

## **The complaint**

Mrs S complains about Zurich Insurance PLC's handling of a claim she made after the wall outside her house began to collapse.

## **What happened**

Mrs S's home is covered by an insurance policy underwritten by Zurich.

The background to this complaint is very well known to both parties, so I'll provide only a brief summary here. But I'd like to assure both Mrs S and Zurich that I've considered all the information and evidence we have on file.

Mrs S made a claim in August 2021 after she discovered large cracks in the boundary wall outside her home. The wall appeared unstable and on the point of collapse.

Zurich accepted the claim, carried out a survey and appointed a contractor to carry out the necessary repair work (in September 2021).

The work stopped after a very short time, essentially because Mrs S noticed that the contractors appeared to be re-building the upper part of the wall on top of the lower section which was clearly itself unstable.

The contractor agreed that the work was unacceptable. Whilst in the process of considering how to move forward, Zurich decided – on the advice of their loss adjuster - that the issue with the wall was due to poor workmanship or design when it was originally built. And therefore, was not covered under the policy.

This effectively left Mrs S with a part-demolished wall, a yard full of building debris and materials and a remaining section of wall which appeared dangerously close to collapse. That part of the wall is around six feet or more high and borders a public pathway.

Mrs S raised the issue with Zurich, but they took no further action, so Mrs S brought her complaint to us. Our investigator looked into and thought Zurich should replace the damaged sections of the wall and pay Mrs S £1,000 in compensation for her trouble and upset.

After attempts to resolve the case informally with Zurich, we issued a formal view on the case in November 2022. Because Zurich didn't respond to that view, the case was referred for a final decision by an ombudsman.

Mrs S has expressed her dissatisfaction with the view because of what she says are factual inaccuracies in it. She also believes the compensation proposed wasn't sufficient given the trouble and upset she's experienced over a prolonged period of time.

Because I wanted to be sure that both parties were fully aware of what was being proposed as the outcome to this case, I issued a provisional decision. This allowed both Mrs S and Zurich a chance to provide further information or evidence and/or to comment on my thinking before I make my final decision on Mrs S's complaint.

## My provisional decision

In my provisional decision, I said:

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

I’m not going to go into great detail here about all of the circumstances surrounding this case. I’ll concentrate on what appear to be the key remaining issues.

Zurich accepted the claim – in September 2021 – and commenced work on the wall. They then decided that they didn’t think they should have covered the claim in the first place.

I’m not going to get into a debate about whether the claim should or should not have been accepted. The fact is, Zurich *did* accept the claim. And it’s palpably unfair to leave Mrs S with a very dangerous wall and a building site in the front of her house – which has effectively taken away the private outside space that Mrs S and her family previously enjoyed.

To be fair to Zurich, they have been in touch with us since the case was referred to me for a final decision and it appears they accept that it’s their responsibility to complete the repair work.

They now appear to be saying that they’ll pay for repairs to the damaged part of the wall, but they don’t think they should have to replace the sections of the wall that are undamaged.

I wouldn’t disagree with that *in principle*. But I can see from evidence provided by Mrs S that the whole of the wall – which curves around the front and side of the property – is severely damaged, if not on the point of collapse - and needs replacing. That goes for the wall at both sides of the opening where the gate used to sit.

If Zurich have expert advice to suggest that any part of the wall is sound and can be left in situ, then they can provide evidence to that effect in response to this provisional decision.

Mrs S has quotes from builders to replace the wall. One at around £8,000 and one at around £26,000. Leaving aside that rather stark difference, Mrs S has said she is happy to go with the lower quote and simply wants her wall back in place and safe. The lower quote may be lower because the builder has said that the existing footings can be retained and used.

It’s entirely possible that Zurich may wish to seek to recover some or all of their costs from the original builder or developer of the property, if they believe the issues with the wall were in fact due to poor workmanship and/or design. That’s a matter for them and should not delay the work to restore Mrs S’s property to a satisfactory state.

This claim was made in August 2021. Mrs S is still living with a dangerous wall and a building site outside her home almost a year and a half later.

Mrs S has been keen to stress that she has been very much inconvenienced by the current state of affairs. Items previously stored in the yard have had to be moved into the conservatory, which means the family have in effect lost that space and utility.

Mrs S has also had the stress and worry of living with an on-going and prolonged situation where it appeared there was no resolution to the problem – and with a potentially dangerous wall directly outside her home and bordering a public footpath.

I'm satisfied that £1,000 in compensation for Mrs S's trouble and upset is justified by the period of time for which she has suffered significant inconvenience and upset. That amount is broadly in line with the awards which we make for trouble and upset, as set out on our website."

In summary, for those reasons, I said Zurich should pay for the repair of the wall and pay Mrs S £1,000 in compensation for her trouble and upset.

### **The responses to my provisional decision**

Zurich didn't respond to my provisional decision. I'll assume that means they agree with it and/or have no further information or evidence to offer. I note they were specifically invited to provide evidence if they thought any part of the wall could be left in place, so I'll also assume there is no such evidence.

Mrs S responded to say she agreed with my provisional decision. She later contacted us to say that the contractor used by Zurich in this case had been in touch and paid her just over £14,000 to get the wall replaced by her own builder.

There was a temporary issue about whether an excess should be taken from the cost of the repairs, but that has now been resolved, in Mrs S's favour.

Mrs S tells us the amount paid by the contractor doesn't include VAT and doesn't include the £1,000 compensation my provisional decision suggested Zurich should pay her.

### **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.

It appears that Zurich have now, through their contractor, paid for the replacement of the wall, with an amount that is acceptable to Mrs S. So, that issue is resolved, although I'll comment in the section below on precisely what needs to happen now.

In the absence of any objection from either Zurich or Mrs S, I have no reason to change my mind about the level of compensation I think is appropriate in this case given the trouble and upset experienced by Mrs S.

### **Putting things right**

I should be clear that I don't have any breakdown of the amount (over £14,000) paid to Mrs S by Zurich's contractor. Mrs S tells me that doesn't include VAT and doesn't include the compensation. I can't confirm that, although I have no reason to doubt what she tells me.

In that context, it's important for me to absolutely clear about what I'm requiring Zurich to do.

Zurich must cover the cost of the replacement of Mrs S's wall, in full, including VAT. I should point out, mainly for Mrs S's benefit, that it's not unusual – or unfair – for an insurer to retain the VAT part of any cash settlement until they have an invoice or receipt to confirm that the work has actually been carried out.

Zurich should also pay Mrs S £1,000 in compensation for her trouble and upset – for the reasons I set out in my provisional decision.

### **My final decision**

For the reasons set out above and in my provisional decision, I'm upholding Mrs S's complaint.

Zurich Insurance PLC must:

- pay for the replacement of Mrs S's wall; and
- pay Mrs S £1,000 in compensation for her trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 23 March 2023.

Neil Marshall  
**Ombudsman**