

complaint

Mr H is unhappy with the way that Zurich Insurance PLC dealt with his landlord insurance claim for flood damage to his let property.

background

In early March 2018 Mr H made a claim to Zurich after his let property suffered serious water damage. Zurich appointed loss adjusters who in turn arranged for the property to be dried out. Drying units were installed in mid-April 2018. Then asbestos was discovered and matters were held up while testing was carried out. Delays were caused because the drying company weren't being proactive enough. They were replaced by another contractor. Zurich advised that the previous contractors had caused delays of about two months and paid compensation of £200 which Mr H accepted. Loss of rent was also paid initially up until September 2018.

Repairs got under way. Zurich agreed to extend the loss of rent payment until the end of October 2018. Mr H visited the property towards the end of October and identified a number of snagging issues. After an on-site meeting with the contractors they agreed to deal with the issues which they estimated would take another four weeks. It was agreed that loss of rent would be paid up until 15 December. However the loss adjusters believed the repairs were prolonged because Mr H caused delays due to his lack of flexibility in negotiations. Mr H visited the property in mid-December after the works were supposed to have finished, and raised further issues. Zurich believed these to be minor issues, not preventing the property from being habitable again.

Mr H arranged for a Gas Safe engineer to inspect the boiler and gas hob. He was concerned about noise coming from the boiler and about excessive yellow flames coming from the gas hob. The engineer identified a number of issues which needed to be resolved. For two of those issues he said that the boiler was "*at risk*" meaning it couldn't be used. The contractors came back to fix the problem with the gas appliances. However they said the boiler had been correctly installed and suspected it had been tampered with.

Zurich agreed to pay the Council Tax on the property up until March 2019. Mr H said there still matters outstanding which Zurich hadn't dealt with. He had had to pay to have these resolved himself. Zurich said it had dealt with issues it believed it had liability for but agreed there had been delays, and apologised for the stress and worry caused to Mr H and for his dissatisfaction with the work, which it believed it had done its best to resolve. It offered to pay a further £500 compensation but wouldn't pay any further loss of rent.

Mr H didn't accept the proposed payment. He said there were still outstanding matters which he hadn't been paid for. He further said his loss of rent hadn't been calculated properly so he was short in that respect.

On referral to this service ultimately our investigator thought that Zurich had acted reasonably and had offered sufficient compensation.

I issued a provisional decision. In it I said that I thought Zurich should pay further loss of rent for the time the property wasn't habitable due to the boiler being unsafe. And that it should pay Mr H's cost for flushing and repairing the heating and for repairing the toilet, and the cost of repairing the door.

Mr H and Zurich didn't agree with my provisional findings. I'll deal with those comments in my findings below.

my findings

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

I note Mr H's detailed response to my provisional findings. I won't go through it all point by point as if mostly reiterates comments and sets out details of his case he's already shared with us. I do confirm that I've considered all the points he has made. I won't comment further on the background as that's intended to be a narrative of what happened in the case rather than any findings. In respect of his particular comments on my provisional findings, I'll deal with those below.

In my provisional findings I said:

"Mr H has drawn up a list of all the snagging issues and I appreciate his making such a comprehensive list. However I won't itemise every issue, and will only deal in this decision with those issues Mr H regards as outstanding. In any large job there will inevitably be snagging issues that arise, and I note that the majority of them were dealt with. I understand that Mr H spent some time negotiating over them but as renting properties is his business that's unfortunately something he had to do. I'll take it into account any extra inconvenience caused in the overall compensation I award, but I won't be awarding any payment for his time spent."

I understand Mr H's feeling that he has lost valuable time and money and that he is still feeling the effects of it. My findings relate to the way the claim was dealt with and I have made clear in what respects I think Zurich should compensate Mr H further. But I don't intend to award any further payment.

In my provisional findings I said:

"Mr H says the following issues weren't dealt with or left unrepaired by the contractors

- *Boiler/ gas hob*
- *Noise in the system*
- *Toilet*
- *Shower*
- *Rear Door*
- *Plastering*
- *Garden debris/maintenance*
- *Rear light*

boiler/gas hob

The contractors installed a new boiler and gas hob. Mr H had the installation checked by a Gas Safe engineer. He identified several issues with both appliances which were marked "Not to current standards". Also with the boiler he noted two issues with a category of "At Risk". This meant that the boiler couldn't be used until the defects were dealt with. The contractors returned to the property on 8 January to deal with all the outstanding issues.

The two “at risk” issues were 1 The flue integrity test point cap was missing and 2 The boilers chimney/flue air duct collar had not been screwed to the chimney/flue air duct and chimney/flue elbow of the gas boiler. In respect of the latter it was recommended to check the position with the manufacturers.

Zurich’s contractors said that the test point cap was in place when the work was finished, and has shown us a photo, so it says it must have been tampered with. With regard to the screwing of the boiler to the flues it has had confirmation from the manufacturers that it wasn’t necessary. As the other work wouldn’t have stopped the appliances being used it doesn’t believe that that would have prevented a tenant taking up a tenancy. The property has to be uninhabitable for the loss of rent cover to apply.

I don’t think there’s any evidence that the boiler was tampered with. I would observe that Zurich’s photo shows the boiler with the warning sticker on it not to use, so must have been taken after the Gas Safe inspection. As the boiler wasn’t able to be used I think the property was still uninhabitable up until 8 January 2019 when the repairs were carried out. I understand Mr H’s point that he had to wait until the Gas Safe engineer returned in mid-February to certify the repairs. However factually I think the property was inhabitable from the point the repairs to the boiler were completed and that is when the policy liability for rent receivable ended.

So Zurich should pay loss of rent by paying for the whole month of December 2018 up until the rent date of 5 January. From then it should pay pro-rated rent for four days based on 4/31 of the monthly payment. I’ve considered Mr H’s argument that this should be based on the year’s payment, but I think it fair in this case for it to be based on the monthly payment. Zurich should add interest at 8% on the payment.”

Zurich says the boiler was left in a safe state. In respect of the two at risk issues, it has shown us a further photo, taken after the boiler was installed, showing the “cap” in place. It points out that the other issue it confirmed with the manufacturers. So it doesn’t believe it should pay any more rent.

Mr H has reiterated that the gas hob was dangerous and so not suitable for a tenant to move in. He also says that the rattling noise in the boiler was such a nuisance it would have prevented any tenant being able to take up possession. He further says that Zurich has without evidence accused him of tampering with the boiler.

I don’t know why the cap on the boiler seemed to be in place after the work but not when the Gas Safe engineer noted it. I think it unlikely however that anybody “tampering” with it would have known this would result in an “at risk” finding. I’m inclined therefore to give Mr H the benefit of the doubt. And still award the further rent, for the reasons I’ve set out above.

Mr H doesn’t agree with my formula for calculating the loss of rent. I think it is a reasonable way of calculating it, although I should point out that it makes very little difference.

He has further pointed out that Zurich has paid the council tax up until March 2019 so this should be taken as admission that it should pay loss of rent to that date. It’s up to Zurich how long it paid the council tax for but I don’t think that should be taken as an admission that it owes rent for that period.

In my provisional findings I said:

“noise in the system

Mr H advises that the central heating system was noisy. The contractors told him the system couldn't be flushed as it was a closed system. Later in response to our investigator's queries they said there had probably been some solder in the system. They maintained that they would have been prepared to cut out and replace part of the pipework, but Mr H had already told them not to come back.

I can't see that the offer was made or that the likely cause – of solder in the system - was mentioned to Mr H at the time. I note that Mr H later had a plumber come and fix the issue by repairing the pipe work and flushing the system.

Since the contractors returned to the property to fix the safety issues with the boiler I can't see why they didn't offer to fix the fault then. It seems to me that this was an issue with the newly installed system which Zurich should have repaired. I think it should pay Mr H's costs of this - £500. It should also add interest at 8% on the payment.

From the point of view of a prospective tenant I think this didn't make the property uninhabitable, so I won't require Zurich to pay further rent.”

Zurich has agreed to pay this, subject to the production of the plumber's invoice. I believe this has already been passed to Zurich but I will get a further copy sent to it. Mr H will have to show Zurich evidence of when he paid it.

Mr H says the noise from the pipes was such a nuisance that any prospective tenant would have been put off taking up a tenancy.

I appreciate that as part of letting out the property Mr H had to resolve it. But I'm not inclined to find that this made the property uninhabitable. I think a distinction has to be drawn between issues that were unsafe and needed resolving by Zurich and issues that might have made the property less attractive to let out. On a change of tenancy, especially after such a long gap, it would usually be expected that the property would have to be cleaned and any repair issues dealt with. Mr H's remedy was to get a contractor in to fix it, which he did. And Zurich is to pay the invoice, so Mr H hasn't lost out.

In my provisional findings I said:

“toilet

Mr H said the toilet was damaged. The contractors agreed to replace it. Mr H then said the toilet had an issue with being blocked. The contractors said it was fine when they completed the work, although they did later comment that the toilet was installed to the wrong size pipework. Mr H had the problem fixed for £120. The plumber found the toilet to have been wrongly installed.

I think that whether or not Zurich accepted any liability, it agreed to replace the toilet and thus had to do an effective repair. If the wrong pipework was in place it should have replaced it. I think it should pay Mr H's costs of £120. It should also add interest at 8% on the payment.”

Again from the point of view of a prospective tenant I don't think this made the property uninhabitable so I won't require Zurich to pay further rent.

Zurich does not feel that replacing the toilet makes it responsible for the original pipework, as this was clearly a pre-existing issue.

Mr H believes that the failure to repair the toilet made the property uninhabitable.

I think that having accepted the repair, it was for Zurich to ensure the toilet was fully functional. Whilst this was a goodwill gesture, it can't then do a poor job and stop at just replacing the toilet leaving it not fully functional.

I don't think the toilet made the property uninhabitable. I refer to my comments above about what in my view makes a property uninhabitable.

In my provisional findings I said:

“shower

The contractors admitted damaging the shower rail and shower head and replaced those. Mr H said the shower unit itself was damaged. He has provided us with a video showing water leaking from the unit. He's also shown us a report from a plumber who fixed the unit and said it was cracked underneath. His view was that the damage was done at the same time as that to the shower head and rail. But I think that's just supposition. Unfortunately without any evidence of the condition of the shower unit before the claim I can't say that Zurich is responsible for replacing this.”

Mr H reiterates his view that the shower was damaged by the contractors, and says that his sons inspected the property a few weeks before the claim not noting any issues. And he's shown us a property inspection report from February 2018, which doesn't show any issues with the shower.

I note Mr H's evidence, but I can't say whether the shower was specifically inspected before the claim. I'm not persuaded to alter my provisional finding.

In my provisional findings I said:

“rear door

Mr H says the outside door to the lounge isn't closing properly and shows signs of water damage. The schedule of work said that the door should be eased, adjusted and rehung. The loss adjusters have since commented that steps were taken to remedy this as outlined in the schedule. However, based on conversations held with the contractors, they felt the damage was a result of wear and tear and not a consideration under the policy. The problem here is whatever Zurich thinks its liability is, it agreed to rehang and adjust the door. But that clearly didn't remedy the problem. Once Zurich had agreed to do this the repair to the door became part of the claim and needed to be done properly even to the extent of replacing the door if necessary. Zurich should pay Mr H's costs of this, if he has had it repaired. He should advise me of this in response to this provisional decision. If he hasn't had it repaired he should provide an estimate of the cost of repair.”

Zurich says it agreed to rehang and adjust the door but says it isn't responsible for historical wear and tear.

Mr H believes the door was affected by the flood as were internal doors. He has shown us an estimate for a new door and frame in the sum of £1,235.78.

I think again having accepted liability for the door, Zurich is obliged to repair it. But it hasn't had the opportunity to see whether the door can be repaired or replaced as per Mr H's estimate. I will require that it reconsider this issue.

In my provisional findings I said:

“plastering

Mr H says that the walls originally had lining paper. But it was agreed that they would have a skim coat of plaster. But the loss adjuster then said this wasn't necessary. He has shown us a report from a decorator criticising the standards of work here and the kitchen installation. I can't see that that has ever been shown to Zurich, so it hasn't had an opportunity to comment on it. It's difficult to say what the standard of the walls was like before the claim. It appears that it was agreed that repapering or plastering was unnecessary and from the evidence I can't say whether that is right. If Mr H wants to share his decorator's report with Zurich it can be given an opportunity to comment on it. On present evidence I can't say that Zurich should take any more action.”

Mr H has restated the content of the report and invited us to share that with Zurich. I think if Mr H wants to progress this issue further it's up to him to show his decorator's report to Zurich. I'm not in a position to make a judgment on it without Zurich being able to get a contractor's opinion on it.

In my provisional findings I said:

“garden debris/maintenance

Mr H says the contractors left debris over the garden and failed to sweep it up. and left some in the bins which the council wouldn't take away. The garden was also overgrown. Zurich said it wasn't given an opportunity to clear away the debris from the bins. I appreciate that Mr H has sent us photos of debris in the garden but they are photos as the matter progressed. If debris was left in the bins and the council wouldn't take it away then he should have advised Zurich at the time and it could have made arrangements. Usually the insurer isn't liable for maintaining the garden during the repairs, that's something the policyholder should arrange. I don't propose to make any award in this respect.”

As I understand it Mr H believes that the contractors should have arranged this themselves, without being told to. He mentions an old sofa which was taken away after many requests, but I note that it was taken away before the contractors left the site. I'm not persuaded that Zurich was given the opportunity to take any further action after its contractors had left the site. I'm not persuaded to change my view on this issue.

In my provisional findings I said:

“rear light

Mr H says the rear light is faulty and damaged by the water, but Zurich has failed to do anything about it. Zurich says the light isn't on the same system as the part of the electrics

that were damaged, and it's not part of the claim. Unfortunately whilst I don't doubt the light is faulty I haven't seen any persuasive evidence that this is part of the claim."

Mr H restates that the electrics were part of the claim. But I'm not inclined to change my view on this, as there's no new evidence that it was part of the claim.

In my provisional findings I said:

"compensation

Zurich has paid compensation of £200 in respect of the initial delays. It offered £500 compensation for the issues after June 2018, which Mr H refused. I've carefully considered Mr H's position. I appreciate that he spent a lot of time dealing with the claim. Although as I've said as letting the property is part of his business he might be expected to be quite proactive. I recognise there were failures and some later delays, although I can't see that there's any persuasive evidence that Mr H contributed to those delays. As I've said I won't itemise every issue where they were resolved, although I can confirm I've taken them into account.

But overall, this large escape of water was effectively finished within nine months and Mr H didn't suffer the inconvenience of having to live there while the repairs were going on. I appreciate that he had to suffer the stress of dealing with the claim but I can only award compensation where I think Zurich added to that stress. Having taken into account awards we have made in similar cases I think a total compensation payment of £700 (£500 still to be paid) is fair and reasonable. If Mr H wants to accept that offer he should contact Zurich directly."

Mr H rejects the offer of £500 as he has lost a lot more in time and there were other effects on him as a result of this matter.

I believe I've set out a clearly why I think £500 is an appropriate payment, and don't intend to change my view in that respect. It's up to Mr H if he wants to accept it or not.

On a final point, Mr H has issues with his renewal premium which he's just received. He must take that up with Zurich, as I can't deal with it as part of this complaint.

My provisional findings, as set out above are now final and form part of this final decision.

my final decision

I uphold the complaint and require Zurich Insurance PLC to:

- pay Mr H's loss of rent for the rest of December and to pay four days loss of rent for January 2019 calculated, as set out above, at a proportion of the monthly rent for January.
- pay the following payments:
 - flushing and repairing the heating £500
 - toilet £120.

- for all the above payments add simple interest* of 8% per year from the date Mr H paid the respective invoices, where such invoices are produced, or would have been paid rent, until settlement is made.
- consider payment of Mr H's estimate of the cost of replacing, or whether it can repair, the rear door

*Zurich Insurance PLC is required by HM Revenue and Customs to deduct tax from any interest paid. Should Mr H request it, Zurich Insurance PLC should provide him with a certificate showing how much tax has been taken off so that, if appropriate, he can reclaim it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 December 2020.

Ray Lawley
ombudsman