

The complaint

Mr T has complained about his let property insurer Zurich Insurance PLC because it declined a claim for malicious damage at a property he owns and then avoided the following year's policy from renewal (treated it as though it had never existed).

What happened

Mr T let his property to a new tenant in October 2021. In November he was made aware of police activity at the property and that the tenant had been arrested, with multiple dogs left in the house. The dogs were subsequently removed from the property, but returned to it in January 2022 when the police released a key to the property to a third-party.

In May 2022 Mr T began eviction proceedings to reclaim possession of the property. He was made aware in September 2022 that the third-party had left the property, the dogs had been left there for a week and the RSPCA were acting to retrieve them. Mr T changed the locks.

The policy for the property renewed in October 2022. In November 2022 a repossession order was granted to Mr T. Over the coming months he acted to reinstate the property – which involved extensive sanitation, with workmen unable to enter without masks for several weeks. The property was ready to re-let in January 2023 and Mr T called his broker to enquire about legal expenses cover as he was unhappy about the action of the police. He was told there was no legal expenses cover but there was cover for malicious damage by a third-party. Mr T made a claim.

Zurich said it didn't feel the damage caused at the property would be covered by the policy. It noted that the damage had stemmed from the multiple dogs living in and left at the property. It didn't think that amounted to malicious damage and it noted there was no cover for accidental damage on the policy. Zurich felt Mr T should have told it about everything that had been going on. It said that if he had it wouldn't have renewed the cover. So Zurich said that as well as declining the claim for damage caused in the 2021/2022 policy year, it was avoiding the renewed policy. Zurich returned Mr T's premium for the renewed policy.

Mr T complained to the Financial Ombudsman Service. He said Zurich, via the broker, had known what was happening at the property because he had told the broker everything in February 2022. He felt the avoidance was unfair, as was its decline of the claim.

Our Investigator, referencing the Insurance Act 2015 and the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), felt that Zurich had acted fairly and reasonably regarding the renewal. And that its claim decision had been fair – noting that most damage had been caused by the dogs; he hadn't seen any evidence that any other damage was likely caused maliciously by the third-party. He didn't uphold the complaint.

Mr T was unhappy with that decision. He said he had told the broker (which acts as Zurich's agent) what was going. He noted his policy had renewed automatically, without him doing anything. He said if he'd checked the renewal and seen questions like 'is the property in a good state of repair' he'd have answered 'yes' – at that time, as far as he knew, it was. He

only gained possession in November 2022, after the policy renewed. Regarding the claim he said he couldn't see any other way to categorise the damage other than as malicious.

Our Investigator responded further to Mr T, providing details of the call which had taken place in February 2022. Mr T did not offer further comment and the complaint was referred for an Ombudsman's decision.

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.

Having done so I've found my view is the same as that expressed by our Investigator. I've set out my findings below and trust they will help Mr T understand why I'm not upholding his complaint.

Avoidance

This policy is for a let property. So strictly speaking the legislation which applies is the Insurance Act 2015. However, where unsophisticated consumers are involved – such as Mr T, who is only a landlord for one property, this service will often consider the rules set out in CIDRA as appropriate. That's because CIDRA places less onerous requirements on the policyholder than the Insurance Act does. Zurich has relied on the Insurance Act. But if its actions were nevertheless in line with what CIDRA allows, the outcome it reached is fair and reasonable.

If a prospective policyholder makes a mistake or fails to answer an insurer's question when applying for a policy, this is known in the insurance industry as a misrepresentation. CIDRA requires a prospective or renewing policyholder to take reasonable care to not make any misrepresentation to the insurer when applying for or renewing cover. If a misrepresentation is made which is a *qualifying* misrepresentation then the insurer will be allowed to act as it would've done if the misrepresentation hadn't been made.

Here I've closely considered Mr T's own comments and recollections from 2021 and 2022 to determine what I think he knew prior to the renewal occurring in autumn 2022. I've bulleted what I feel are the relevant points below:

- November 2021 – the police advised that illegal activities were thought to be occurring at the property, with drugs having been found, with the property then being unoccupied.
- January 2022 – multiple dogs were returned to the empty property and there were rent arrears.
- April 2022 – Mr T witnessed poor conditions at and extremely poor repair of the property, with the absent tenant being obstructive via a non-tenant living at the property.
- May 2022 – eviction proceedings began.
- September 2022 – the dogs had been left alone for a week in the now vacated property, with windows left open, the garden and downpipe were extensively damaged, with the interior in a very poor state.

Mr T was advised that his policy was due to renew. He was given access to his policy documents and directed that if nothing had changed he did not need to do anything. The policy documents contained statements that Mr T had first agreed to when the policy was arranged in 2021. The statements Mr T had agreed to in 2021 included; that the property was in a good state of repair, and that he knew of no event having occurred which might give rise to a claim, or which he could have claimed for but didn't. Mr T did not check his documents or advise of any changes since 2021.

I note that Mr T says he did not know what state the property was in until he gained access in November 2022. But having considered the above details I think he did know the property wasn't being looked after. I also think he was reasonably aware that the activity occurring at the property, the way it was being kept and his own, reasonable action to begin eviction proceedings, were all things which *might* give rise to a claim. I don't think Mr T took reasonable care at renewal by not considering his documents and in not telling Zurich of what had been going on. I'm satisfied his failure to do so resulted in a misrepresentation.

I've considered the call which happened in February 2022. The call is less than a minute in length and Mr T merely asks if his tenant having a criminal conviction would affect the cover. I'm satisfied that Zurich was not given reasonable notice in this call of things happening at the property which might give rise to a claim.

I've considered evidence from Zurich about what it would have done if it had been told about relevant activity at the property. I'm satisfied that if it had been told it would not have renewed the policy. As Mr T did not take reasonable care, resulting in a misrepresentation and Zurich would have otherwise done something differently, that misrepresentation is seen as a *qualifying* one. CIDRA, in such a circumstance, allows Zurich to avoid the policy. I note that is what Zurich did whilst returning Mr T's premium. I think it acted fairly and reasonably in the circumstances.

Claim

I appreciate that Mr T's hopes were raised about making a successful claim when he enquired about legal expenses cover in January 2023. And that he doesn't know how else the damage could be classified other than as malicious. But the presence of damage alone doesn't mean it has to be or will be covered by a policy of insurance.

A claim for malicious damage – referenced in the policy as damage caused by malicious persons – requires an intent by the perpetrator. An intent to cause damage. If damage just happens via neglect that doesn't rise to the level of malice. And from what Mr T has said the only damage caused directly by the person at the property was through smoking, which had caused staining and moisture damage. That isn't akin to malicious damage.

The vast majority of the damage – considering what Mr T has said about the state the property was found in and the extensive sanitisation and repairs which were needed – was caused by the dogs. Dogs can't reasonably be said to act maliciously. Damage by dogs might be considered to be accidental damage. But as Zurich pointed out to Mr T, his policy didn't offer cover for accidental damage.

I appreciate the significant effort Mr T had to go to in order to reinstate the property. Along with the substantial costs incurred. I can see this was stressful for him and he then had his hopes raised that he might at least be able to claim back some of his outlay from his insurance policy. I understand Zurich's decline of the claim was then disappointing for him. However, I am satisfied that Zurich's claim decision was fair and reasonable.

My final decision

I don't uphold this complaint. I don't make any award against Zurich Insurance PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 12 April 2024.

Fiona Robinson
Ombudsman

