

The complaint

Mr M complains that Zurich Insurance PLC (“Zurich”) unfairly voided his policy and declined his claim for water damage.

What happened

In September 2022, Mr M made a claim when he was made aware of a leak at a property he rents out. His insurer, Zurich, considered the claim but following a review, the policy was avoided because Zurich said that incorrect information had been given to it about Mr M’s tenant.

Mr M made a complaint. In its response, Zurich said that if it had known the tenant was unemployed and on benefits, it wouldn’t have provided cover. So it didn’t think it had acted unfairly by avoiding the policy.

Because Mr M didn’t agree, he referred his complaint to this service. Our Investigator considered the evidence and didn’t think the complaint should be upheld. She said that Zurich had shown us that the misrepresentation made was a qualifying one, which means that cover wouldn’t have been offered if the right information had been provided, and that Zurich was therefore entitled to avoid the policy and decline the claim.

Mr M didn’t accept our Investigator’s view, so the complaint has now 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.

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 M failed to take reasonable care not to make a misrepresentation when his broker (on his behalf) said Mr M’s tenant was a private tenant instead of relaying the correct information that the tenant was unemployed and in receipt of benefits.

I've looked at the question that was asked, both when the policy was taken out and at the renewal in 2022, and this shows the heading "Occupant Type" next to a dropdown box which included options such as "Non-Working Occupant(s), Benefits Assisted" as well as the option which was selected which was "Private Rental".

Whilst I accept that Mr M says he didn't complete the form, I have to consider whether the answers provided by the broker, acting on Mr M's behalf, showed that they took reasonable care. And I think they failed to take reasonable care both at inception and renewal, because the more suitable option would've been to select "Non-Working Occupant(s), Benefits Assisted". So I consider there to have been a misrepresentation here, and in order to determine what Zurich was entitled to do in the circumstances, I need to consider whether the misrepresentation was a qualifying one, ie. whether it made a difference.

Zurich has provided information to show that it wouldn't have provided cover if the misrepresentation hadn't been made, ie. if the correct information had been given to it. This information includes its underwriting guide which clearly demonstrates that if the box for unemployed tenants in receipt of benefits was selected, Zurich would've referred the application to one of its underwriters. Its senior underwriter has also confirmed that this was a risk outside their appetite, so the application would've been declined.

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

Zurich has treated Mr M's misrepresentation as careless, rather than deliberate or reckless, which I think is fair. I haven't seen evidence which would persuade me that Mr M was intentionally trying to deceive Zurich through his broker or that he was reckless when taking out the policy. Zurich has returned Mr M's premiums, which I'd expect it to do, if it was treating Mr M's misrepresentation as a careless misrepresentation, so I'm not going to ask it to do anything more in relation to that.

As I'm satisfied Mr M's misrepresentation should be treated as a careless misrepresentation, I've looked at the actions Zurich can take in accordance with CIDRA. And under CIDRA, Zurich is entitled to avoid the policy (treating it as though it never existed) and decline the claim, whilst also refunding Mr M's premiums as it has done. So I'm satisfied that Zurich has not acted unfairly. And looking at the timeline of the claim and complaint, I also do not think there were any excessive delays.

It follows therefore that I will not be upholding this complaint. I'm aware that Mr M has a separate complaint about the correspondence he asked for, so I've not commented on that in this decision.

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 Mr M to accept or reject my decision before 4 September 2024.

Ifrah Malik
Ombudsman