

## The complaint

Ms F is unhappy with the service received from Zurich Insurance PLC (Zurich) following a claim made under her property insurance policy.

## What happened

Ms F is a leaseholder of a flat within a housing development. She pays towards an insurance policy with Zurich as part of her service charge. This policy is taken out in part for the benefit of Ms F and damage which might be caused to her flat that she'd be responsible for.

In August 2020 Ms F noticed significant damp issues in her flat and this was reported to Zurich, the insurance provider. Following investigation into the cause, Zurich said that they'd pay for damage caused by the discovered leak. But they said the cause itself was from gradual wear and/or poor workmanship to a waste cap located under Ms F's bath, and they said this wouldn't be covered as it was excluded under the policy. A second leak was also later discovered to the water tank, which was the responsibility of the freeholder to resolve and/or attempt to claim for under their insurance.

Due to the damage to her flat, Ms F was placed in alternative accommodation so repairs could be undertaken. However, the boiler in the alternative accommodation suffered with a loss of pressure which meant it stopped working on several occasions. Ms F subsequently said the alternative accommodation was uninhabitable, she moved out and asked Zurich to rehouse her elsewhere.

Zurich disagreed that the alternative accommodation was uninhabitable and refused to provide further accommodation as a six-month tenancy agreement was already in place. But they recognised having a boiler with an intermittent issue would be disruptive, so they agreed to pay a disturbance allowance to Ms F. They also paid £300 compensation for communication issues, and the amount of time taken to review the complaint.

Ms F approached this service during the early stages of the claim.

Our investigator looked into things, and he issued several assessments on the complaint. This is because the claim position kept changing and moving on. In his first assessment, he said Zurich hadn't reasonably shown the exclusion to decline cover for the waste cap applied. So, he recommended that Zurich should reconsider things, and carry out a further investigation. He also said he couldn't hold Zurich responsible for the freeholders delay in repairing the water tank. He said in his view the alternative accommodation wasn't uninhabitable and Zurich had acted fairly in paying a disturbance allowance generally.

An agreement couldn't be reached at first. Zurich disagreed with the recommendation to revisit and investigate the waste cap. And Ms F didn't agree with the investigators view of the alternative accommodation. As an agreement couldn't be reached, the complaint was going to progress to an ombudsman for review at that point. However, following further correspondence, Zurich agreed to carry out a further inspection as recommended. But Ms F refused to allow this to go ahead.

Ms F engaged legal representation, who then confirmed that the inspection could go ahead as suggested. This was completed, and the cause of the waste cap leak was concluded as poor workmanship, so Zurich maintained their position on it being excluded.

Ms F's legal representative on her behalf said she accepted the findings of the waste cap report and that it's not covered under her insurance policy. Ms F referred this back to the freeholder to resolve before insurance repairs could be continued. However, Ms F's legal representative outlined that the outstanding issue which she'd like an ombudsman to decide is the duration payable for the disturbance allowance. Ms F believes Zurich should pay it for a longer period than they have done.

Our investigator hadn't issued his findings on this point, so he looked at this element further. He concluded that the period Zurich had paid disturbance allowance for was fair and reasonable. Therefore, he didn't ask Zurich to increase this.

Ms F didn't agree and asked for a final decision from an ombudsman.

### **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.

Where I've referenced actions by Zurich, I'm also referring to other agents appointed by and acting on behalf of Zurich during the claim.

As mentioned above, since the complaint first came to us, things have moved on and developed. I've briefly summarised the key points of the background and what happened above. But I don't intend on commenting on every individual event which occurred as both parties are already aware. I don't mean this as a discourtesy to either party, but as things have moved on, I'll instead focus on what Ms F and her legal representative specifically have said remains in dispute, and that's the disturbance allowance duration. And I'll also comment on some other specific points I think are important in reaching a fair and reasonable decision in all the circumstances of the case.

But having said that, I'd like to reassure both parties that I've considered all the information they've provided when reaching my final decision.

I also note that Ms F is unhappy with Zurich's communication and handling of things with the freeholder for part of the claim and repairs they are responsible for. This relates to a leak from the main water tank, which caused damage to Ms F's property and impacted on the repairs being able to be started. But I'm not able to hold Zurich responsible for the actions or delays caused by the freeholder. And I'm not able to consider any insurance claim the freeholder made to Zurich, as that would be between those two parties.

Following the claim and damage being reported by Ms F, and Zurich carrying out an inspection which included a dye leak detection test, it was thought that the waste cap under her bath was causing the leak and consequential damage. Zurich accepted damage caused by the leak and said it would be covered, but they said the waste cap itself wouldn't be. They said the issue with the waste cap was due to poor workmanship and/or wear and tear, which is excluded under Ms F's policy.

Our investigator didn't agree that Zurich had demonstrated the exclusion applied. He said the report didn't make specific findings which showed wear and tear and/or poor workmanship. He noted the policy covered the broader event of accidental damage and in the absence of the exclusion being sufficiently demonstrated, he said Zurich should reinspect the waste cap and reconsider the claim.

After initial disagreement with this, both parties later agreed to this reinspection. Zurich carried out a more detailed investigation as the property had been stripped out which allowed them to fully access the waste cap. This enabled Zurich to conclusively evidence faulty workmanship to the waste cap. Our investigator was persuaded by these findings and that it was fair and reasonable for Zurich to rely on the exclusion to decline the waste cap specifically. Ms F, via her legal representative, accepts this conclusion based on the new investigation and referred this back to her freeholder to resolve, (and potentially try and claim for) before repairs could then be continued to her flat.

So, this point is no longer in dispute and I don't need to decide that here. But it wasn't only the waste cap causing the leak and consequential damage to Ms F's flat. At first it was thought it was, but following strip out works being completed, it was discovered there was a leak from the mains water tank in an adjacent room, which was affecting Ms F's property and causing damage. From the information provided, this is the responsibility of the freeholder to fix. Whilst Ms F is unhappy with Zurich and the freeholders handling of the repairs to this, I'm not able to hold Zurich responsible for delays caused by the freeholder. But I can see Zurich chased the freeholder for confirmation that the water tank was fixed, so they could proceed with repairs to Ms F's flat.

The main point in dispute that Ms F wants me to decide is the duration she's been given a disturbance allowance for. So, I'll consider this below, along with how this became payable.

Due to the damage caused at Ms F's flat, it was deemed uninhabitable as it needed to be stripped out to repair. Therefore, Ms F was provided with alternative accommodation which is covered under her policy.

Initially Ms F provided details of a property for alternative accommodation. However, Zurich didn't agree to this on the basis of cost and that Ms F had a one-bedroom property, and the alternative accommodation she proposed had two bedrooms. Ms F found another suitable property in her development which Zurich accepted (albeit this was also two bedroom) and a six-month tenancy agreement was arranged.

Ms F reported that the boiler in her alternative accommodation had repeated issues of pressure loss, which had caused it to stop working a number of times. The landlord arranged for an engineer to attend to identify the issue. However, the loss of pressure continued to happen intermittently. Ms F says this meant she didn't have heating or hot water on several occasions. The landlord showed Ms F how she could refill the boiler herself, but Ms F didn't want to do this, as she says she wasn't comfortable doing so for health and safety reasons.

Due to the repeated boiler issues, Ms F said the alternative accommodation was uninhabitable. And she wanted to terminate or dissolve the tenancy agreement and for Zurich to provide different alternative accommodation.

Zurich liaised with the landlord, who carried out and arranged further investigations. But the landlord didn't agree that the property was uninhabitable, so they didn't agree to end or dissolve the tenancy agreement as Ms F had asked. Zurich also didn't agree the property was uninhabitable, and as the tenancy agreement was already in place until March 2021, they refused to provide further different alternative accommodation until that time.

Ms F decided to leave the alternative accommodation toward the end of November 2020 and moved in with a relative. Ms F says she had to leave the alternative accommodation as she maintains it was uninhabitable due to the issues with the boiler. She also maintains the tenancy agreement should've been dissolved due to the landlord's breach of it.

As explained by our investigator, our role isn't to determine the enforceability of the tenancy agreement or whether it was binding or had been breached by either party. Instead, I need to consider whether Zurich took a fair and reasonable approach by saying the alternative accommodation wasn't uninhabitable, and subsequently refusing to provide further different alternative accommodation until the tenancy agreement ended.

Having considered everything, I don't think the position taken by Zurich was unreasonable here. This is because I don't agree the alternative accommodation was uninhabitable. The issue with losing pressure was intermittent. And the landlord attempted to resolve this when reported and also explained how this could be resolved. So, I don't think Zurich acted unreasonably by failing to provide further different alternative accommodation on the basis the property was uninhabitable.

Instead, following further discussion, Zurich recognised the issue with the boiler would cause disruption even though the property was habitable. Consequently, they agreed to pay Ms F £20 per day disturbance allowance backdated to 24 November 2020.

Ms F says this should've been paid up until 27 March 2021, which is when the six-month tenancy agreement ended, and she moved to different alternative accommodation covered under her policy by Zurich. She says it should be for the full period on the basis she says the property was uninhabitable for the entire duration. Zurich said it would only pay up to 15 January 2021. This is when they say the boiler issue was confirmed as resolved and Ms F could've returned to the alternative accommodation without facing further disruption with the boiler. But Ms F decided not to return.

The dispute I need to decide therefore is how long it is fair and reasonable for Zurich to pay the disturbance allowance for.

As I said above, I don't think the property was uninhabitable on the basis the issue with the boiler was intermittent. But I do agree it would have been disruptive. The issue Ms F was experiencing with the boiler was due to low pressure, which was being caused by the mains water tank leak. But after Ms F moved out, the water supply to Ms F's and other flats was diverted from the damaged water tank direct to the mains supply, so the freeholder could investigate the water tank issue further.

Zurich says that pressure issues were resolved when the water supply was diverted, and consequently that would've resolved the issues being experienced with the boiler in the alternative accommodation. Ms F has said she thinks pressure issues would have still continued. But she didn't return to the alternative accommodation or actually experience that, or provide evidence of this, instead she's hypothesised that it was likely.

However, the landlord and loss adjuster appointed by Zurich visited Ms F's alternative accommodation, shortly after the water supply had been diverted. They confirmed the boiler was working, and the property had heating and hot water and wasn't suffering from pressure issues. Whilst Ms F has said that there hasn't been any reports produced to show the boiler was working, she also hasn't provided any reports to show it wasn't. Instead she's given her suspicions that it wouldn't have been. But both the loss adjuster and landlord actually attended and confirmed the boiler was working, and I'm persuaded by this.

So, on balance I think it's most likely the pressure issues were resolved when the water supply was diverted to the mains, shortly before Zurich inspected and confirmed the boiler was working and there were no further issues. On this basis, I think the period Zurich paid for disturbance allowance (24 November 2020 to 15 January 2021) is fair and reasonable in the circumstances. As the boiler issue was, on balance, most likely resolved at that point, there was no further disruption to pay a disturbance allowance for and Ms F could've returned but decided not to. With this in mind, I'm not going to ask Zurich to increase this amount or pay it for the longer period until the end of the tenancy agreement in March 2021.

As outlined, the claim has developed and moved on since the case first came to us. And some issues first raised, such as the waste cap, are no longer in dispute. Ms F has copied this service into a number of emails with various parties in relation to her claim. She said this gives wider examples of how Zurich have in her view been unsupportive overall throughout. Amongst other things, she's also said she's unhappy that Zurich won't pay for her TV licence at the new alternative accommodation and delays in paying bills at the new property. And with Zurich not confirming what legal cover she's entitled to when requested. However, Ms F hasn't formally raised a complaint(s) with Zurich about these or any outstanding issues she's unhappy with and they haven't investigated her complaint(s) or issued their response to those concerns.

As explained by our investigator, the alternative accommodation (both whether it was habitable and disturbance allowance payable) and waste cap elements were part of the original complaint brought to this service and Zurich has considered these points and given their response. So, I've considered those points and issues here. And Zurich also paid £300 compensation for events up to that time, for communication issues and time taken, which alongside the disturbance allowance, I think was reasonable in the circumstances.

But if there any other issues Ms F is unhappy with (such as the TV licence, delays in paying utility bills, providing legal cover information or specific service issues) then she'd need to raise these with Zurich to investigate in the first instance as outlined by our investigator.

### **My final decision**

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 Ms F to accept or reject my decision before 7 March 2022.

Callum Milne  
**Ombudsman**