

## **complaint**

Mr K has complained about the way in which his claim for an escape of water at his property was handled by Zurich Insurance PLC.

## **background**

Mr K made a claim to Zurich in early 2011 following an escape of water at his home, which he owns through a shared ownership scheme with a company ("A"). Zurich accepted the claim and loss adjusters were appointed to manage repairs to Mr K's home. However, relations between Mr K and the loss adjusters deteriorated and a new loss adjuster was appointed several months into the claim.

I should note at the outset that this decision will not cover this claim from the start in 2011. Issues that arose up until the point that the original loss adjusters were replaced have already been dealt with by one of my colleagues in a final decision.

Furthermore, since that first final decision, another of my colleagues has considered and issued his findings on further issues with the claims handling after that point. I will therefore consider events that have occurred from about September 2012. As a result of the decisions issued by my colleagues, which set out in some detail the chain of events, and the fact that these events are well known to both parties, I do not intend to repeat them here.

This complaint raises Mr K's concerns about various issues relating to the repairs that have been undertaken at his property and the handling of his claim.

One of our adjudicators assessed the evidence and recommended that the complaint should be upheld in part. However, as an agreement could not be reached amongst the parties, this case has been passed to me for my consideration.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

### *repairs to the property*

Having reviewed the photographs that Mr K has provided, I can understand why he has found the claims process frustrating and upsetting. Zurich has acknowledged that, at the first attempt, repairs were not carried out to an acceptable standard; it is more than unfortunate that the life of this claim was prolonged by the fact that certain work had to be repeated or corrected and that there are still issues.

For example, there are a number of decorative issues, including bubbling in paintwork, "bleeding" of paintwork of one colour into another and cracks and scratches to woodwork and paintwork that have not been repaired. Some electrical fittings are not straight or have not been painted correctly.

Mr K states that he has always maintained the property diligently and is mindful of the obligations of his lease with A. I can appreciate why Zurich's statement that works are now complete must be distressing when he considers there to be so many outstanding items that need to be addressed; it is the case, for example, that newly painted walls should not be chipped.

Zurich has offered for a surveyor to assess the repairs and report on the standard of works; our adjudicator recommended that a surveyor should visit the property, with Mr K in attendance, for a list of outstanding repairs to be agreed.

I consider this to be a fair outcome in the circumstances and the only way to conclude the repairs to the property. In the interests of drawing this claim towards a resolution that is acceptable to all parties, the surveyor should consider all of Mr K's concerns, including more recent issues, such as the leaking patio door.

Mr K has sought advice from his own surveyor, which he would like Zurich to review; I understand it has not done so to date. It seems reasonable, in order to conclude this process, for Zurich to consider any report.

#### *wallpaper and paint choices*

There is confusion as to whether the wallpaper originally chosen by Mr K was used; moreover, he is concerned that the wallpaper that has been used in the house has been damaged by Zurich's contractors.

Zurich has offered to pay Mr K the cost of replacement wallpaper and a sum for him to employ decorators to hang that wallpaper. I consider this to be a reasonable offer. Mr K has said that he bought furnishings to match the original wallpaper and the latter may no longer be available. If this is the case, Zurich should consider any evidence of the cost of such items and reimburse those costs to Mr K.

I have also noted Mr K's concerns that the paint used in the property is not the paint that was originally agreed. He has provided photographs of paint pots in the house; some are for undercoat and primer, but others are for top coat / finishing paints. I can see why the latter has caused concern as to whether the agreed paint was ultimately used. Zurich has stated that it can evidence that the correct paint was used; it should provide copies of this evidence to Mr K. If it cannot do so, it will have to re-consider this element of the complaint.

#### *notice to quit alternative accommodation / return to the insured address*

Mr K is not willing to return to the insured address whilst it is in what he has described as a "horrendous state". As set out above, I agree that there are outstanding issues. However, that is a different question to whether or not the property is now in a habitable state. Mr K says there are significant remedial works to all rooms, giving rise to significant disruption to "normal occupation" of the property. He has consulted a surveyor who has said that the property is uninhabitable.

The problems I have highlighted above are not isolated to one room and there will be some disruption whilst works are undertaken. The question is whether this renders the property uninhabitable and I am not persuaded that it does. This service considers a property to be uninhabitable if basic everyday living is not possible because, for example, kitchen facilities (and/or bathroom facilities in some cases) cannot be used at all. Having assessed the evidence, I have not seen anything to persuade me that either of these is the case here.

Mr K has said that the condition of the garden and exterior alone is sufficient to declare the premises uninhabitable. I cannot agree that this is the case. He has also stated that the builders have poured waste into an open drain and that this has "more than likely" blocked the drains. However, I have seen no conclusive evidence that this is the case.

There may be a degree of inconvenience whilst remedial works are carried out. However, although the issues appear to be numerous, none that I have seen should prevent Mr K from returning to the property; Zurich should offer him any assistance he reasonably requires to do so. Returning to the property would not mean that Zurich would no longer be required to undertake the remaining works.

Mr K has pointed to works to the ceilings that were dealt with in my colleagues' decisions. I cannot comment on their findings as to whether this work should be carried out, except to say that having such works done would not cause the property to be uninhabitable, as discussed above.

Our adjudicator recommended that, for Mr K's peace of mind, a check of the boiler and heating at the property should be carried out, given the significant period of time during which it has not been used. I do consider that this would be fair in the circumstances.

Mr K says that A has asked for rent on the insured property to recommence and that, as it has stated that the property is in a habitable condition, it must have had sight of documents from Zurich that he has not seen. He has highlighted that his is a "fully repairing lease" and he is concerned that he will be in breach if repairs are not concluded satisfactorily.

I cannot comment on the legal obligations Mr K owes A under his lease, only on Zurich's obligations under the insurance policy. Whilst I agree that there are some outstanding issues, I do consider that its liability to provide alternative accommodation because the property was uninhabitable has now been fulfilled.

#### *garden*

The issue of maintenance of Mr K's garden was dealt with by both of my colleagues in their decisions; it was concluded that it would be impractical to agree what should happen with the garden until the repairs to the house are complete and the state of the garden can be properly assessed. Zurich has agreed that it will commence work to the garden once the repairs to the house are complete and Mr K has returned there.

As concluded above, the state of the garden or otherwise is not a reason either for the claim not to proceed or for Mr K not to return to the property.

#### *exterior woodwork*

Mr K says that the length of the claim means that there has been no maintenance of the exterior of his property and, as a result, the exterior woodwork, including the porch and fascia boards to the windows, is now rotten.

I am not persuaded that the works at the property have allowed this to occur. Without evidence of planned maintenance to the property which was prevented by the works for this claim, I do not hold Zurich responsible for any gradual wear or damage to the woodwork. If Mr K supplies Zurich with any of this evidence, it should consider it; otherwise, I will not require it to do anything in relation to the exterior woodwork.

#### *general claims handling*

It is certainly the case that this claim could have been handled better; Zurich has acknowledged that the initial repairs were not satisfactory. Moreover, having considered

Mr K's complaint about the conduct of the contractors, I do appreciate his concerns. It was not Zurich's fault that Mr K's property was initially damaged and he had to make a claim – nor that he had to leave his home for repairs to be undertaken. Insurance claims of this nature inevitably involve some inconvenience.

It is the case that Mr K has been out of the property for longer than should have been necessary, although I do not consider that Zurich is responsible for delays in the period covered by this decision. As concluded above, the property is habitable again and ready for Mr K to return.

I have to consider what inconvenience was caused over and above that which was inherently part of this claim. I have seen photographs of the property whilst the works were on-going, showing the general use of the property as a work site. I have noted, for example, Mr K's complaint that contractors were using the W.C. in the property when there was a "portalo" available for their use; Zurich did not action this complaint quickly.

I have seen photographs of a skip that is very full; this should have been emptied more regularly. I have also seen photographs of the outside of the property strewn with builders' waste, including fencing, sanitary ware and other debris. The proper use of a skip, or clearance of the site daily, should have meant that this situation did not arise. Issues with the works caused Mr K to worry about his home and the way it was being treated during the course of the works, to the extent that he did not feel able to go on a planned family holiday.

Mr K's photographs also show his garden, which was well maintained and clearly a source of pride and enjoyment. Whilst my colleagues' decisions have dealt with reinstatement of the garden, the upset caused by its current state is a consideration in my award.

Mr K has sent photographs of a personal injury sustained due to the state of the property; any evidence linking this to the property should be sent to Zurich to consider in the first instance.

Zurich has offered to pay for a professional deep clean of the property before Mr K returns to live there and I do consider this to be a reasonable – and necessary – offer in the circumstances. Any cleaning that would ordinarily follow on from any of the outstanding works should also be carried out, as in the ordinary course, once those outstanding works are completed.

Overall, I consider that compensation is merited for the shortcomings in the claims handling set out here and I will require Zurich to pay Mr K £350.

#### *outstanding items*

I have noted Mr K's comments that he was denied access to his home. I can see that the front door was replaced and the locks changed, but I am satisfied that him not having access was due to poor communication (and therefore poor claims handling) by Zurich and its agents, rather than a deliberate attempt to exclude him from the property.

It is clearly not the case that a policyholder should be out of pocket for claims expenses and I am pleased to note that the outstanding payments that Mr K complained about, including utility bills, stationary and council tax bills have now been reimbursed by Zurich. Any other issues around outstanding amounts should be referred to Zurich in the first instance for its consideration.

Finally, Mr K has raised concerns that some of his contents have been in storage for so long that they may no longer be working or may have been damaged (in particular, white goods). This would primarily be an issue for Mr K's contents insurer and I note that a separate investigation is being undertaken at this service with that insurer.

### **my final decision**

For the reasons given above, I uphold this complaint, I require Zurich Insurance PLC to:

- meet the cost of a surveyor to consult with Mr K, including considering any evidence from his surveyor, and agree a list of final repairs;
- consider the damage to the rear patio door;
- reimburse Mr K the cost of replacement wallpaper, and an allowance for labour;
- consider evidence of costs for any matching items if the original wallpaper is not available and reimburse those costs, plus interest from the date of purchase;
- consider reimburse any reasonable outstanding claim costs, subject to evidence of such costs being provided by Mr K, plus interest from the date those costs were incurred;
- provide evidence of the paint used to decorate the property;
- arrange, at Mr K's election, a safety check of the boiler and heating at the property;  
and
- arrange a professional deep clean of the property prior to Mr K's return and provide any other assistance for the return to the property.

Any cash payments made should include interest at a rate of 8% simple per annum, less any legally deductible tax, from the relevant date until the date of settlement.

I also award Mr K £350 compensation to reflect the issues with the handling of his claim set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr K to accept or reject my decision before 16 February 2015.

Helene Pantelli

**ombudsman**