

The complaint

Miss B, Ms C, Mr L and Miss S (who I'll refer to collectively as "the Homeowners") complain Zurich Insurance PLC unfairly voided their buildings insurance policy and declined their storm damage claim.

What happened

I issued a provisional decision. I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The Homeowners had a buildings insurance policy with Zurich. In February 2022 they made a claim against the policy for storm damage. Zurich accepted the claim and repairs began. In May 2022 Zurich voided the policy and declined the claim because it considered the Homeowner's had made a qualifying misrepresentation. The Homeowner's say, in brief, they didn't make a qualifying misrepresentation and so the claim should be paid.

I'm satisfied it's appropriate to consider this case in relation to The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). I say this because the Homeowners are a collection of individuals who entered into the contract wholly or mainly for purposes unrelated to their trade, business or profession.

CIDRA 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.

As I understand it, the policy was originally taken out several years prior to this policy year and was taken out by a leaseholder who has since sold their flat and left the group. In May 2021 the policy renewed, creating a new contract of insurance for the policy year at the heart of this complaint.

Zurich issued a statement of fact. It made clear the importance of making sure the information was accurate and the potential consequences of not doing so. It asked the Homeowner's to check the information was correct and get in touch if it wasn't.

Towards the bottom of page two, it sets out the property details. I will include some of the details below, to set out the question and the context:

“Is the premises in an area that has a history of flooding?”

Is there an ATM on the premises?

Has the property or adjacent property [typo removed] suffered from, or shows any visible signs of damage from subsidence, landslide or ground heave?

Is the property of non-standard construction [walls not built only of brick, stone or concrete or roofed only with slates, tiles or concrete]?”

The answer stated for all the questions is ‘No’. Zurich says the answer to the final question should be ‘Yes’ because the property has a mostly flat roof. The Homeowners say, in brief and amongst other things, the question is confusing. I agree. While the part related to walls is relatively clear, the part related to the roof is not. And the test isn’t whether the answer was accurate or not, it’s whether the Homeowner’s took reasonable care not to make a misrepresentation.

I don’t think a reasonable consumer with a flat roof, looking at that question, would understand that they should answer that their property is of non-standard construction. It follows I’m not persuaded the Homeowner’s failed to take reasonable care not to make a misrepresentation by not contacting Zurich to change the answer to ‘Yes’.

This is supported by the Homeowner’s later actions. In February 2022, in preparation for the upcoming renewal, the Homeowner’s broker sent them an online questionnaire. One of the questions was *“Do any insured properties have part of the roof construction flat or partially flat?”*. The Homeowners answered “Yes”. This shows when they were asked a clear question, they answered it accurately. In my view this supports that the Homeowners took reasonable care not to make a misrepresentation at the May 2021 renewal and that it was the wording of the question which led to the problem.

As I don’t find the Homeowner’s failed to take reasonable care not to make a misrepresentation, I don’t find Zurich has shown there was a qualifying misrepresentation under CIDRA. And, as set out above, Zurich only has remedies under CIDRA where it can show the misrepresentation was a qualifying misrepresentation. As I don’t think it was, it follows that I find it wasn’t fair and reasonable for Zurich to void the policy and decline the claim. To put things right Zurich should:

- Reinstate the policy and remove any record of the voidance from internal and external records; and
- Settle the claim in line with the remaining policy terms. Zurich should include simple interest at 8% a year from 1 June 2022 (when payments should have been made) to the date of settlement on any payments made to the Homeowner’s.

I’m not aware of any financial losses this matter will have caused the Homeowner’s once the above actions have been completed. But I’m aware of non-financial losses. Having the claim accepted and then the policy unfairly voided and the claim declined caused the Homeowner’s a great deal of distress and inconvenience. There was the initial shock and disappointment, and then the need to fund significant repairs at

short notice.

Zurich has offered the Homeowner's £300 compensation for customer service-related matters, and I note it has argued it insured an entity (a homeowner's association) rather than the leaseholders of three flats. I don't accept that argument. It knew it was insuring the property for the benefit of the three leasehold flats, and each has been impacted by its unfair decision to void the policy and decline the claim. I intend to require Zurich to pay the Homeowner's £750 compensation, in total, in recognition of the distress and inconvenience they've been caused.

My provisional decision

I intend to uphold this complaint and require Zurich Insurance PLC to:

- Reinstate the policy and remove any record of the voidance from internal and external records;
- Settle the claim in line with the remaining policy terms. Zurich should include simple interest at 8% a year from 1 June 2022 (when payments should have been made) to the date of settlement on any payments made to the Homeowner's; and
- Pay Miss B, Ms C, Mr L and Miss S £750 compensation, in total."

The Homeowner's accepted my provisional decision. Zurich didn't. It remains of the view the question was not confusing and that there was a careless qualifying misrepresentation. Zurich also commented on the broker-led sale of the policy, the Homeowner's knowledge of the roof design, and its expectation of the Homeowner's as a management association.

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.

Zurich says the policy was sold by an insurance broker and the question is set by the insurance broker industry. I accept a broker sold the policy and I see no compelling reason to doubt what Zurich has said about the origin of the question. But this was a renewal, and therefore a new contract of insurance. The 2021 statement of fact - which contains the question - is Zurich's document. So for this policy year, Zurich asked the question.

Zurich has explained why it considers the question not confusing. But it has done so by taking only part of the question, and therefore not taking account of the question as a whole or the surrounding context. For the reasons I set out in my provisional decision I remain satisfied the question is unclear. It follows I remain satisfied the Homeowner's took reasonable care not to make a misrepresentation.

Zurich has commented on the Homeowner's knowledge of the property design. The thrust of this argument is that they knew, or ought reasonably to have known, the roof was mostly flat and said so. I accept they knew, and I'm satisfied had they been asked a clear question, as they were in February 2022, they would have answered accurately, as they did in February 2022.

Zurich points out it would not have insured the flats individually and therefore only insured the Homeowner's on the basis they'd formed a management association, which it expected would oversee maintenance and upkeep of the property. I don't find this point relevant because the claim isn't related to a lack of maintenance and upkeep. The claim was accepted without any reliance on gradual damage (lack of maintenance/upkeep) exclusions.

My final decision

I uphold this complaint and require Zurich Insurance PLC to:

- Reinstatement of the policy and removal of any record of the voidance from internal and external records;
- Settlement of the claim in line with the remaining policy terms. Zurich should include simple interest at 8% a year from 1 June 2022 (when payments should have been made) to the date of settlement on any payments made to Miss B, Ms C, Mr L and Miss S; and
- Pay Miss B, Ms C, Mr L and Miss S £750 compensation, in total.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B, Ms C, Mr L and Miss S to accept or reject my decision before 3 December 2024.

James Langford
Ombudsman