

## The complaint

Ms K is unhappy about Zurich Insurance PLC's (Zurich's) handling of a claim she made for damage to her property, caused by subsidence.

## What happened

I issued my provisional decision on 12 January 2023 explaining why I was intending to uphold this complaint. Here's what I said in my provisional decision:

### What happened

*Ms K says that she first noticed cracks in the garden wall and front bay wall of her property in August 2018. Tree roots were found under the bay and the tree was removed in 2021. Almost three and a half years on from when the cracks were first observed, Ms K says no real progress has been made to properly repair the damage caused to her property by the subsidence.*

*Over time Ms K says the cracks have worsened so she's filled them in with expanding foam in an attempt to stop the cold. During that time the exterior of the property has also deteriorated. Ms K says she's had to spend more to keep warm over the last three winters and it has affected her mental health.*

*Zurich have accepted that some of the items Ms K has claimed for are covered by her policy, however, it has also identified areas of repair which aren't covered by the policy so are Ms K's responsibility to repair.*

*Ms K isn't happy with Zurich's report or the proposed schedule of work and has said that she'd like them to properly repair the bay, not just with a quick fix of cement in the gaps as they have proposed.*

*Ms K complained to Zurich, however in its final response it concluded that the claim had been correctly dealt with. Still unhappy, Ms K brought her complaint to this service.*

*One of our investigators looked into what happened and issued her view not upholding the complaint. She felt that Zurich had made reasonable attempts to obtain the council's agreement to the removal of the offending tree. She explained that it was the council, rather than Zurich, who were responsible for the delays in progressing the claim.*

*In relation to the scope of works prepared by Zurich, our investigator concluded that the offer made by Zurich was fair and reasonable in the circumstances. Our investigator also concluded that Zurich's proposal for using helibars and epoxy resin infill to repair the bay and sill section was reasonable. She explained that if Ms K wasn't happy with Zurich's proposals, she needed to obtain her own report and schedule of work and provide that to Zurich to be considered.*

*Ms K didn't accept our investigator's view. She said she was asking for help with the gaps in the front of the bay. In Ms K's opinion, not all the wood needed to be replaced, but the gaps she filled with expanding foam were supposed to be a temporary fix and she felt it was unfair to leave someone in that state. With regard to obtaining her own report or scope of works, Ms K said she asked two builders to give her a quote for repairs to the front bay to support her position that the subsidence caused the large gap between the wood and the windowsill, but they didn't get back to her. Ms K asked for an ombudsman's decision on her complaint.*

#### *What I've provisionally 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 come to a different conclusion to our investigator and I'm intending to uphold this complaint in part. I will explain why.*

*I've first considered the period of time in which Ms K's claim has been ongoing to decide whether or not Zurich should be held responsible for any of the delays, and if so, whether any compensation is warranted.*

#### *Compensation for delays in settling claim*

*Ms K first reported the claim on 30 July 2018. Zurich sent its contractor, F, to complete a Geotechnical Survey Report in August 2018, which identified abundant roots in the soil. In September 2018, Zurich sent its arborist P, to complete an arboricultural assessment. P's engineer found that the damage to the property was likely due to subsidence caused by an Alder tree, situated on the adjacent street, owned by the council.*

*F carried out regular monitoring from September 2018 to November 2021 (which included five months after the tree had been removed in June 2021). The November 2021 monitoring reports showed that following the removal of the tree, the ground movement had stopped.*

*Zurich's claims handler, C, wrote to Ms K enclosing monitoring reports, periodically while the claim was ongoing. However, between 7 December 2018 and June 2021, the only update provided was that P was chasing the council to remove the tree with no other meaningful updates on next steps.*

*During this time period, in February 2020, the council decided to appoint their own independent specialist to review the monitoring information. At that time, C said that should no positive decision be forthcoming in the near future they may seek an alternative way forward to prevent further unnecessary delays. In March 2020, C asked whether Zurich might be able to bring some pressure to bear on the local authority's insurers to obtain an earlier response. I've not seen any evidence that Zurich did so, and as it took a further 14 months for the tree to be removed, I'm not persuaded Zurich took any additional steps to move the matter forward.*

*As our investigator explained, subsidence claims can be lengthy and drawn out, especially where an insurer is reliant on a third party to co-operate regarding the cause of the subsidence. Where trees are owned by other parties, an insurer can't remove them without permission, and often detailed evidence is required to support that request. However, ICOBS 8.1.1 requires an insurer to settle claims promptly and fairly. After considering the action taken on the claim since 2018, I think Zurich has provided Ms K with poor service and caused some avoidable delays. In terms of the*

*impact of the cracking that Ms K had to live with, I understand that this reduced her ability to enjoy the property, but I'm also mindful that they weren't so significant that they caused her property to be uninhabitable, so, despite some loss of enjoyment, Ms K was still able to live in her home during this period.*

*Taking everything into account, I think that Zurich could have taken more proactive steps to engage with the council regarding the tree's removal, from March 2020 when C first requested assistance. Or, as C suggested, an alternative way forward could have been considered from February 2020. I think that either of these actions could have served to move the claim forward more efficiently.*

*I asked Zurich for more information about why neither step appears to have been taken, but as the people who'd originally been involved with the claim are no longer available to answer questions about the claim, no further clarity could be provided. However, Zurich did forward copies of emails from their agent to the council, which showed that between January and October 2019, Zurich's agents sent four emails to the council regarding the tree removal and received three responses from the council. A further 20 months passed before the tree was removed.*

*Ms K has told us that the time taken to progress the claim caused her worry and discomfort as she had to live in a cold house, and inconvenience as she had no help from her insurer with carrying out temporary repairs, that she had to do herself in the meantime. I don't think Zurich has treated Ms K fairly in the way it's handled her claim and I'm currently of the view that its actions have caused her stress and inconvenience at points over a prolonged period.*

*So, I'm intending to require Zurich to pay Ms K £500 for the distress and inconvenience she's been caused by the way it's handled her claim.*

*I've next considered Zurich's scope of works and its proposed settlement of Ms K's claim.*

#### *Has Zurich made a fair offer to settle Ms K's claim?*

*On 11 August 2021, following the removal of the tree, Zurich's contractor attended the property with Ms K and her representative, to consider the damage Ms K had claimed for and clarify whether or not it was covered by the policy. Notes of this meeting were included in Zurich's business file for Ms K's complaint.*

*Ms K believes that an effective repair could only be achieved by replacing the bay and the window above it. However, our investigator thought that the works proposed by Zurich were likely to achieve an effective repair without doing so.*

*Having considered all of the available evidence, and after asking Zurich for further information relating to its scope of works and proposed settlement offer, I've come to a slightly different conclusion than our investigator. While I agree the replacement of the bay and window isn't necessary to repair the damage, I don't think the settlement amount is adequate. I say this because, having reviewed the meeting notes referred to above, it seems that there are some areas of repair highlighted by the loss assessor, that haven't been included in the scope of works, or provided for in the settlement offer. I asked Zurich to provide its comments on each of these elements of the claim, however, it was unable to do so, due to key individuals who were involved in the claim, no longer being contactable.*

*I've set out below the five elements of repair that I think have either been omitted, or not adequately accounted for in Zurich's proposed settlement offer.*

*In section 1.8 of the minutes dated 11 August 2021, the loss adjuster noted that the location of the external wall was adjacent to the damage to the front of the property. He suggested the foundation was likely to be minimal in depth with holly bushes growing adjacent to the wall. He said that area of cover would need to be explored further. However, I've not seen any evidence to suggest that further investigation was carried out to support the 25% contribution the loss adjuster later arrived at. In the circumstances, I think a 50% contribution would be a fairer way to resolve this part of Ms K's claim. I've explained the reasons why I think this should be increased, along with other parts of the claim, below.*

*The scope of works sent to Ms K, attached to the offer letter, detailed works required to be carried out to the living room (which I assume was the lounge, as referred to in the minutes), bedroom and external areas. However, the August 2021 minutes refer to two other areas for which the loss adjuster recommended a cash settlement be made for the decoration works. In particular, severe cracking was observed to the hallway lounge wall which he said needed to be repaired, lined and redecorated. Also, the loss adjuster recommended cash settling the repair works needed to redecorate the cracking in the front bedroom landing wall (which appears to be distinct from the area for which the claim was declined – namely the left hand side alcove and ceiling). Therefore, I'm minded to conclude that Zurich also need to include this in the settlement which I've outlined below, along with the reasons why.*

*There were two other areas of damage, highlighted by the loss adjuster, which I don't think Zurich's proposed works go far enough to repair either. The first is in relation to the front bay window on the ground floor. The loss adjuster observed that the sill could have been adequately repaired with a cement fill and redecoration, if the windows had been in good condition. However, no proposed repair was detailed for the sills, in the window's current condition. As the damage caused by subsidence would need to be addressed, regardless of the state of the windows, I would have expected an alternative repair to be proposed that would achieve an adequate repair in the current circumstances. Therefore, I'm also minded to conclude that Zurich need to include this in the settlement which I've outlined below.*

*Also, in relation to the front room, a comment was included at the end of the minutes under the heading, "Damp to Front Bay Window, Ceiling and Walls" to say that the pre-damaged or pre-loss state of the relevant areas was water-damaged, so internal repairs and redecoration to those areas would be "betterment". Again, in the context of indemnifying an insured party for a subsidence claim, where repair works would have been required to a particular area, to repair the subsidence related damage, then we would expect the insurer to carry out those works, or cash settle them. So, in this case, I don't accept that the presence of water staining would remove that liability to repair under the policy. I appreciate that Zurich believes issues with the roof would need to be repaired, so that the ceiling wouldn't suffer new water damage once repaired, however, as Zurich isn't carrying out the works, I don't see how that is its concern. The settlement offer should still cover the cost of all the repairs necessary to address the damage caused by subsidence. I've explained below how I think Zurich should settle this part of Ms K's claim.*

#### *How to put things right*

*In considering what Zurich needs to do, to put things right for Ms K, I have limited information to base my award on. Zurich haven't been able to provide any additional information in relation to the five issues I've identified above and Ms K also hasn't provided any reports or quotations for me to consider. As the subsidence occurred*

more than four years ago, I don't think that requiring Zurich to send another contractor to the property to re- assess the scope of works, is a viable option, as the passage of time will also have impacted the state of the property. So, taking this into account, I've considered what is the fairest alternative way to settle the claim and complaint.

The offer letter sent to Ms K in November 2021 set out a gross settlement sum of £4,152.54, from which the £1,000 excess would be deducted, before the balance was paid to her. In Zurich's case file there is a record of a call between C and Zurich, explaining how C had arrived at that gross figure. The redecoration of the lounge was allocated £2,219.43, the repairs to the bedroom were allocated £797.82 and the 25% contribution to the repair of the boundary wall was calculated to be £1,135.29.

It is this information, together with an early schedule of costs, provided by Zurich which have formed the basis of my proposed award, detailed below, as I consider they are reflective of the likely costs relevant to each element of repair.

1. Boundary wall: C explained that the boundary wall was showing signs of wear and tear, and a holly bush was affecting the wall, which wasn't connected to the house. Elsewhere in the evidence, a comment was also made that the foundations were likely to be shallow, but further investigations would be needed before making a settlement offer in relation to the boundary wall. C offered £1,135.29 as 25% contribution to the wall. However, I don't think that is sufficient. In the absence of any further investigations being undertaken, I think a 50% contribution would be fair in the circumstances, given the proximity of the wall to the large tree which caused the subsidence, and taking account of wear and tear and the impact of other small vegetation near the wall. So, I think Zurich should increase its cash offer for repair to the wall by an additional £1,135.29.
2. Hallway lounge wall: The loss adjuster said this needed to be repaired, lined, and redecorated. I've seen information that suggests if the entire hallway was repaired and redecorated the resulting cost would be approximately £650 (excluding doors and door frames which weren't accepted as part of the claim) but the whole area wasn't affected by the subsidence, so it would only be those areas that were that would be covered. On that basis, I think a fair contribution to the redecoration of the damaged hallway lounge wall, for the subsidence related damage, would be 50% of that sum, so, £325.00.
3. Landing near front bedroom: The loss adjuster also recommended cash settling the repair works needed to redecorate the cracking in the front bedroom landing wall which was subsidence related. I've seen information that suggests if the entire landing near the front bedroom was repaired and redecorated, the resulting cost would be approximately £760. So, I think a fair contribution to the redecoration of the landing near the front bedroom, for the subsidence related damage, would be 50% of that sum, so £380.
4. Living room - ceiling above bay window: C explained that as there was water ingress to the bay window ceiling due to unrelated wear and tear to the roof above the window, the redecoration of the room would not include that aspect. Therefore, a cash settlement of £2,219.43 for the redecoration of the lounge was included in the settlement. As I've explained above, I think the settlement amount should cover the redecoration or the ceiling above the window. Given that is proportionally, a small part of the overall room, I think the cash settlement amount for the redecoration of the living room should be increased by £300 to cover that additional area.

5. *Living room - repair to sill: I have no information in the case file which specifically refers to costs regarding the repair of the sill. However, I have seen estimates to repair other areas of damage with epoxy resin, and to redecorate wood surfaces. Based on those estimates, I think an additional £250 should be included in the settlement offer, to cover repairs to the sill which was damaged by subsidence.*

*So, having considered all of the available information, I've provisionally decided that Zurich should increase its settlement offer to Ms K by an additional £2,390.29.*

*But I should add, as I've outlined above, the challenge here is that Ms K disputes the settlement is reasonable but hasn't provided any expert reports to demonstrate otherwise. And Zurich has only been able to provide very limited details, as those involved in the claim are no longer available for comment.*

*So, I've reached a provisional conclusion on what the fairest settlement is, based on the limited information I have available, which I think is fair and reasonable in all the circumstances of the case. If Ms K obtains further information in support of her position, such as builders reports or schedules of work, then she should submit this to Zurich to consider in the first instance. But based on all the (limited) evidence both parties have provided, I'm minded to conclude the settlement I've outlined is fair and reasonable in the circumstances.*

I concluded by saying I was intending to uphold the complaint and require Zurich to pay, in addition to the initial offer of £3,152.54, an additional £2,390.29 to fairly settle Ms K's claim, together with interest, and £500 compensation for the distress and inconvenience she'd been caused by the way her claim had been handled.

I asked both parties to provide any final comments or information they wanted me to consider, by 25 January 2023. Ms K accepted the conclusions set out in my provisional decision. However, Zurich didn't respond.

### **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, as neither party have provided any new arguments or information for me to consider, I see no reason to depart from the conclusions set out in my provisional decision. I therefore uphold this complaint and require Zurich to pay the awards detailed below.

### **Putting things right**

For the reasons detailed in this decision (which include the reasons set out in my provisional decision), I uphold this complaint and require Zurich Insurance Plc to pay Ms K:

- the initial settlement sum of £3,152.54;
- an additional £2,390.29 in full and final settlement of her subsidence claim;
- 8% interest on the two awards detailed above, from the date of the original offer (11 November 2021) to the date the payment is made to Ms K (Note: If Zurich Insurance Plc considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Ms K how much it's taken off. It should also give Ms K a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate); and

- £500 compensation for the distress and inconvenience she's been caused by the way Zurich Insurance Plc has handled her claim.

**My final decision**

My final decision is that I uphold this complaint and require Zurich Insurance Plc to pay the awards detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 23 February 2023.

Carolyn Harwood  
**Ombudsman**