

The complaint

Mrs L and Mr L complain about their insurer, Zurich Insurance PLC (Zurich). Their complaint is about Zurich saying they would accept a claim for damage to their property but then declining the claim on the grounds of there being no insured event.

Zurich use agents to administer the policy. Reference to Zurich includes these agents.

What happened

In December 2020 and then again in January 2021 Mrs L and Mr L's property was subject to adverse weather, leading to rainwater entering the rear of the property through the roof. Mrs L and Mr L contacted Zurich to make a claim for the damage. Zurich appointed a surveyor (R) who inspected the damage the following month. R then wrote to Mrs L and Mr L to say their claim had been approved by Zurich and work to repair the damage would be scheduled once Mrs L and Mr L had paid the policy excess (£100), R then sent a schedule of works that only included rectification of the internal damage to the property (not any external damage that had caused the rainwater to come in).

Mrs L and Mr L then contacted Zurich to query the absence of external works but were told that the claim hadn't in fact been approved. But Mrs L and Mr L said the initial letter from R approving the claim, meant Zurich would have to accept the claim.

Unhappy at the claim being declined after being told it was approved, Mrs L and Mr L complained to Zurich. But they didn't uphold the complaint. In their final response they said the damage had been caused by wind driving rain through the roof, highlighting an existing issue that allowed the rainwater to enter. As such, Zurich concluded that there was no insured event under the policy and confirmed their decision to decline the claim. However, Zurich accepted that Mrs L and Mr L had been told initially the claim had been accepted and therefore had been misled. In recognition of this loss of expectation, Zurich offered Mrs L and Mr L £300 compensation.

Mrs L and Mr L then complained to this service. They felt the cause of the damage hadn't been properly investigated (as storm damage) as R's inspection had been external using a drone to take pictures of the outside of the property, including the roof as well as a brief visual inspection through the loft hatch. Mrs L and Mr L added that they were told by R that the only way to conclude on how the damage was caused was by a more extensive inspection of the affected external areas, including removing tiles.

They also thought Zurich hadn't followed the FCA *Insurance: Conduct of Business Sourcebook* (2.2.2) as the information provided to them wasn't clear or fair, and misleading. Mrs L and Mr L said they'd been affected financially by having to take time off work and the damage was getting worse after further adverse weather. They wanted Zurich to accept the claim, repair the damage caused and fix the problem of rainwater entering the property.

Our investigator upheld the complaint, concluding Zurich hadn't acted fairly. From photographs of the area affected by rainwater ingress, she wasn't satisfied (as Zurich said) there was age-related deterioration in part of the roof where rainwater had entered. Nor that

Zurich had shown how rainwater had entered in other areas. She also concluded there were storm conditions around Mrs L and Mr L's property at the time Mrs L and Mr L noticed the damage. Overall, she thought Zurich hadn't shown that their decline of the claim was valid, and they should assess the claim for both internal and external damage (as storm damage). In addition, she thought Zurich should pay Mrs L and Mr L £150 in compensation for distress and inconvenience (and the length of time the matter had taken).

Zurich disagreed with the investigator's conclusions and requested an ombudsman review the complaint. While they accepted there were storm conditions at the time of the damage, they referred to their surveyor's conclusion that the damage wasn't consistent with that from a one-off incident (such as a storm) and therefore there wasn't an insured event. They also referred to the surveyor's view that there was age-related deterioration in part of the roof.

In my findings I concluded there was evidence of deterioration of the concrete verge along the eaves and from general industry information this wasn't an uncommon problem (that happens gradually). Based on this, I was persuaded the rain and winds highlighted the issue. However, as other rooms affected weren't by the verge, I concluded this indicated a wider issue at the rear of the property. As there was no visible damage to tiles across the roof at the rear, then in the absence of any other cause, I was persuaded by R's view that the issue was with water ingress through the soffits (given the internal damage appeared to be at the same level as the soffits). Taking all these points into account, I concluded Zurich acted fairly and reasonably in declining Mrs L and Mr L's claim.

On the issue of Mrs L and Mr L being told initially their claim had been accepted (then told it hadn't) I agreed it was misleading and Mrs L and Mr L were understandably frustrated. But as I concluded Zurich acted fairly and reasonably in declining Mrs L and Mr L's claim, I didn't think it affected the outcome. I thought Zurich's response, to apologise and offer £300 in compensation, was fair in the circumstances.

Because I disagreed with the investigator's conclusions, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

What I've provisionally decided – and why

I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

My role here is to decide whether Zurich has acted fairly towards Mrs L and Mr L.

The two key issues in Mrs L and Mr L's complaint are, firstly, that Zurich didn't properly investigate the cause of the damage (due to storm) and (consequently) acted unfairly in declining their claim. The second issue is that Zurich hadn't followed the FCA Handbook, specifically they didn't provide information that was clear, fair and not misleading. I've taken this to mean initially being told the claim had been accepted, but then being declined.

On the first issue, Mrs L and Mr L maintain that Zurich didn't properly investigate the cause of the damage (as storm damage) and therefore acted unfairly in declining their claim. They specifically refer to what they say they were told by R during the inspection that the only way to conclude on how the damage was caused was by a more extensive inspection of the affected external areas, including removing tiles. For their part, Zurich maintain that R's report supports their decision to decline the claim on the grounds that there wasn't an insured event and the damage was due to the rain and winds highlighting existing issues (such as the age-related deterioration of part of the roof).

I've considered both views (including those of R) together with the associated evidence and reports, including the available photographs. As the cause of the damage is potentially storm-related, then I've considered the three key issues we consider:

- Do we agree that storm conditions occurred on or around the date the damage is said to have happened?*
- Is the damage claimed for consistent with damage that a storm typically causes?*
- Were the storm conditions the main (or dominant) cause of the damage?*

On the first question, I've looked at the information about the weather conditions around the date of the incident, from the weather service we use. It indicates a dry¹ storm on the date Mrs L and Mr L noticed the damage (they also mention adverse weather in the previous month). Also, when responding to our investigator's view, Zurich said that they were not disputing a storm occurred. But based on R's view the damage wasn't consistent with - or caused by - a storm. Which are the second and third questions we consider.

Looking at these two questions, I've looked closely at R's report and additional views, including the photographs taken during the inspection. R's view is that there is age-related deterioration of the concrete verge at the edge of the roof, as shown by the photographs, which would account for some of the rain ingress into one of the affected bedrooms. But the report also notes the ingress affects two other rooms at the rear of the property, which R believes would appear to be the result of water ingress through the soffits (given that the damage in the rooms is at the level of the soffits). R's report also notes the roof tiles at the rear of the property are intact and show no damage – although the photographs would appear to show a couple of tiles at the edge of the roof by the eaves are slightly misaligned (though this may be the result of the failure of the concrete verge, or the application of temporary protectors on part of the eaves). The report also notes no obvious evidence of ingress in the loft.

Having considered these points carefully, I'm persuaded that there is clear deterioration of the concrete verge along the eaves and I'm aware from general industry information this isn't an uncommon problem (and that it happens gradually). Taking these points together I'm persuaded that the rain and winds highlighted the issue (the photographs also show temporary protectors on part of the eaves). However, the other rooms affected aren't adjacent to the verge, indicating a wider issue at the rear of the property. As there's no visible damage to tiles across the roof at the rear, then in the absence of any other cause, I'm persuaded by R's view that the issue is with water ingress through the soffits (given the internal damage appears to be at the same level as the soffits).

I've also considered Mrs L and Mr L's point about being told (by R) the only way to conclude on how the damage was caused was by a more extensive inspection of the affected areas, including removing tiles. While I have no reason to doubt what Mrs L and Mr L have said, given my conclusions above then I think there's sufficient evidence to conclude that the storm conditions were, on the balance of probabilities, the cause (or predominant cause) of the damage.

Taking all these points into account, then I've concluded Zurich acted fairly and reasonably in declining Mrs L and Mr L's claim.

On the second issue, R's report on the damage to the property clearly states that the damage isn't considered to be the result of a one-off event (such as a storm) and that the rainfall and high winds highlighted an existing issue (the report refers to age-related deterioration in part of the roof). However, R's letter to Mrs L and Mr L says their claim had

¹ A 'dry' storm is one where the wind level would meet the definition of a storm, but not the level of rainfall.

been approved by Zurich (subject to payment of the policy excess). It's not clear why the letter states the claim has been approved when R's report indicates there wasn't event related damage and the cause of damage was recorded as 'wear and tear'.

For their part, Zurich apologise in their final response for R's letter being misleading and the incorrect impression that the claim had been approved. Given the sequence of events above, I agree it was misleading and Mrs L and Mr L were understandably frustrated at being told their claim was being accepted, only to be then declined. But as I've concluded Zurich acted fairly and reasonably in declining Mrs L and Mr L's claim, I don't think it affects the outcome. But it clearly raised Mr L and Mrs L's expectations, only for them not to be met. I've considered Zurich's response, to apologise and offer £300 in compensation. I think that's fair in the circumstances for that element of Mrs L's and Mr L's complaint.

My provisional decision

For the reasons set out above, it's my provisional decision to uphold Mrs L and Mr L's complaint in part. I intend to require Zurich Insurance PLC to:

- Pay Mrs L and Mr L £300 in compensation for giving the misleading impression their claim was approved, only for it to then be declined.*

Mrs L and Mr L responded with several points and provided additional information. Firstly, they didn't think the water entered their property through the soffits (as R's report suggested). In support of their view, they referred to the method of construction of the property, which they thought made it impossible for the water ingress to be through the soffits. They also referred to the views of third parties, including roofing contractors.

Secondly, they said the water ingress could have occurred through the storm conditions lifting a row of tiles and causing the row to slip, meaning they were no longer bonded (so allowing water between them).

Thirdly, they said they had the property re-rendered and all four verges replaced with a PVCU system. But this hadn't prevented water ingress, which they said supported their view the problem wasn't related to the soffits or the verges.

Zurich responded to note the provisional decision supporting their decision to decline the claim. They also asked for clarification of whether the provisional decision for them to pay £300 meant they were being asked to pay an additional £300 (given their final response to Mrs L and Mr L had offered them £300 for loss of expectation and misunderstanding).

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.

My role here is to decide whether Zurich have acted fairly towards Mrs L and Mr L.

Taking Zurich's response first, I can confirm that my provisional decision was that Zurich should pay £300 in compensation for giving the misleading impression that their claim was approved, only for it to then be declined. I didn't intend this to mean Zurich should pay an additional £300 on top of the £300 already offered (but not paid before Mrs L and Mr L complained to this service).

On the points raised by Mrs L and Mr L, I'd want to reassure them I've considered all the points they've raised and looked carefully at the additional photographs, diagram and other information. I've concentrated on the key points they've made.

Taking the second point first, they say a likely explanation of the water ingress is the winds lifting a row of tiles, causing them to slip so they're no longer bonded and let water in. However, they haven't provided clear evidence to support this possibility. Photographs of the roof (both at the time of the incident and more recently) don't show any visible signs of tile slippage or other gaps that would indicate obvious routes through which water could enter. If this were the case, I'd have expected Mrs L and Mr L to engage a roofing specialist to examine the roof and confirm whether this is the case. In the absence of any independent, direct evidence to support this view (as well as R's original observation there wasn't any obvious sign of ingress in the loft) I'm not persuaded this explains the water ingress. It's also not obviously consistent with the areas damaged in the original incident.

On the third point, I can see from the photographs Mrs L and Mr L have had the verges on the roof edges replaced as they've described. They don't say why they've had this carried out, although it would be consistent with either the original verges having deteriorated (as I observed in my provisional decision) or their being one of the sources of water ingress. Mrs L and Mr L say the replacement verges haven't prevented water ingress, which they say supports their view the problem isn't related to the soffits or the verges. If it is the case the replacement verges haven't prevented further water ingress, it may suggest the original verges weren't an issue (or not the only issue).

But, equally, the water ingress wasn't just in those areas of the property next to the verges – in R's view the verges would account for some of the rain ingress into one of the affected bedrooms. But R's report also notes the ingress affected two other rooms at the rear of the property, which they believed would appear to be the result of water ingress through the soffits (given that the damage in the rooms is at the level of the soffits). Both R's view, and Mrs L and Mr L's view the water ingress could be the result of tiles lifting and slipping, indicate that replacing the verges wouldn't prevent water ingress (or some of it). So, I don't think the verges having been replaced is relevant to deciding what, on balance, is most likely to have caused the water ingress.

That leaves the first point raised by Mrs L and Mr L, that the method of construction means the soffits can't have been the source of the ingress. I appreciate what they've said, but I'm not persuaded by their alternative explanation (of tiles lifting and slipping). That view also doesn't explain the observation by R that the damage in the rooms is at the level of the soffits, in two rooms at the rear of the property.

Taking these points together, I'm not persuaded they change the conclusions set out in my provisional decision, so my final decision is the same as my provisional decision.

My final decision

For the reasons set out above, it's my final decision to uphold Mrs L and Mr L's complaint in part. I require Zurich Insurance PLC to:

- Pay Mrs L and Mr L £300 in compensation for giving the misleading impression that their claim was approved, only for it to then be declined.

Zurich Insurance PLC must pay the compensation within 28 days of the date on which we tell them Mrs L and Mr L accepts my final decision. If they pay later than this, they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 16 August 2022.

Paul King
Ombudsman