DRN-4815489

The complaint

X has complained about the decision by Zurich Insurance Company Ltd to void (cancel from the start) his home insurance policy.

What happened

X took out a home insurance policy with Zurich in May 2021. In December 2022 he made a claim to Zurich following a water leak. During its investigation of the claim Zurich found out information that it hadn't been made aware of when X had applied for the policy. In particular it thought the property was not in a good state of repair.

X told Zurich he didn't want to pursue the claim. Zurich said it would continue its investigation anyway.

It said if it had been aware that the property was not maintained in a good state of repair, it would have declined to offer him cover. It told X he had misrepresented the risk to it in a reckless or deliberate way. It also noted that other information had been misrepresented. So it voided the policy from the date it had been first taken out. It also said as the misrepresentation was at least reckless, he wasn't entitled to a refund of the premium. Lastly Zurich add details of the policy voidance for false misrepresentation onto the Insurance Fraud Register.

X brought a complaint to this service. Our Investigator didn't uphold it. He didn't think Zurich had been unfair.

As X didn't agree, the matter has been referred to me.

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.

The relevant law in this case is the Consumer Insurance (Disclosure and Representation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out an insurance policy like the one X bought. The standard of care is that of a reasonable consumer.

If a consumer fails to take reasonable care, then the insurer has certain remedies providing the misrepresentation is what is referred to in CIDRA as a qualifying misrepresentation. The insurer will need to prove it's a qualifying misrepresentation by showing the consumer failed to take reasonable care and that it wouldn't have offered the policy at all or offered a policy on different terms.

Zurich has said there were three things it believes X didn't answer correctly when he took out the policy. However in order to avoid the policy it only needs to prove that one of these was a qualifying misrepresentation. So I have started by looking at whether X gave Zurich correct information about the property's state of repair.

When the policy was taken out, X was asked:

"*Is your home in a good state of repair*?"

I think that's a clear question. X says he thought the question was asking whether the house was habitable and not in a derelict condition. I don't think that's how most people would interpret that question. I think if X was unsure what the question meant, he could reasonably have sought clarification when taking out the policy.

Next I need to decide whether a reasonable person would consider the property as a whole to be in a good state of repair and from what I've seen, I don't agree that they would. I've looked at photos of the property. These appear to show a property in poor condition - for example, there is a large crack in one wall, a hole in another internal wall and sections of plaster have come off exposing bare bricks. I have ignored the damp and mould for this purpose as the claim was for a water leak and so some of the damage might have been caused by that but I note Zurich thought there had been previous unrepaired water damage. Zurich also noted that the rear yard wall was in a dangerous condition with sections of the wall having previously collapsed onto a public area and the external woodwork was rotten. It appears to have been some years since the property had had any significant maintenance carried out. Overall, it looks to me like a property that would require substantial renovation to bring it up to "*a good state of repair*".

Zurich has said that if X had told it that the property wasn't in a good state of repair, it wouldn't have provided cover. This means I'm satisfied X's misrepresentation was a qualifying one.

Zurich has also said that the misrepresentation was at least reckless. Under CIDRA a qualifying misrepresentation will be deliberate or reckless if the consumer:

- knew the information they provided was untrue or misleading or did not care whether it was untrue or misleading; and
- knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.

It seems to me that at the very least X didn't care whether he had given Zurich correct information about the state of repair of his property especially since, as Zurich has pointed out, he is a professional in the construction industry. I have also borne in mind that other information X gave to Zurich was inaccurate. I think it is reasonable to suppose that when taking out buildings insurance he should have known that information about the state of repair of his home would be relevant to his insurer. It follows that I think it was fair for Zurich to take the view that the misrepresentation was reckless if not deliberate. However, whether it was deliberate or reckless is immaterial to the remedy Zurich has, as under CIDRA the remedy is the same. That means Zurich was entitled to void the policy and retain the policy premiums.

I appreciate the significant impact that the avoidance of the policy will have on X. In particular, he is likely to find it more difficult to obtain insurance in future although I understand there are specialist providers who should be able to help him. While I am sorry for the difficult situation he is now in, I'm not persuaded Zurich has acted unfairly by avoiding his policy.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask X to accept or reject my decision before 3 September 2024.

Elizabeth Grant
Ombudsman