

The complaint

Miss W has complained about Zurich Insurance Company Limited's decision to avoid her motor insurance policy and reject her claim for damage to her vehicle because of this. This complaint was originally set up against KGM Underwriting Services Limited. But as KGM is an agent of Zurich, who is the underwriter of Miss W's policy, Zurich is the correct respondent business.

Any reference to Zurich in this decision includes KGM.

What happened

Miss W's vehicle was damaged in an accident and she claimed under her policy for the damage to it. Zurich decided her vehicle was a total loss. It placed a market value on the vehicle and told Miss M what this was and what documents she needed to send for the settlement amount due to be paid. Miss M has said she also had a text with a link to the valuation with the option to accept or reject it.

Miss W rejected the valuation. She then had a letter from Zurich saying that her policy had been avoided due to her failure to disclose two fixed penalty offences when she took out her policy. And it explained that this meant she would not receive anything in settlement of her claim.

Miss W complained to Zurich. It wouldn't alter its decision to avoid her policy and reject her claim, but it did offer her £250 in compensation because the process had taken longer than it should have done.

Miss W wasn't happy and asked us to consider her complaint. One of our investigators did this. She said she thought Zurich was entitled to avoid Miss W's policy. She also said that, while Zurich could have been clearer on the fact it may not pay Miss W's claim, this had not prejudiced Miss W's position, as she would still have replaced her van. And our investigator also said that the £250 Zurich had offered as compensation for the delay was fair.

Miss W did not accept the investigator's view. She said that she would not have borrowed the money to replace her van if she'd known Zurich might not settle her claim. She also said that she thinks Zurich waived its opportunity to avoid her policy by sending the communication setting out its valuation of her vehicle.

I issued a provisional decision on 24 October 2024 in which I set out what I'd provisionally decided and why as follows:

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 provisionally decided to uphold it and make Zurich reinstate Miss W's policy and settle her claim in accordance with its terms.

The relevant legislation in this case is The Insurance Act 2015 (the Act). This gave Zurich

the right to avoid Miss W's policy if she failed to make a fair presentation of the risk she wanted Zurich to insure when she took out the policy. This is provided Zurich could show this was what the Act describes as a qualifying breach. I agree Miss W did fail to make a fair presentation of the risk when she took out the policy by saying she hadn't had any fixed penalty offences. And I am also satisfied this was a qualifying breach. However, I agree with Miss W's view that in sending details of the settlement amount due to her with the option for her to accept it, Zurich affirmed her contract with her and waived its right to avoid her policy. I say this because Zurich did not place any sort of condition on what was in effect an offer of settlement or reserve its rights in any way. And, at the point it sent this communication, it had known about Miss W's undisclosed fixed penalty offences for well over a month.

I appreciate Zurich did need to make sure it continued considering Miss W's claim while also considering what to do about her failure to declare her fixed penalty offences. But it should have made it clear when it sent the settlement details to Miss W that it hadn't validated her policy and decided whether or not it was going to settle her claim. It didn't; therefore I think in sending the communication on the settlement it affirmed the contract Miss W had with it.

This means I think the fair and reasonable outcome to Miss W's complaint is for Zurich to reinstate her policy and settle her claim under it in accordance with the policy terms. And Zurich should add interest to the amount payable at 8% per annum simple from the date it sent its settlement communication to the date of payment. This is to compensate Miss W for being without funds she should have had. Zurich should also remove any record of the avoidance of the policy from its records and any central databases it has placed it on.

I am satisfied that what Zurich offered as compensation for distress and inconvenience is enough in the circumstances. But, it seems it hasn't actually paid this amount to Miss W, so it needs to pay this as well.

My provisional decision

For the reasons set out above, I've provisionally decided to uphold Miss W's complaint about Zurich Insurance Company Limited and make it do the following:

- *Reinstate Miss W's policy and settle her claim under it in accordance with the claim settlement terms in the policy.*
- *Pay interest on the amount due to Miss W at 8% per annum simple from the date it made its first settlement proposal to the date of payment.*
- *Remove any record of the avoidance of Miss W's policy from its records and any central databases it has placed it on.*
- *Pay Miss W £250 in compensation for distress and inconvenience.*

I gave both parties until 7 November 2024 to provide further comments and evidence in response to my provisional decision.

Miss W has said she is pleased with the decision, but would like the following points to be considered:

- She was very disappointed with the correspondence she had with Zurich in that it provided no support whatsoever despite her having been in a horrific crash.
- Zurich's arrogance in not accepting her complaint has led to an eight month investigation, which has had a prolonged effect on her mental health.
- She is unsure of the figure Zurich will need to pay in settlement of her claim.

Zurich has provided the following further comments:

- No evidence has been provided to show that Miss W borrowed money and purchased another vehicle when she received its offer. So, it is not clear that she is 'out of pocket'.
- Miss W declined the valuation on 7 February 2024 and gave her reason for declining it as the fact she couldn't find another vehicle the same colour. And it doesn't believe its offer gave an indication a payment would be forthcoming if she accepted it.
- It's claims process is to let the customer know about the valuation why it is still considering the claim. And if they hadn't sent the valuation it could have delayed Miss W's claim. And my approach suggests I think its process is unfair and this could result in it delaying making an offer on future cases. And its process is designed to give its customers the best possible claims service and when a vehicle is written-off they want to know this and its value as soon as possible, so they can start looking for a replacement.
- Also, a customer may want to challenge the valuation and, if it is not provided early, then the process of them doing this would delay the claim.

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 it remains my view that it should be upheld.

Dealing first of all with Zurich's comments. As I explained in my provisional decision, the fact Zurich provided its valuation of Miss W's vehicle to her is not the issue. The issue is that Zurich made this out to be an offer of settlement. This was because it gave her the option to accept or reject it without making it clear it was just asking Miss W to accept or reject its view on the market value of her vehicle. All Zurich needed to do was make it clear that if Miss W accepted the valuation this did not mean her claim would be settled; it just meant that if her claim was accepted the settlement amount would be based on this valuation. This means Zurich is perfectly within its rights and that it is good practice to let a customer know the valuation of their vehicle as soon as possible if it is a total loss. But in doing so it needs to be clear that this is not an offer of settlement.

As I explained in my provisional decision because Zurich didn't make it clear it wasn't offering to settle Miss W's claim when it sent the valuation at a point it knew about her failure to disclose her fixed penalty offences, I consider it affirmed the contract she had with it and waived its right to avoid her policy. This remains my view irrespective of whether she borrowed the money to buy another vehicle or not. And it means I think as part of the fair and reasonable outcome to Miss W's complaint Zurich needs to reinstate Miss W's policy and settle her claim under it.

I've noted Miss W's comments and I appreciate she was in a terrible accident and that Zurich could have handled matters better. But the main reason she had problems with her claim was that she failed to declare two fixed penalty offences, despite being asked a very clear question about these. So, while there was a delay due to Zurich's consideration of her failure to disclose these and her complaint, this only came about because of Miss W's non-disclosure. In view of this, I'm satisfied £250 is appropriate compensation for distress and inconvenience.

With regards to the settlement amount. Zurich will need to settle the claim in accordance with the policy terms. And this means it will need to pay the market value of Miss W's vehicle at the time it was damaged, less any policy excess. The market value is defined as a vehicle of a similar make, model, age, mileage and condition. However, I do not consider that this means that the fact Miss W's vehicle was an unusual colour needs to be taken into account.

It just means that the market value should be enough for her to replace her van, albeit it may not be possible for her to find one exactly the same colour.

Miss W's complaint was not actually about the amount Zurich offered in settlement of her claim, so I have not considered this aspect. I've just decided it should settle it in accordance with the policy terms. According to Zurich it offered to settle Miss W's claim by paying £6,263, less the £250 policy excess, i.e. £6,013. If Miss W's isn't happy with what Zurich offers in settlement after this decision she can make a new complaint to Zurich about this to it in the first instance. And then to us if necessary.

Putting things right

For the reasons set out above and in my provisional decision I've decided to uphold Miss W's complaint about Zurich Insurance Company Limited and make Zurich do the following:

- Reinstatement Miss W's policy and settle her claim under it in accordance with the claim settlement terms in the policy.
- Pay interest on the amount due to Miss W at 8% per annum simple from the date it made its first settlement proposal to the date of payment.
- Remove any record of the avoidance of Miss W's policy from its records and any central databases it has placed it on.
- Pay Miss W £250 in compensation for distress and inconvenience.

My final decision

I uphold Miss W's complaint about Zurich Insurance Company Limited and require it to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 5 December 2024.

Robert Short
Ombudsman