

The complaint

Mr H complains that Zurich Insurance plc unfairly avoided his commercial vehicle insurance policy and declined his claim.

What happened

Mr H purchased a motor trade insurance policy with Zurich. Following a third-party claim for an accident and a claim from Mr H for a stolen car, Zurich asked for evidence to verify the details provided by Mr H when the policy was purchased.

Zurich didn't think Mr H had given a fair presentation of the risk when taking out the policy and so avoided it (cancelled from the start as if it never existed) and declined his claim. It said this was because it thought Mr H was a sole trader with employees, however, it turned out he actually worked for a limited company and so wasn't a motor trader himself. Zurich also raised concerns about the details given by the driver of the vehicle insured on Mr H's policy, when it was involved in an accident with the third party.

Mr H didn't think this was fair and complained. He said he'd told Zurich when the policy was taken out that he worked at the limited company and didn't think Zurich had acted fairly by avoiding his policy and retaining the premium. Zurich reviewed the complaint and didn't uphold it. It remained satisfied that Mr H hadn't given a fair presentation of the risk when the policy was taken out. Unhappy with Zurich's response, Mr H referred his complaint here.

I issued a provisional decision on this complaint on 20 October 2023 where I said:

"The relevant legislation to be considered here is the Insurance Act 2015 ("the Act"). Under the Act, Mr H had a duty to make a fair presentation of the risk when buying his policy. And for Zurich to take any action, it needs to show that Mr H didn't do that and that it made what's known as a qualifying breach. To demonstrate a qualifying breach, Zurich would need to show that if Mr H had made a fair presentation of the risk, it would either have not offered Mr H the policy or would have done so on different terms.

The Act says:

- "(3) A fair presentation of the risk is one—
 - (a) which makes the disclosure required by subsection (4),
 - (b) which makes that disclosure in a manner which would be reasonably clear and accessible to a prudent insurer, and
 - (c) in which every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith.
- (4) The disclosure required is as follows, except as provided in subsection (5)—
 - (a) disclosure of every material circumstance which the insured knows or ought to know, or
 - (b) failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances."

I therefore need to consider whether Mr H failed to disclose a material circumstance that he knew or ought to have known.

Zurich said Mr H failed to give a fair presentation of the risk as, during the sales calls, it appeared as though the company Mr H worked for, which I'll refer to as W, was actually his company and Mr H said he was a sole trader with six employees. Mr H also gave a trading name of W, which is listed on the policy documents. Zurich became aware W was a limited company when it asked Mr H for proof of trading.

Mr H said he is an employee of W, but hasn't provided anything to prove he works for W. Such as a pay slip or contract of employment. Mr H said this is due to him working as and when is needed and on a cash in hand basis.

I've listened to the calls Mr H had when he purchased the policy. And while I agree he does say "I've been working at this company for some time". He also says he has six people working for him and says, "I'll speak with my business partner".

When considering the requirements under The Act, I'm satisfied Zurich has acted fairly and reasonably by saying Mr H hasn't made a fair presentation of the risk. I say this because from the conversations, when the policy was bought, it appears as though it is Mr H's own business and that he has a business partner. So, I'm not persuaded Mr H made the disclosure in a manner which was reasonably clear.

Zurich has shown that if it knew Mr H worked for W, rather than it being his own business, then it wouldn't have offered him a policy. I'm therefore satisfied that Zurich has shown Mr H has made what is known as a qualifying breach. The remedies available to Zurich depend on whether the breach is deliberate or reckless, or neither deliberate nor reckless. Zurich has avoided the policy, declined the claim and said it would have refunded the premium. So it appears that Zurich has treated the qualifying breach as neither deliberate nor reckless, which I'm satisfied is fair in the circumstances.

I am aware though that Zurich hasn't refunded the premium as there is an outstanding third-party claim, which it might be responsible for, and so is offsetting this against what it will have to pay. While under the Act, Zurich isn't allowed to keep the premium unless the qualifying breach was deliberate or reckless, given the third party claim though I'm not going to interfere with Zurich's decision to retain the premium. I know this will be a disappointment to Mr H, but I'm not persuaded Zurich has acted unfairly in avoiding his policy, declining the claim and retaining the premium."

Zurich didn't provide any further comments to my provisional decision. Mr H responded and didn't accept it. He said the initial calls should have given Zurich ample opportunity to assess the risk associated with his policy. Mr H also said Zurich had asked for further information after the policy started, and during this process, he let it know he didn't own the company. Following Mr H providing this information Zurich cancelled the policy and then reinstated it before the claim. He provided two e-mails from Zurich to support this.

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 considered Mr H's comments but I'm not going to depart from the findings in my provisional decision. I say this because while there is a responsibility on Zurich to consider the information provided and, if needed, ask more questions. It doesn't alter that there is also

a responsibility on the insured to give a fair presentation of the risk. And, for the reasons explained above and in my provisional decision, I'm satisfied Zurich has acted fairly by saying Mr H didn't give a fair presentation of the risk when taking out the policy.

I've also considered Mr H's points about the validation checks done after the policy started, and when Zurich cancelled the policy and re-instated it. I can see that following the incident which resulted in the third-party claim, Zurich had some questions about which vehicles should be added to the policy and asked to verify information. I understand Mr H has said he notified Zurich at this time that he didn't own the business but, in my view, the emails he has provided in support of this do not indicate that Zurich was aware he didn't own the company when it re-instated the policy. I say this because they refer to customer vehicles being added to the policy incorrectly and ask for proof of ownership for the vehicles on the policy along with copies of the registration documents. Overall, when taking all of the facts of this case into account, I'm not persuaded Zurich has acted unfairly by avoiding his policy and declining his claim.

My final decision

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 January 2024.

Alex Newman
Ombudsman