

The complaint

Ms H complains about Zurich Insurance Company Ltd's decision to avoid her home insurance policy.

What happened

Ms H took out a home insurance policy with Zurich in May 2024. In July 2024, she made a claim under the accidental damage to underground services cover.

In August 2024, Zurich avoided Ms H's policy from inception. It said she made a careless misrepresentation when she took out the policy. It refunded her premium but didn't pay the claim.

Ms H complained. She said before she took out cover with Zurich, she contacted her previous insurer to request the relevant details. She said, keeping in mind the disabilities that impact on her memory and recollection, she'd made reasonable efforts.

Zurich issued a complaint response in September 2024. It said Ms H had declared one previous claim, but failed to declare another. And if she had, it wouldn't have offered cover. It maintained its decision to avoid her policy for a careless misrepresentation.

Ms H referred her complaint to the Financial Ombudsman Service. She said there hadn't been consideration of her disabilities and she'd made reasonable efforts in the circumstances, to obtain the correct information.

I issued an outcome in March 2025. I said Ms H hadn't taken reasonable care not to make a misrepresentation. And I said it was fair for Zurich to treat this as careless and avoid the policy, with a refund of Ms H's premiums.

Ms H didn't agree. She maintained she took reasonable care and she said there hadn't been fair consideration of her disabilities.

I issued a provisional decision and in it said:

"The relevant law in this case is the Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it's entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims against it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

I've started with the first element outlined above, this being the duty to take reasonable care, along with the relevant standard of care.

Zurich has said that Ms H didn't answer the following question correctly:

"Have you, or anyone living with you, made any claims or had any losses in the last 5 years?"

I think it's first critical to stress that the test under CIDRA isn't whether Ms H gave incorrect information, or whether Zurich is responsible for the actions of other parties that led to the incorrect information. The test under CIDRA is whether Ms H failed to take reasonable care. And the test for reasonable care is that of a reasonable consumer. So it's not a question of whether Zurich considers the information Ms H provided was incorrect, but whether a reasonable person in the same set of circumstances would have acted in a similar way.

All parties accept that Ms H declared a claim from 2023, but failed to declare the claim from November 2022.

But Ms H has said she has medical conditions and disabilities that affect her memory and recollection. So I've gone on to consider how she acted in light of this, and whether a reasonable person in those circumstances would have acted in a similar way.

I've received evidence from Ms H's previous insurer (who I'll refer to as L), to show that before she took out the policy with Zurich, she contacted L to ask about her claims information. I consider a reasonable person, who was aware of their difficulty in recalling information, would have acted similarly. Zurich itself has accepted Ms H did make an attempt to obtain the correct information, and for the reasons outlined above, I think this amounted to taking reasonable care.

I've also reviewed the documents Ms H received from L when she took out that policy in 2023 and when she received renewal documents in 2024. And having reviewed them, I don't consider they were sufficiently clear as to make the information about both claims from 2022 and 2023 clear to someone in Ms H's circumstances. Zurich accepts that even a careful reading of these documents would require some unpicking to reveal the information about both claims. And in these circumstances, I think Ms H took reasonable care by contacting L to confirm the claim details.

The evidence shows the information L provided was only for one claim, which Ms H declared. I don't consider Ms H failed to take reasonable care in relying on this information, when she took out the cover with Zurich shortly after. I say this because I think a reasonable person in the same circumstances would have done the same.

Zurich says it's not responsible for the actions of L and I agree on this point. But as outlined above, this is not relevant to the test under CIDRA in the circumstances. Zurich also says it wouldn't have offered cover if the correct information was provided, but this would only be

relevant if I was satisfied Ms H failed to take reasonable care under CIDRA and the relevant standard of care. And for the reasons outlined above, I don't consider Ms H failed to take reasonable care.

Because I consider Ms H did take reasonable care not to make a misrepresentation, I don't think Zurich had a remedy under CIDRA. It follows that in the circumstances, I don't think Zurich acted fairly in avoiding Ms H's policy from inception. Ms H's policy cover started in May 2024, and Zurich avoided the policy in August 2024 (less than three months later). And in the circumstances, I don't consider it fair for Zurich to request repayment of the premium refund, or deduct this from any settlement."

Ms H accepted the provisional decision. Zurich didn't agree. It said it wasn't clear from the evidence the exact question Ms H asked L. It said if she was given information by L that she failed to then disclose to Zurich, it would maintain its decision. It only agreed to reverse the avoidance and record the policy as cancelled by Ms H.

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.

My decision is based on the available evidence and arguments. Zurich hasn't provided any further evidence to show Ms H was given claims information by L, that she failed to disclose to Zurich, when she took out the cover.

The evidence I've seen shows Ms H asked L about claims information, shortly prior to taking out the policy with Zurich. And this doesn't show Ms H asked L a question that was unreasonable, or that L provided information which Ms H then failed to disclose to Zurich.

Zurich said it accepts Ms H made an attempt to obtain the correct information. Ms H said she made reasonable attempts to find out about and then declare previous claims. I think the evidence shows she contacted L for this purpose, and I'm persuaded she relied on the information L provided, when she took out the cover with Zurich. And in doing so, I'm satisfied Ms H did take reasonable care.

For the reasons outlined above, I don't think Zurich had a remedy under CIDRA. And I've not seen further evidence to persuade me to change the outcome I reached in my provisional decision.

My final decision

My final decision is that I uphold this complaint. Subject to the comments above, I require Zurich Insurance Company Ltd to:

- Remove any record of the policy avoidance from all databases.
- Reconsider Ms H's claim from May 2024, in line with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 27 June 2025.

Monjur Alam
Ombudsman