

The complaint

Ms P complains that Zurich Insurance PLC (Zurich) avoided her commercial motor insurance policy and declined cover for a claim following an accident.

Any reference to Zurich includes its agents.

What happened

Ms P was involved in a collision with another vehicle in February 2022. She says the third-party driver was at fault and had acted aggressively, so she didn't stop at the scene of the accident. She subsequently reported the incident to the police and to Zurich.

Zurich says Ms P's policy was for a commercial van. During the sales process she was asked to confirm that the insured vehicle wasn't a campervan. It says the police have said the vehicle is a campervan, which Ms P confirmed when interviewed about the accident.

Zurich says it wouldn't have offered cover if Ms P had told it the vehicle was a campervan. It says the third-party made a claim against Ms P's policy. It decided to settle the claim with the third-party as is its right under the policy terms. It didn't think the evidence supported Ms P not being at fault, and so acted to minimise the cost of the claim. Zurich says it acted appropriately to avoid the policy and refuse Ms P's claim for her vehicle damage.

Ms P didn't think this was fair. She says the vehicle hadn't yet been converted into a campervan, so she didn't answer Zurich's questions incorrectly. She says nothing has been fixed to the body of the vehicle and it didn't meet the DVLA's criteria for registration as a campervan. Zurich didn't change its decision, so Ms P referred her complaint to our service.

Our investigator didn't uphold her complaint. She says Ms P misrepresented the information she gave to Zurich by not disclosing the modifications made to her vehicle. She says the policy has an exclusion for vehicles modified or altered in anyway. Because of this she thought it had acted fairly, under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), to avoid the policy and decline to cover the damage to Ms P's vehicle.

Ms P didn't think this was fair and asked for an ombudsman to consider the matter.

It has been passed to me to decide.

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've listened to the call recording when Ms P first contacted Zurich. She explains she's been asked to make contact. The agent confirms this is because a claim has been made via the third party's insurer, in relation to the accident that occurred in February 2022. Ms P says the other driver was at fault having changed lanes at speed, resulting in the collision. She also says the other driver appeared to have acted in a state of "road rage".

In its complaint response Zurich says an independent witness who saw the accident, considered Ms P was at fault. It says that based on the evidence it decided to settle the claim with the third-party to keep solicitor's costs to a minimum and avoid the risk of the third-party entering into a credit hire agreement with the associated costs.

I've read the police report from the interview that took place with Ms P. As well as the email the police officer dealing with the incident sent to Zurich. In this he says Ms P drove, *"180 degrees around a roundabout in the outside lane, colliding with a vehicle which was correctly exiting the roundabout, so in my view she is clearly at fault"*.

Ms P's policy terms explain that Zurich is entitled to take over and either defend or settle any claim made against its policy. This is a common term found in most insurance policies. It effectively allows the insurer to decide how best to deal with any given claim. We don't think this is unreasonable as the insurer is responsible for paying the cost of the claim.

This doesn't mean an insurer can act however it wants. We still expect it to treat its customer fairly. In this case there is an independent witness, and a police officer that both say Ms P was at fault. Based on this evidence I don't think Zurich acted unreasonably in deciding to settle the claim with the third-party.

Zurich explains that it settled the claim on a without prejudice basis. This means it hasn't prejudiced Ms P's position should she wish to pursue the matter through a court. It says it will mark the claim as non-fault if she takes the matter to court and is successful. I think it's fair that Ms P retains the option to take the matter to court. But I don't think it's been shown that Zurich acted unfairly in settling the claim in the way it did.

I've thought about whether Zurich's decision was fair, to avoid Ms P's policy and refuse her claim for damage to her vehicle.

We asked it to provide the questions Ms P was asked when she purchased her policy online. Zurich has sent screenshots to show this information. This shows Ms P was asked the following:

"I confirm the vehicle

Is NOT a Horsebox, Lorry, Minibus, Motor Caravan, Motor Home, Campervan, Recovery Vehicle or a Tipper."

Under this section it says, *"I consider all the above statements are correct"*. There is checkbox that Zurich says Ms P must have completed in order for the application to proceed.

A screenshot Zurich has provided from the *"Statement of Fact"* says:

"Your policy has been issued on the basis of you agreeing to the Acceptance Criteria made available prior to purchase. You must answer all questions honestly and to the best of your knowledge and belief. If you don't, your policy may be cancelled, or treated as if it never existed, or your claim rejected or not fully paid."

I think the question asked and the information provided to Ms P during the application process was clear. Zurich confirmed it wouldn't insure a campervan. By checking the box Ms P confirmed her vehicle wasn't one of the vehicles Zurich wouldn't provide cover for.

I can see the statement of fact that was sent to Ms P also says, *"You have declared that the vehicle: is not a ...Campervan"*.

This is a commercial policy so the relevant law here is The Insurance Act 2015. This requires Ms P to make a fair presentation of the risk to her insurer before the contract of insurance is entered into.

Ms P says that her vehicle is registered as a van. She points to the DVLA requirements for when a vehicle should be re-registered as a motor caravan, which she doesn't think apply here. The DVLA says it will consider changing the body classification to motor caravan if the vehicle's exterior is distinguishable as a motor caravan in traffic. Ms P says her van isn't. She says at the time the policy was agreed it had two foldable loungers, a freestanding water pedestal, and a zipped storage compartment in the rear of the van. But Ms P says none of this is fixed to the body of the vehicle.

I asked Zurich to respond to Ms P's comments. It said Ms P had herself declared that the vehicle is a "*self-converted campervan*" and confirmed her intention to complete a full conversion on it. It says she confirmed this point during a police interview, and the police officer's own opinion was that the vehicle was a campervan. Zurich says whilst it accepts some of the modifications might not be permanently fitted/fixed – the vehicle was being used as a campervan. It says this means it has all the associated ratings and risk factors for an insurer that such a vehicle entails.

In its response Zurich says it has no doubt that Ms P was using the vehicle in the capacity of a campervan. It says she was aware of this when applying for insurance cover.

Unlike consumer policies, where it is for the insurer to ask the right questions of the consumer, commercial policyholders and indeed applicants must volunteer information – they have a duty to make a "*fair presentation*" of the risk to the insurer when taking out a policy. This means they must disclose either:

- everything they know, or ought to know, that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms; or
- enough information to put an insurer on notice that it needs to make further enquiries about potentially material circumstances.

As mentioned, during the online application Ms P checked a box that says her vehicle isn't a campervan. I acknowledge the information she provided from the DVLA's website about vehicle classification. But it's for Zurich to decide what risks it intends to cover. It's not for me or indeed Ms P to determine what risks any insurer wishes to cover or wishes not to cover. Insurers are fully entitled to decide this themselves based on their own commercial discretion and the varying regulations of the Financial Conduct Authority. Zurich made it clear it wouldn't provide cover for campervans, which is how Ms P's van was being used.

Considering the confirmation Ms P was asked to provide that her vehicle wasn't a campervan - I don't think it's reasonable or indeed a "*fair presentation*" for Ms P not to declare she intended using the van as a camper. In not doing so Ms P failed to provide a fair presentation of the risk as required by her under the Insurance Act 2015. She may not have thought the DVLA would classify her vehicle as a campervan, but she acknowledges this is how it was being used. Making a fair presentation of the risk should reasonably therefore have included confirmation that the vehicle was to be used as a campervan.

In cases like these where the risk is not acceptable to the insurer, the 2015 Act gives the insurer remedies as follows:

- if it was deliberate or reckless the insurer can avoid the policy and refuse all claims and it doesn't have to return the premiums

- if the qualifying breach was neither deliberate or reckless and the insurer wouldn't have provided the insurance, it may avoid the contract and refuse any claims, but it must return the premiums; (unless the non-disclosure was deliberate or reckless)
- if the insurer would still have provided the insurance but on different terms (other than the premium) the policy is to be treated as if it had been provided on those terms; and
- if the insurer would have charged a higher premium, it may take a 'proportionate' approach to any claims.

Zurich has retained Ms P's premium, meaning it considers she acted deliberately or recklessly when failing to provide a fair presentation of the risk. I don't think Zurich acted unreasonably here. Ms P knew she was going to use the vehicle as a campervan when she applied for the policy. She should reasonably have informed Zurich of this by not checking the box indicating the vehicle was intended to be used as a campervan. Or otherwise informing Zurich of this, given the clear message that campervans weren't an acceptable risk for cover.

I understand that Ms P will be disappointed with my decision. But I don't think Zurich did anything wrong. It's because of this that I can't fairly ask it to do anything more.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 18 May 2023.

Mike Waldron
Ombudsman