

## The complaint

Mr A has complained about his property insurer, Zurich Insurance PLC because when he made a claim for theft following a burglary it cancelled his policy to a date before the burglary occurred, and declined his claim.

## What happened

Mr A suffered a burglary at his home in November 2018. He had taken out a policy with Zurich in May 2018, telling it he had £30,000 of valuables. Mr A had then bought more valuable items in July 2018. When Zurich assessed his claim it determined about £57,000 of valuable items had been stolen, which included the £17,000 worth of items purchased in July 2018. In March 2020, Zurich said Mr A should have at least told it when more items were purchased, and if he had it wouldn't have continued with his cover. So it said it was cancelling his policy as of July 2018. Mr A complained to us.

Our investigator ultimately upheld Mr A's complaint. But Zurich didn't agree with what she'd said about the valuable items. Zurich also detailed a number of other concerns it said it had about information Mr A had given it when arranging the cover, as well as some issues it had with the claim. Mr A's complaint was passed for an ombudsman's consideration.

I also felt the complaint should be upheld. But my reasoning differed from that set out by our investigator. In short I felt Zurich had unfairly and unreasonably acted to cancel the policy mid-term. I felt the policy should be reinstated, with any extra premium costs for Mr A, the claim and compensation, paid. My provisional findings were:

### "avoidance"

*Despite the values in question, Zurich didn't choose to avoid Mr A's policy from the date it began (and in so doing treat it as though it had never existed) on the grounds he had misrepresented the worth of the valuables he was looking to cover. Whilst Zurich could have chosen to do that (and I'm not saying whether or not it would have been fair and reasonable for it to do so), it actually chose to rely on the policy terms to effect a mid-term cancellation. So Zurich has acknowledged that the policy was in place. And I note it did that despite being aware of other issues of concern which it identified to our investigator in response to their view. If Zurich felt Mr A had misrepresented on any other issues, it had the chance to argue that and avoid the policy on those grounds. But, similar to the amount of valuables, it chose not to. Nor, when cancelling the policy on terms, did it seek to reserve any right to go back later and look at avoidance in respect of other issues. So, fairly and reasonably, Zurich, in my view, has lost the opportunity to do that now because it's affirmed the cover in place by seeking to rely on its terms to effect a cancellation. The only issue for me to consider is whether Zurich acted fairly and reasonably when it enacted a mid-term cancellation.*

### mid-term cancellation

*I appreciate that if Mr A had called Zurich in July 2018 and told it about the valuable items he had just bought, it would have looked to cancel the cover. Zurich has explained that the amount of valuables Mr A owned in July 2018 had exceeded what it would have wanted to*

*offer cover for. An insurer can choose what it wants to offer cover for, and this service won't usually interfere with that. But, during the course of a policy, it isn't unusual for a policyholder to buy, or come into possession of, new items. And this service wouldn't necessarily expect a policyholder to ring an insurer every time they bought something new. That is despite what the policy sets out a policyholder should do. That's because we find it fair and reasonable to say that an insurer only needs to be told of anything that materially changes the risk they are covering. Adding more jewellery, even a fair amount of expensive jewellery, doesn't materially change the risk Zurich was covering, it merely increases it.*

*So Mr A didn't fail Zurich by not telling it about the new jewellery. And even if he had told it, Zurich couldn't have fairly and reasonably cancelled the policy because the risk presented by Mr A hadn't materially changed (although it had increased). Zurich fairly and reasonably needs to reinstate the cover and settle the claim.*

#### *reinstating cover*

*I understand that although Zurich didn't act to cancel the cover until 2020, the policy had actually lapsed at renewal in 2019. Seemingly the policy was offered under agreement with a broker and the scheme had come to an end. That can happen and I don't think the policy not renewing was caused by any failure of Zurich. Rather it is something that Mr A would always have faced in 2019, regardless of the claim or the loss. So Zurich will only have to reinstate the cancelled policy until it expired at renewal in 2019. And I understand that whilst Zurich has offered Mr A a policy refund he had refused it. So Mr A won't have to pay it anything more for the reinstated cover. As Zurich is reinstating the cover it must remove the record of the cancellation from its own and any industry database.*

#### *Mr A's cover in 2020*

*Zurich cancelled Mr A's policy from 2018 in spring 2020, before the policy he had in place at that point was due to renew. If Mr A declared the cancellation when he renewed his cover this may have affected the premium his new insurer charged. If Mr A can show Zurich he declared the cancellation and that his premium increased then Zurich should reimburse him the increased sum, plus interest\* from the date he paid it until settlement is made.*

#### *the claim*

*In replying to our investigator, Zurich raised a number of concerns it has with the claim. All of which it was aware of when it chose to cancel the policy. So Zurich could have looked into those, or at least reserved its right to consider them if its cancellation was found to be unfair and unreasonable. But it didn't. So, in my view, it doesn't get to reinvestigate those concerns now. Rather it must settle Mr A's claim in line with the policy terms.*

*In saying that I note that Zurich's policy contains, what I consider to be, a significant and unusual term which applies in the event a sum insured on the policy doesn't equate to what it will cost to replace all the items as new. That is the case here as Mr A has £30,000 of cover for valuable items, but lost items with a replacement value of around £57,000. So I've considered whether I should allow Zurich to rely on that term in settling the claim.*

#### *wear and tear and sum insured term*

*When considering if an insurer can fairly and reasonably rely on any term like this, this service first considers whether the insurer was clear with the policyholder about what the sum insured was meant to represent. And we'll also want to see that the insurer was clear with the policyholder that information given should be accurate, as well as stating what might happen if incorrect information is given. I think Zurich was clear in respect of all of this. The*

*schedule said the sum insured must be the replacement value, and the statement of fact said the detail must be accurate and that the claim may not be paid in full if it isn't. So, on the face of it, I think Zurich could reasonably rely on the policy term to limit its claim outlay.*

*But, as I noted above, this term, in my view, is significant and unusual. If applied by Zurich it might significantly reduce any settlement the policyholder might be entitled to receive in response to a claim. Most policies, when/if dealing with what will happen if a sum insured doesn't equate to the replacement value, give an insurer the option to settle a claim proportionately. Proportionately usually means any settlement will be based on the percentage of how much the policyholder is 'underinsured' by. So, for example, if the sum insured is 75% of the total replacement value, then the insurer will only have to settle 75% of the claim, and the policyholder will not be entitled to the other 25%. Whereas Zurich's term says that if the sum insured is less than the full replacement value, it will deduct an amount for wear and tear. So, as I said, it's a significant and unusual term. However, just because a term is significant and unusual, doesn't necessarily mean an insurer can't rely on it when settling claims. Or, where 'underinsurance' is concerned, that the insurer will have to pay the claim in full.*

*When a term is significant and unusual, this service first considers if it was highlighted to the policyholder when cover was arranged. Having seen the policy paperwork, I don't think it was. So I have to think about what would have happened if it had been.*

*I don't think that if Mr A had known about the term it would have put him off taking out the policy with Zurich. I say that because I note Mr A has said he thought he'd given a reasonably accurate value for his jewellery when cover was arranged. I know from what Zurich has said, that it thinks he was wrong in that respect. But I'm not really considering the accuracy of his value at this time. Rather, I accept what he says; that he thought he'd given accurate detail – and, that being the case, a term about what might happen, if inaccurate detail was given, wouldn't have made him think the policy wasn't for him. So I think Mr A would always have continued with this cover provided by Zurich, even if his attention had been drawn to the significant and unusual term. Therefore, whilst I don't know how Zurich will assess what wear and tear had occurred to jewellery items that were stolen, or what the net result of applying this term might be on Mr A's claim, Zurich can, reasonably in my view, rely on this term when setting Mr A's theft claim.*

#### compensation

*Mr A was clearly upset by Zurich's unfair and unreasonable decision to cancel his policy and, by association, decline his claim. I think Zurich should pay him £250 compensation."*

Mr A accepted my findings. Zurich did not.

Zurich said it didn't think all of its concerns had been taken into consideration. It said its current reply should be reviewed in conjunction with its response to our investigator's view. In short that response to our investigator's view detailed a number of Zurich's concerns. The key points (which aren't replicated by Zurich in its actual response to my provisional findings) of it being:

- There were concerns with the details Mr A had given at inception of the policy about a number of things, not just the amount of jewellery owned.
- Mr A's reason given for not knowing the worth of all the jewellery owned was unreasonable.
- It's very possible Mr A owned more items at the start of the policy than he had declared/taken cover for. And, therefore, he had likely acted recklessly in breach of the reasonable car duty under CIDRA.

- It had cancelled the policy to 18 July 2018 because Mr A had misrepresented the amount of jewellery owned.
- But he had also had a duty to tell it in July 2018 when he had purchased further jewellery items, which he must have known took him beyond the policy limit.
- That the circumstances of the theft were of concern to it.
- Responses made to its enquiries during the course of the claim had been inconsistent.
- Any evidence presented by Mr A must be treated with caution as it believes he has a propensity to misrepresent things.

Moving onto its response to my provisional findings, Zurich said it feels that the purchase of jewellery in July was material to the risk it was offering cover for, because that took the worth of items owned beyond the valuables limit, and several items individually beyond the single article limit. And that Mr A must have known he was exceeding the key values on the policy. Also that as I accept the policy was clear – he should have known to tell it this. So Mr A, in its view, should have notified it and it would have been unable to maintain the policy, because that level of jewellery was (and is) just unacceptable to it. Zurich said that as jewellery is worn outside, a lot more jewellery makes for a much greater risk for insurers. So it isn't fair to say, says Zurich, that the risk just increases. It cannot reinstate the cover because the risk Mr A presents is simply unacceptable to it.

### **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.

I can assure Zurich that I did take its response to our investigator's view into account when I made my provisional decision. But as can be seen from my bullets above, the majority of that reply focused on what Mr A did or didn't know or should and shouldn't have done at inception of the policy, as well as that other concerns for Zurich existed about the claim and/or evidence Mr A had presented. And I explained provisionally why Zurich's act of dealing with all this by cancelling the policy mid-term, without reserving any rights, meant the situation had moved beyond the point where those issues could fairly be considered. So I did not overlook or disregard Zurich's response to our investigator. Rather I considered it and explained why the points Zurich had raised didn't cause me to think Mr A's complaint should not be upheld.

I fully appreciate that the amount of jewellery Mr A owned, certainly as of July 2018, made for an unacceptable risk for Zurich. But it being an unacceptable risk does not make it material information Mr A reasonably needed to disclose to it during the course of the policy year. Arguably owning any jewellery makes one a target for thieves – if one owns more than they did before, that merely increases the risk. The risk itself hasn't changed. And Zurich's policy is written with the foresight to protect it in situations where policyholder's belongings exceed the sum insured. As I noted provisionally, Zurich can adjust the claim settlement to account for wear and tear where the policy sum insured is exceeded. So, assuming Mr A's sum insured was exceeded – which seems very likely given the amount of jewellery alone that was owned – it will be fair for Zurich to rely on that term, if it wants to, when settling Mr A's claim.

But I remain of the view that Zurich cannot fairly and reasonably cancel this policy mid-term. Mr A did not have to tell it about the further jewellery he bought in July 2018 as that did not represent a material change in risk. And Zurich could not fairly and reasonably cancel the policy on the basis that Mr A had failed to tell it of a change that had materially altered the risk it was offering cover for, because the change wasn't material. So Zurich must reinstate the policy. In doing that I'm not asking Zurich to give Mr A cover for all his belongings.

Rather the policy as it was will be reinstated and will lapse at renewal in 2019 – as it did anyway before Zurich made its decision in March 2020 to cancel that already lapsed policy back to July 2018.

In summary, Zurich's reply to my provisional findings has not caused me to change my view on this complaint. My provisional findings, along with my responses to the points Zurich has raised in reply, now form the findings of this, my final decision.

### **Putting things right**

I require Zurich to:

- Reinstatement Mr A's policy to the date of renewal in 2019, removing the record of cancellation from its own and any industry database.
- If Mr A had an increased cost for cover in 2020, and can show that he declared the cancellation at that time, pay Mr A the increased amount of cover, plus interest\* from the date the increase was paid until settlement is made.
- Settle Mr A's claim for theft in line with the terms and conditions of the policy. In doing so it can't use any terms to decline the claim, partially settle it or reduce its outlay, except in respect of the wear and tear term – which it can apply when calculating the settlement.
- Pay Mr A £250 compensation.

\*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. If Zurich considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr A, it should tell him how much it's taken off. It should also give Mr A a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

I uphold this complaint. I require Zurich Insurance PLC to provide the redress set out above at "*putting things right*".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 20 April 2022.

Fiona Robinson

**Ombudsman**