

The complaint

Mr C complains that Zurich Insurance Company Ltd voided his policy and refused his claim.

What happened

Mr C took out a motor policy with Zurich through a broker in September 2021.

In May 2022 Mr C parked his car, and when he returned to it, he found it had rolled into the wall of a property.

Following reporting the incident to Zurich, the car was assessed and written off.

After checking his driving licence record, Zurich voided Mr C's policy saying he had failed to declare two six point MS90 convictions, and it considered this to be a deliberate qualifying misrepresentation, which entitled it to void the policy and decline the claim. They returned his premiums.

Mr C brought his complaint to us and our investigator thought it shouldn't be upheld, because he thought it was fair for Zurich to rely on the information provided by DVLA about the offences.

Mr C doesn't agree with the investigator and has asked for an ombudsman's decision because he says he knew nothing about these convictions, so the matter has come to me to review.

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 Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Zurich thinks Mr C failed to take reasonable care not to make a misrepresentation when he failed to tell them about his convictions when he took out the policy.

I've looked at the questions that were asked and responded to, and I've also taken account what Mr C says about not having received notification of these convictions.

Zurich say that when the policy was purchased Mr C was asked "In the last five years, have you received any motoring convictions, licence endorsements or fixed penalties and/or have you been disqualified from driving (including pending prosecutions)". He answered "No" to that question.

The policy schedule and statement of fact included a declaration that Mr C had "No motor offences in the last 5 years". It asks him to read the statement and contact Zurich if any of this information is incorrect. Mr C didn't make contact with Zurich, and so the policy was inceptioned on the basis of him having no motoring convictions.

However, when Zurich checked Mr C's records after the incident, they discovered he had 12 points on his driving licence for driving offences. These were six points on 27 March 2020 and six points on 29 January 2021. Both of these convictions were for MS90 offences.

These types of offences would have come about because a motoring offence such as speeding was committed in the car which was registered to Mr C. The police would then have written to him at the address held as the registered keeper's address with DVLA, asking for him to provide details of who was driving at the time of the offence. Failure to respond to this request for information would have meant that he was sent further documentation about being prosecuted for failing to provide information about the identity of a driver, and subsequently he would have been convicted of that offence, resulting in six penalty points and possibly a fine.

Mr C says he wasn't aware of any of these offences and didn't receive the correspondence. He says he moved house during lockdown and may not have received the letters.

I've asked Mr C for the dates he lived at what address, and when he notified DVLA of these changes. He has told me that he lived at address A from 2017 until February 2020 when he moved to address B (student accommodation), and then to address C in April 2021.

The first offence was a speeding offence committed on 21 February 2020, which resulted in a failure to provide offence in March 2020 - so around the time that Mr C says he moved from address A. However, in September 2021 when he took out the policy with Zurich, Mr C used address A as his residential address on the Zurich policy, and so I'm satisfied that he was still at least partially resident there and able to receive documents there or he wouldn't have taken out insurance from that address.

It therefore seems likely to me that DVLA sent the documents relating to the convictions to an address that Mr C was either resident at or had access to between February 2020 and April 2021. He may have not chosen to open the correspondence sent, but I think it's more than likely it was sent to his address. These offences also carry fines, and so it is likely that there was quite a lot of correspondence sent following the initial notifications.

Mr C has told us that he has contacted the court about one of the offences, and the court agreed to reopen the offence and hear it on 24 August this year, but he hasn't provided any documentation to support this, hasn't provided us with any details of the outcome of this, and despite requests, hasn't provided us with any other evidence relating to his addresses.

In view of that I think it's fair to say that Mr C didn't take reasonable care not to make a misrepresentation when he took out his policy in September 2021.

I've then looked at what would have happened if Mr C had disclosed the convictions correctly.

We have asked Zurich whether they would still have offered cover if they had known about the offences. Zurich have confirmed they wouldn't have offered cover and have provided evidence in the form of their underwriting criteria, which shows this.

This means I'm satisfied Mr C's misrepresentation was a qualifying one.

What action Zurich can then take will depend on whether the misrepresentation is deliberate, reckless or careless.

Zurich has said Mr C's misrepresentation was deliberate because both of the motoring convictions were awarded prior to the policy inception. I have thought about this, and although I can't show that Mr C definitely knew about the convictions, I'm satisfied that he should have known, as the documents were sent to his address, and so I think that this misrepresentation is reckless, as Mr C didn't check that the information that he was providing was correct. So I'm satisfied that Zurich are entitled to void the policy and withhold premiums.

In any event, Zurich have refunded the premiums, which they are not obliged to do, and so I think they have treated Mr C fairly and reasonably.

My final decision

My final decision is that I'm not upholding Mr C's complaint and Zurich Insurance Company Ltd don't need to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 29 October 2024.

Joanne Ward
Ombudsman