

The complaint

Mr S is complaining on behalf of L – a limited company – about the way Zurich Insurance PLC has handled a claim L made on a commercial property insurance policy.

What happened

Mr S says, in October 2022, a leak from the property above L's premises occurred which caused damage to L's premises. So L contacted Zurich to claim on the insurance policy that covered the building in which it owned the leasehold. Zurich appointed a loss adjustor to investigate the claim on its behalf.

Mr S was unhappy with the conduct of the loss adjustor. He said the loss adjustor continually asked him what the cause of the leak was. But he says he'd explained the leaseholder of the above didn't engage with him. And he said it was for Zurich to contact the freeholder or the leaseholder itself.

In December 2022 the loss adjustor advised it had completed its investigations and it said it had passed this information to Zurich. Following this, Zurich contacted Mr S to say it wanted to complete a video interview to discuss some aspects of the claim. Mr S responded to say he didn't want to have a recorded video interview as he was worried about the implications that may arise from an out of court settlement he'd reached in 2019. And he asked Zurich to attend L's premises to carry out the interview.

Zurich didn't agree to go to L's premises and said the only option was a recorded video or telephone conversation. It said this was standard practice. Mr S said he wouldn't agree to this and wanted a face to face meeting at L's premises. Zurich later agreed to a face to face meeting, but it said it would need to be conducted at Zurich's offices. Mr S maintained that the interview was to be conducted at L's premises and he thought it was unfair Zurich was holding up the claim settlement. And he said this delay was impacting L's staff's health. Zurich maintained it would not attend L's premises, so Mr S referred L's complaint to this Service. And he said he thinks Zurich's actions amount to racial profiling. Finally he said he wasn't the policyholder of the insurance policy – the freeholder was – so he said he wasn't bound by Zurich processes.

Our investigator didn't uphold this complaint. He said Zurich had explained its concerns were in relation to Mr S's conduct and communication with the loss adjustor on previous claims. So it had a duty to safeguard its staff, which is why it wasn't willing to attend L's premises. The investigator said Zurich was entitled to make further queries as part of the claim investigation. And he said he was unable to force Zurich to attend L's premises. Finally, he said he hadn't seen anything to show that Zurich had racially profiled Mr S.

Mr S didn't agree with the investigator. He said he'd since offered to have the meeting conducted at his solicitor's office. So he queried why this wasn't being agreed. He said he had a right to safeguard himself and he thought the investigator was being biased by not taking this into account. He said there wasn't anything to support that he'd been aggressive or acted unreasonably.

As Mr S didn't agree with the investigator, the complaint's been passed to me to decide.

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've decided to not uphold this complaint and I'll now explain why.

I should first set out that I'm only considering Zurich's actions up to when it issued its final response to L's complaint in February 2023. I'm aware the claim has moved on since then, but I'm unable to comment on anything that's happened after February 2023.

Firstly, I note Mr S has said that L is not bound by Zurich's terms and processes because it's not the policyholder. But I respectfully disagree. While it isn't the policyholder, it is a named beneficiary of the policy and it's seeking to rely on the terms of the policy to claim for the damage. So, if L wishes Zurich to settle the claim under the insurance policy it is bound by *all* the policy terms – including the requirement to assist with any enquiries Zurich may have. So it wasn't for L to dictate how a claim should proceed. But if it wished for Zurich to settle the claim under the terms of the policy it needed to agree to any reasonable requests Zurich may have.

That said, Zurich also had a duty to treat its customers fairly and to take into consideration any concerns they may have. I don't think it was unreasonable for Zurich to want to carry out an interview as it wanted to understand whether any of the damage being claimed for was pre-existing – i.e. related to leaks it had settled previously. And it's standard practice that online video meetings are used to carry out such interviews.

I recognise that Mr S had concerns about the interview being recorded, which is why he wanted a face to face meeting. But, even if it had been face to face, a written statement would have been taken of everything Mr S had said. So, in *all* circumstances there would be a record of what was said. However, Zurich still had a duty to consider Mr S's request. I note he says Zurich has racially profiled him by refusing to attend L's premises.

I should first state that this Service isn't the regulator. So it's not our role to direct Zurich generally about how it conducts its business. But I can look at whether it has treated Mr S – as an employee of L – fairly. It's also not our role to say whether a business has acted unlawfully or not – that's a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things into account including relevant law and what we consider to have been good industry practice at the time. So, although it's for the Courts to say whether or not Zurich has breached the Equality Act 2010, we're required to take it into account, if it's relevant, amongst other things when deciding what's fair and reasonable in the circumstances of the complaint.

The Equality Act 2010 ('the Act') is relevant here and I've thought how it applies in Mr S's case. The Act prohibits several types of discrimination – such as direct and indirect discrimination and victimisation – and the relevant protected characteristic here is race.

Zurich has said it didn't want to attend L's premises because of the way Mr S had spoken with the loss adjuster previously. But, as I said, Mr S thinks Zurich was racially profiling him in this refusal. But I don't agree. Mr S is essentially saying that Zurich indirectly discriminated against him – and in turn L.

I've considered what Mr S has said and also thought about Zurich's reasons for not wanting

to attend L's premises. In its submissions to Zurich, the loss adjustor had said Mr S had been aggressive during the claim and abusive towards its claims handlers. I've also seen some emails between Mr S and the loss adjustor and I note he's said the following in some of his emails:

- *"And then you hire idiots from [the loss adjustor]"*
- *"You are testing our patience? Or you are just incompetent?"*
- *"Let me please say this, you are out of your depth, and talking complete non-sense. You want to try us, be our guest."*

Ultimately, I haven't seen anything to show that Zurich has made its decision on grounds of race. I'm not saying Mr S's actions amount to aggressive or unreasonable behaviour. But, given the concerns the loss adjustor raised, I can't say it was unreasonable for Zurich to not want to conduct the interview at L's premises. I think it took the decision to safeguard its staff and I don't think it was unfair for it to make the decision it did.

I recognise Mr S wanted the interview to take place in a manner of his choosing. But, as I said above, Zurich was entitled to have control of the claim process and I haven't seen anything to show it's acted unfairly in the way it's done so.

I've also considered the concerns Mr S raised about the loss adjustor's actions at the start of the claim – notably that he says it was asking him to provide information he'd said L couldn't provide. But I don't think the loss adjustor acted unfairly. In the first instance, it was L's responsibility to demonstrate that any loss or damage arose from an insured peril. So it was ultimately for L to show that there was an escape of water that caused the damage. This is what the loss adjustor was setting out and I can't say this was unfair. I can also see that the loss adjustor did explain to Mr S it was also making these enquiries with the freeholder, which he did. And it was ultimately through these enquiries that he was able to complete his investigations. So, I can't say that the loss adjustor acted unreasonably in the handling of the claim.

My final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S – on behalf of L – to accept or reject my decision before 6 January 2024.

Guy Mitchell

Ombudsman