

complaint

Managing agents of a firm that owns a property, M, complain on its behalf about two letters sent by Zurich Insurance Plc in 2016 to M's residents, referred to here as lessees. They said the letters included incorrect information and led to the lessees taking legal action. The agents want Zurich to set the record set straight, with an apology and costs reimbursed.

background

I set out the background to the complaint in my provisional decision, which is attached.

my provisional findings and the parties' responses

In my provisional decision I said Zurich hadn't imposed inspections on lessees to see if plumbing checks were carried out, but this didn't make much difference as it still applied the excess to claims where checks hadn't been made. M's agents said the checks came from Zurich or M, and as agents they only act on instruction from their client. I said Zurich had not given complete or accurate information in its letters to lessees.

Concerning costs, I said I was minded to require Zurich to cover M's legal costs relating to the deficiencies in their letters, but not the agents' own time in dealing with the issue. M's agents said that had Zurich sent correct letters, or corrected them earlier, costs wouldn't have been incurred. The agents said Zurich should meet *all* legal costs and costs from '*subsequent court action brought by Lessees*'.

M's agents said Zurich's actions put them to significant work, which isn't a normal function of their role and not covered by M's management fee. They said M will be liable for these costs unless Zurich settle them, a situation they described as grossly unfair.

I said I was minded to require Zurich to meet any other third party costs to M that are directly attributable to the deficiencies in Zurich's letters. M's agents said these will be invoiced to M and passed on to Zurich.

Zurich said the property insurance was managed by brokers under delegated authority and decisions to improve the claims experience were agreed between the parties involved in the insurance. Concerning my recommendation for an amended statement, Zurich said an amended statement was agreed between the parties and sent by letter to residents on 27 July 2017.

Zurich said it didn't agree with some of the aspects of my provisional findings, but is willing to accept the conclusions in respect of costs. Zurich said it had previously offered to contribute towards legal costs directly related to the information provided in its letters.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I remain of the view that M's complaint should be upheld and for the reasons given in my provisional decision.

Zurich accepts my provisional findings in respect of costs. M's agents want me to remove the restriction I proposed that only legal costs and any other third party costs specifically relating to the deficiencies in Zurich's letters be reimbursed. I see no persuasive reason why

this should be changed as to do so would unfairly expose Zurich to costs for which its letters were not directly the cause. It is not our role to penalise businesses, and to allow recovery of costs not directly related to Zurich's letters could have that effect.

I would add that costs for which recovery is sought from Zurich must have been incurred by M, or its managing agents from third parties. Should M, or M's agents, obtain recovery of their legal costs from other parties then this should be taken into consideration in the amount of these costs to be recovered from Zurich.

As to the managing agents' own time, I said this isn't something for which we would generally award costs. M's agents said the work Zurich had caused them was in no way part of their normal role, as I had suggested. It said the work fell outside of its contract with M and would be separately invoiced.

M's agents describe the service it provides to clients on its website. It states that a 'dedicated claims hub' and 'specialist in-house insurance team' enable it to support clients as part of the service it provides. It may be for this reason that M asked its agents to try to resolve its complaint. M's agents have declined to send me a copy of its contract with M and I can't be sure of the extent of the service it offers.

I don't think it would've been difficult for M to bring its complaint to our service, and although it would still have benefitted from legal advice, I don't think it needed much other professional assistance to pursue its complaint. For these reasons I make no award for the recovery of M's agents' own time.

Zurich said the content of the letters sent to lessees on 27 July 2017 was agreed between the parties, including M's agents. M's agents said there were discussions about this, but denied agreeing to the specific correspondence. From what I've seen there doesn't appear to be a need for a further amendment to be issued, but if that changes then the parties should agree a new statement, and that can incorporate my findings about Zurich's letters.

my final decision

For the reasons I have given, it is my final decision that the complaint is upheld. I require Zurich Insurance Plc to pay M and M's managing agents' legal costs that specifically relate to the deficiencies I have identified in Zurich's letters to M's lessees.

Zurich Insurance Plc should also pay M and M's managing agent for any other third party costs they have incurred that are directly attributable to the deficiencies in its letters. I do not require Zurich Insurance Plc to pay for M's managing agents' own time and resources in dealing with the lessees about their insurance, or working to resolve M's complaint.

In the event that the parties are unable to agree the costs to be reimbursed to M, I recommend they submit their disagreement to professional mediation or arbitration. The parties to this complaint may need to wait before deciding on the sum to be recovered to see what recovery, if any, M can obtain on its legal costs from other parties.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 5 March 2018.

Andrew Fraser
ombudsman