurich has agreed that it will roll back its avoidance to 2008 as suggested by our adjudicator, thus providing a greater reimbursement to Mr C than it had previously offered. As it has agreed to this I will say no more about it other than that I find this to be fair and reasonable.

Finally in respect of the merits of Mr C's complaint, I need to consider whether any compensation for delay is due and whether Zurich is liable for the crack that has appeared in Mr C's property. However, as I have found that Zurich's avoidance, of policy and, therefore, his claims too, was justified and that it did not unreasonably delay in deciding to take this action, it follows that I find no compensation for the further damage to Mr C's home is due. That being said, Zurich could have communicated better with Mr C at times and this would have gone a long way to reducing the upset the necessary delay was causing him. Therefore, I do intend to award compensation to Mr C for the distress and inconvenience that Zurich caused him by not communicating with him as well as it might have done. I am currently satisfied that £150 is a fair and reasonable award.

For completeness, Mr C has mentioned his concerns about how evidence was handled during this complaint and earlier by Zurich during his claim. I have seen no evidence that Zurich did not provide all the evidence that it had received to us. It is not for me to comment on how the complaint was handled prior to my involvement. However, it is not for this service to present a complainants case for them, rather we assess the evidence provided by both sides in order to reach a fair and reasonable conclusion in all of the circumstances.

my provisional decision

My provisional decision is that I am minded to uphold this complaint in part. I say uphold in part as Zurich Insurance PLC has agreed to 'roll-back' its avoidance to 2008 which I believe to be fair and reasonable. This means that it must reimburse Mr C a further two years premium (if it has already paid that going back to 2010, if not it will have to pay this as well).

I also believe that £150 compensation for distress and inconvenience is due to Mr C.

However, I also provisionally find that, regardless of the date, Zurich Insurance PLC's avoidance of Mr C's policy, and by extension his claims, was fair and reasonable. I do not intend to order Zurich Insurance PLC to reinstate Mr C's policy.

I do not intend to make any other award against Zurich Insurance PLC.

Fiona Robinson
ombudsman