

The complaint

Mr H complained that Zurich Insurance plc (Zurich) made a fraud allegation against him following claims for two separate leaks at his home, but it didn't formally decline his second claim.

Mr H's legal representative brought the complaint, and a Loss Assessor also acted on his behalf. For ease, I'll refer only to Mr H throughout my decision and any reference to actions include those taken by his representatives.

What happened

Briefly, in June 2018 Mr H claimed under his buildings insurance for an escape of water from his bathroom (Claim 1). When Zurich's loss adjuster (LA) inspected the damage, Mr H mentioned that there was another leak from his en-suite which he hadn't yet claimed for (Claim 2). He asked the agent to take photos of both areas of damage while on site, in preparation for making his second claim.

Mr H made his second claim the following week, and Zurich's LA attended. However, there was some doubt about whether all the damage reported was caused by the second leak. From here followed a detailed exchange of opinions, expert reports, and information requests.

Mr H complained about Zurich's handling of his claim and its failure to formally decline Claim 2. He refused to allow further investigation at his home because he thought Zurich had carried out enough visits. Zurich then declined Claim 2 because it thought Mr H had deliberately concealed and misrepresented information; made false statements, and failed to co-operate. But it accepted Claim 1 less Mr H's excess, and less the cost of its investigation into Claim 2.

Our investigator upheld Mr H's complaint because she didn't think that Zurich had fairly applied the fraud condition. While she accepted there were discrepancies in the information Mr H gave, she thought that was likely due to misunderstandings, with no intention of trying to gain more out of the claim than he was entitled to. Our investigator thought Mr H had only become uncooperative in response to Zurich's requests for further investigation because it applied the fraud condition and cancelled his policy. So, she didn't think it was fair to apply the failure to cooperate condition either. Our investigator recommended that Zurich:

- shouldn't apply the fraud condition;
- shouldn't deduct the investigation cost from Mr H's first claim;
- should reinstate the policy, giving him another chance to cooperate with its investigation, and
- remove the negative markers from Mr H's record.

Mr H accepted this outcome and confirmed he would allow a suitably qualified person to attend his home to inspect the flooring.

Zurich didn't agree with the outcome or recommendations because it thought it had enough evidence to warrant invoking the fraud condition.

I issued a provisional decision in July 2021 explaining that I was intending to not uphold Mr H's complaint. Here's what I said:

To be clear, it isn't within my remit to decide whether fraud has taken place. I've looked at whether Zurich's decision to decline the claim for the reasons it gave was fair and reasonable in the circumstances, and in line with the policy terms. In doing so, I've relied on the same expert evidence as that available to both Mr H and Zurich. While I won't comment on every piece of information, and our rules don't require me to, I'd like to reassure both parties that I've given it all considerable thought. I've focused on what I think the key issues are, which I'll explain now.

When making a claim under an insurance policy, each party has a responsibility. Here, Mr H's responsibility was to show that he'd suffered an insured loss. Zurich's responsibility was to settle the claim unless it could show that an exclusion applied.

Claim 1

Zurich accepted Mr H's first claim for escape of water from his bathroom. It seems the outcome of the claim itself is not in dispute, but Mr H is unhappy that Zurich reduced the settlement for Claim 1 so that it could recover its costs for investigating Claim 2. As the settlement was only adjusted because Zurich declined the second claim, I'll cover the reduction of the Claim 1 settlement as part of my overall decision about Claim 2.

Claim 2

Mr H made this claim for escape of water from a mixer tap in his en-suite shower. He said the water was dripping through the floor, ceiling and light fittings, and onto a chair, lamp, and wooden floor below. The focus of the claim, but not limited to, was the damaged floor. Zurich didn't think the floor would've been damaged to the extent it was in the circumstances Mr H described.

The complaint Mr H brought to this service was about Zurich's failure to formally decline his claim. Since bringing his complaint, Zurich declined his claim and agreed to us considering this aspect of the complaint in the spirit of reasonableness. Zurich declined Mr H's claim for breach of Conditions 4 and 2:

- Deliberately concealed information from us;*
- Deliberately misrepresented information to us;*
- Deliberately made false statements to us;*
- Failed to co-operate with us.*

Further, in line with the fraud condition, Zurich cancelled the policy with effect from the date of Claim 2, and said it would take the money it paid out to investigate Claim 2 from the settlement amount it agreed to pay Mr H for Claim 1.

Date of the leak

Looking at the evidence, I can see that Zurich questioned Mr H's account of events leading up to his discovery of the second leak. But I can't see that he provided a reasonable explanation for the differing accounts. Mr H reported that he discovered the leak mid-week, but also said it was on a Sunday after a weekend away. He said the plumber repaired the leak the next day, which the evidence shows was a Monday. Zurich didn't think Mr H would've been unable to recall the exact day, especially if he'd just returned from a short break, and I agree. While this in isolation might not amount to fraud, I think it's reasonable that Zurich wanted to investigate further.

Access and repair

Zurich spoke to the plumber who said he'd broken tiles to access and repair the mixer-tap leak. Mr H reported that the ceiling was cut away to gain access, and that the tiles weren't broken. But he also said the ceiling came down because of the leak. The photos show undisturbed tiles around the mixer-tap and a repaired ceiling. Again, in isolation this might just show confusion between Mr H and the plumber but, in the absence of a reasonable explanation for the differing accounts, I accept that this cast further doubt on the claim for Zurich. I think it's reasonable that Zurich wanted clarity around the circumstances, especially as part of the claim was for repair of the full ceiling, and without it, I think its delay providing a decision was fair.

Lamp and floor damage

Mr H said the wood floor was damaged because water had pooled underneath a lamp. The photos show a circular mark broadly the size of the lamp base, with further uneven edges, typical of a spreading water stain, and some swelling. Mr H's expert report says the damage could've been caused within 48 hours and the marks were typical of that seen when water is in contact with ferrous metal. Zurich's expert says the damage was there much longer and can't be attributed to water dripping for just 48 hours. Unfortunately, Mr H immediately disposed of the chrome lamp so neither party could determine whether it showed signs of involvement in the floor damage, and they relied on its identical pair for base size comparison.

The issues which caused Zurich to doubt Mr H's claim about the lamp contributing to the floor damage are these:

- he disposed of the lamp immediately, preventing verification of his claim;
- Mr H said the purchase price of the lamp was around £700, but he hasn't claimed for the loss;
- it's unlikely that the leak Mr H described would've damaged the lamp to the extent that he didn't try to get it repaired;
- Zurich has seen one lamp, but Mr H hasn't provided evidence that he bought two identical lamps, and
- the expert reports give conflicting information about the cause and extent of the floor damage.

With these points in mind, I can see why Zurich had doubts about the claim. Mr H couldn't provide evidence of his loss, and he chose not to claim for items which Zurich says could've been added to the claim for consideration. At this point, Zurich has concerns about three parts of Mr H's claim, none of which he was able to verify or explain.

Expert reports

Two experts gave conflicting assessments of whether the floor would've been damaged to the extent shown in the photos by a 48-hour dripping leak. But Mr H wouldn't agree to a third expert assessment to bring this matter to a conclusion. In situations such as this, I'd expect a third assessment and I think Zurich's request was fair because it would've given Mr H the opportunity to prove his loss. While Mr H thought enough people had already inspected his home, – a total of four people for two separate claims – given the value of his claim and the possibility of Zurich invoking the fraud and/or failure to cooperate conditions, I think it would've been reasonable to agree a further inspection. So, I can see why Zurich considered his refusal to cooperate with its request evidence of an exaggerated claim.

Floor invoices

Both experts described the varnished wood floor as high-end and in (at least) good condition. During the claim investigation, Mr H provided Zurich with the original floor purchase and installation invoice from May 2010, and a quote for full replacement by the

same company, dated July 2018. Zurich considered the documents to be false for these reasons:

- the purchase invoice charged VAT at 20% - the rate at the time was 17.5%;
- the VAT number handwritten on both documents isn't a valid number, and
- the flooring company was dissolved four years before the quote was issued.

I've confirmed this information with HMRC and Companies House. While Mr H can't be held responsible for a company recording its VAT registration number incorrectly, I think it's unlikely that a company would make the same handwritten mistake on two occasions four years apart. I also think Zurich fairly concluded that Mr H would've known that the company was no longer operating, and a dissolved company wouldn't have quoted for work. Based on this information alone, I think Zurich had reasonable cause to think Mr H had supplied false documents to support his claim.

So, Zurich had doubts about the validity of the claim because of the description of events, the date on which they happened, the differing expert reports, and the issues around the lamp. Together with the evidence suggesting Mr H provided false documents – a proof of fraud in itself – I think Zurich has shown that its decision to invoke the fraud condition was fair and reasonable.

Mr H has now agreed to the third expert assessment of his damaged floor. But Zurich confirmed that its decision to invoke the fraud condition wasn't due to Mr H's refusal to have a further inspection – it was because it had sufficient evidence to think he'd made a fraudulent claim. So, if I suggested that the third assessment goes ahead, I would simply be prolonging this matter. Zurich declined the claim under the fraud condition and, for the reasons I've given, here, I think it was fair to do so. I won't be asking Zurich to make arrangements for a further assessment.

Overall, then, I think Zurich has shown that, on the balance of probability, the evidence Mr H provided to support his claim was likely to be false and exaggerated in order to gain from his policy. The Insurance Act 2015 states that if a fraudulent claim is made,

- the insurer is not liable to pay the claim,
- the insurer may...treat the contract as...terminated with effect from the time of the fraudulent act.

The policy conditions state:

Fraud

If you or anyone acting on your behalf have intentionally concealed or misrepresented any information or circumstance that you had a responsibility to tell us about, or engaged in any fraudulent conduct, or made any false statement relating to this insurance, we will:

- void the policy in the event of any fraud which occurred during the application process, which means we will treat the policy as if it had never existed; or
- terminate the policy with effect from the date of any fraud which occurred during the period of insurance; and in either case, we will:
- not return to you any premium paid;
- not pay any fraudulent claim or a claim which relates to a loss suffered after any fraud;
- seek to recover any money from you for any claim we have already paid which is later established as invalid, including the amount of any costs or expenses we have incurred;
- inform...other financial services organisations and anti-fraud databases.

Zurich declined Mr H's claim under the fraud condition, cancelled his policy and confirmed it would recover its costs for Claim 2 from the Claim 1 settlement. I'm satisfied that its actions were in line with those provided for within the Act and the terms of the policy, so I won't be asking Zurich to reinstate the policy or remove any fraud marker from the database.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Zurich had nothing further to add.

Mr H responded with further comments under each of the headings in my provisional decision, and he disagreed with the overall findings. I'll summarise and respond to each point in turn.

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.

Having done so, I've decided not to uphold Mr H's complaint. I realise he'll be disappointed with this outcome, but I haven't seen anything to suggest that Zurich handled his claim unfairly.

As a first point, Mr H commented that he'd not seen the correspondence provided by Zurich to our service. Some of the information is commercially sensitive, but I'm satisfied that my decision summarises the key pieces of evidence. I understand Mr H is aware of how he can obtain any personal data.

The insured peril/loss

Mr H believes he demonstrated his loss, but Zurich doesn't think the level of damage seen could've happened in the way he describes. Mr H hasn't provided any further evidence to support his claim, but he comments that Zurich hasn't paid any part of the settlement for the first claim, or shown its costs for the second claim to be removed from the first.

As Mr H hasn't provided any further evidence, and after reconsidering what was already available, my view on the loss and the circumstances around it hasn't changed. I'll address the specific points of the claim under the relevant heading below. In terms of any settlement, my decision is based on the understanding that Zurich will, if it hasn't already, settle the first claim which is not disputed. If Mr H doesn't receive the settlement, he'd need to raise that with Zurich in the first instance.

Date of leak

Mr H said his travel dates were confirmed by Zurich and reliance shouldn't be placed on any mistake made when giving the day and dates of the insured peril. He says any inconsistency was a misunderstanding because he had two ongoing claims for escape of water. He also explained that Zurich spoke with his plumber who confirmed the exact dates.

If there'd been a simple misunderstanding once, or perhaps twice, then I might accept this. However, having looked through the documents again, it's clear that Mr H repeatedly reported the claim differently. I can see that he said the damage was found after one night away from home, after a weekend away, on a specific mid-week date, and on a Sunday evening. But, the point I made was that he gave Zurich conflicting information, so it was reasonable that it wanted to investigate further. I agree that confusing the dates, alone, might not amount to fraud, but it does go to explain why Zurich delayed giving a decision about the second claim, which was Mr H's original complaint.

Access and repair

Mr H explained that the plumber wouldn't necessarily be aware of the difference between trace and access, and simply repairing a leak. So, he doesn't think it was fair for Zurich to criticise him for any comments the plumber made.

The concern isn't what amounts to trace and access – rather that Mr H said tiles weren't broken and the plumber said he broke them to effect the repair. Further, it was reported that the ceiling came down because of the leak and that the ceiling was purposely cut away to gain access. Again, the issue here is that Zurich received differing accounts of the work done and how the leak was accessed, so I think it was reasonable to delay its decision about the claim while waiting for clarification. I don't think Zurich did anything wrong here.

Lamp and floor damage

Mr H thinks it's odd that Zurich doubts his version of events because he didn't claim for his damaged lamp. However, I don't think his decision not to claim for it was the key factor in Zurich's consideration of the claim. Mr H threw away what was an expensive lamp rather than keep it to support his claim, or to see whether it could be repaired or replaced. If the water leaked down the lamp and pooled underneath, leading to the floor damage, then it's reasonable that Zurich would want to see it to confirm it was the source of rust present in the floor stain.

So, I think it was reasonable that Zurich questioned Mr H's decision not to keep or claim for the lamp. Partly because it was one of a matching pair, and for which he had a receipt, and partly because it would've allowed him to prove his claim. In the circumstances, I think it was reasonable for Zurich to take this into consideration when assessing the overall claim.

Expert evidence

Mr H says he hasn't been able to confirm that Zurich's engineers are more qualified than the expert he appointed. He points out that his expert carried out comparative testing and disputed Zurich's suggestion that the damage could've been caused by a potted plant.

I see that Mr H's expert report says the damage didn't contain any organic matter, which is why he ruled out a potted plant. He went on to say that the damage was metallic in nature, suggesting the water had come into contact with ferrous metal. Setting aside the fact that plant pots can be metal, and a pot inside the home is unlikely to have drainage holes which might let organic matter through, Zurich pointed out that the lamp was chrome plated and unlikely to be a source of rust over such a short time. I also note that Mr H's expert says that a domestic water supply naturally contains traces of ferrous elements and could've contributed to the staining. So, I don't think the expert report provides anything conclusive.

Further, Mr H's expert carried out tests on a sample of similar wood and reported that the resulting stain was similar to that on the wooden floor. Mr H reported that the water dripped through his ceiling, down the lamp and pooled around the base. The test his expert carried out involved submerging a small piece of wood in water for 48 hours. I can't fairly say that the test mirrors the circumstances of the claim, and I'm not persuaded that Mr H's expert was better qualified to comment on the damage than Zurich's expert.

With all this said, the overriding issue is that if Mr H had kept the lamp to show its damage, this matter could've been avoided. Instead, there were two conflicting expert reports, and I don't think it was unreasonable that Zurich proposed a further inspection.

Mr H said he is willing to have a further inspection but, at this point, I don't think there's any benefit. A further inspection would just give another opinion of the same facts, without the lamp as firm evidence to support it either way.

VAT invoices

Mr H says he can't be expected to know the trading status of the original floor supplier, so Zurich's comments about it being dissolved several years earlier are irrelevant. He also says he submitted an estimate, not a VAT invoice, so there was no attempt of fraud.

The point here is that the VAT number on the paid purchase invoice is invalid, and the VAT percentage is incorrect for the date of issue. Mr H presented it as the original floor installation invoice, so I can see why Zurich questioned its authenticity, when considered alongside all other points raised here.

The estimate Mr H presented had the same invalid VAT number, but he says he can't be expected to know the company's trading status, especially as the same person has a similarly named company now. The trading status is not the only issue here. The VAT number is the same on both the invoice and the estimate, and it isn't valid. I think it's reasonable Zurich doubted the authenticity of the invoice because it showed current VAT rates and an incorrect registration number, and Zurich questioned whether it was, in fact, a more recently created invoice.

Summary

Looking at each point in isolation detracts from the overall view of the circumstances. Zurich declined Mr H's claim and invoked the fraud condition because, put together, these issues led it to believe that Mr H's second claim wasn't genuine, and that he'd provided false documents to support it. Mr H rightly pointed out that it isn't my role to determine a fraud allegation. My role is to decide whether Zurich fairly declined the claim and whether it was reasonable to invoke the fraud condition for the reasons it gave. For the reasons I've given above, I'm satisfied that Zurich's decision was fair and reasonable in the circumstances, and in line with the terms of the policy. I see no reason to ask Zurich to remove the fraud marker or carry out a further inspection of the floor.

My final decision

For the reasons I've explained above, and in my provisional decision, I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 October 2021.

Debra Vaughan
Ombudsman