

The complaint

Mr C is unhappy with how Zurich Insurance Company Ltd (Zurich) handled his car insurance claim.

Both Mr C and Zurich have used agents to handle the claim and complaint on their behalf. But for ease of reference I shall refer to anything the agents have said or done on behalf of Mr C and Zurich as being done by Mr C and Zurich respectively.

What happened

Mr C had a car insurance policy with Zurich which was taken out via his broker in June 2021. Zurich says the policy said the insured vehicle would be kept in a locked garage at Mr C's property between the hours of 11pm and 6am and a policy endorsement was applied on that basis. The policy renewed in 2022 and 2023.

In March 2024 Mr C's vehicle was stolen from the driveway of his home at around 8.30pm and he reported the theft to Zurich. While investigating the claim Zurich identified that Mr C's vehicle wasn't kept in a locked garage overnight in line with the policy's endorsement. So it decided to avoid the policy from inception and refund the policy premiums Mr C had paid – it said it wouldn't have offered the policy if it had known the vehicle wasn't kept in a locked garage.

Mr C complained about Zurich's decision. He disagreed with Zurich's statement that he had told it his vehicle was never garaged at his address. He was also unhappy that he found out about Zurich's decision via a third party. But Zurich maintained its decision. It said Mr C had told its loss adjuster his driveway was still under construction, so his vehicle wasn't put in the garage as he feared damaging it. Zurich also said it had seen online images of the property showing extensive construction work to Mr C's property including the garage being blocked by building materials deeming the garage inaccessible. Mr C remained unhappy with Zurich's handling of his claim and referred his complaint to this Service.

I issued a provisional decision upholding this complaint and I said the following:

"I should first set out that I acknowledge I've summarised Mr C's complaint in a lot less detail than he has presented it. Mr C has raised a number of reasons about why he's unhappy with the way Zurich has handled this matter. I've not commented on each and every point he's raised. Instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy about this. It simply reflects the informal nature of this Service. I assure Mr C and Zurich, however, that I've read and considered everything they've provided.

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 deliberate or reckless 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 under 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 thought about what's happened in this case.

Zurich thinks Mr C failed to take reasonable care not to make a misrepresentation when he didn't tell it his car wasn't kept in a garage overnight. It said he made this misrepresentation in 2021 when he took out the policy and again in 2022 and 2023 when the policy renewed.

As I said above, it was Zurich's responsibility to set out what information it needed to now to do a risk analysis. It was then Mr C's responsibility to take reasonable care to not make a misrepresentation when answering these questions. Mr C took the policy out through a broker and, so, it was the broker's responsibility to ensure Mr C took the requisite reasonable care.

I need to firstly make clear that I'm only considering Zurich's actions in this decision. Other than where the broker can be found to be an agent of Zurich, I'm unable to consider anything the broker did in this decision.

Zurich, like most insurers, sets out the information it wants to know in the statement of fact. Under CIDRA, for me to be satisfied that there's to have been a misrepresentation, I have to ascertain whether Zurich asked Mr C to disclose the car was kept in a garage. Crucially, it's also important to set out that each renewal is a new policy application and, therefore, a new requirement upon both Zurich to ask clear questions and for Mr C to take the requisite reasonable care.

I've considered the statement of facts that were sent on each policy. In these, it sets out a number of statements which it says it understands are the material facts Mr C – through his broker – had told it about. But in none of these does it say Mr C had told it that the car was kept in a garage.

That said, Zurich have shown that when he first took out the insurance policy in 2021 Mr C told the broker the car was garaged. I've also seen that, when arranging the insurance policy in 2022, Zurich asked the broker to confirm that Mr C kept the car in a garage. So I'm satisfied it did ask whether the car was garaged – even though I can't see the broker replied to this.

Mr C has said he didn't misrepresent whether the car was kept in a garage or not. But I don't agree. I'm persuaded by the evidence Zurich has provided that Mr C had said he hadn't ever kept the car in the garage. I recognise Mr C has said there isn't definitive evidence to

support this – i.e. in the form of a call recording etc. But it's this Service's role to decide what's most likely to have happened.

I've considered Zurich's investigator's statement. He said he'd called Mr C to ask further questions – in particular about where the car was garaged. He said he asked if the car had ever been kept in the garage. And he says Mr C confirmed that due to building work to the garage of his address, the car had never been garaged. Zurich has also provided online photographs of the property dating back to before renovation works of the house and suggested that the garage was too small to store a car of the insured car's dimensions. I've considered the photographs of the garage and I don't think this was an unfair conclusion for Zurich to make.

Ultimately, I'm persuaded that it's more likely than not that Mr C didn't store the car in the garage. And, therefore, it was fair for Zurich to say Mr C had misrepresented this on the 2021 and 2022 policies. Zurich has demonstrated that it wouldn't have provided these insurance policies had Mr C advised the car wasn't stored in a garage. And, as I said above, Zurich is entitled to avoid these insurance policies under CIDRA. I consider this to be fair too.

However, when the policy renewed in 2023, I haven't seen anything to show that Zurich asked Mr C if the car was kept in a garage. As I said above, each renewal is a new policy application. And both Mr C and Zurich's respective responsibilities under CIDRA apply again. So it was Zurich's responsibility to ask Mr C clear questions setting out what it needed to know and it was then Mr C's responsibility to not make a misrepresentation in answering these questions – or in this case advising Zurich whether any of the information contained within the statement of fact was incorrect. I can't say Mr C has failed to take reasonable care not to misrepresent here as there wasn't anything in the statement of facts relating to where he kept the car that he should have advised Zurich was incorrect.

I recognise that Zurich has included a garaging endorsement within the policy documents requiring the car to be garaged at certain specific times in the day. But this is different from it asking Mr C if the car was garaged.

I accept Zurich wouldn't have insured Mr C had it been told the car wasn't kept in a garage. But, given it didn't ask him in the policy documents, or any other correspondence before the policy started, whether it was garaged or not, I cannot say there's been a misrepresentation. And, therefore, I have to conclude there weren't remedies available under CIDRA. It follows, therefore, that I consider it was unfair for Zurich to avoid the 2023 policy. And I intend to require Zurich to remove any record of this policy's avoidance from Mr C's record.

Given I find it was unfair for Zurich to have avoided the 2023 policy and this was the policy which Mr C made the claim upon, I find that it was unfair for Zurich to say there wasn't a valid policy to cover the claim. So I intend to say that Zurich should reconsider the claim against the terms of the insurance policy."

Neither party accepted my provisional decision and they both provided detailed submissions setting out why. I've summarised their responses below.

Zurich

- It believes that consideration of whether a consumer took reasonable care has to take into account the garaging endorsement.
- It said, even if it had asked Mr C about whether he kept the car in a garage, he wouldn't have done anything to alert Zurich to the fact that his car was not garaged.
- It's illogical for insurers to be able to void the policy for 2021 and 2022 and not 2023: any

decision to insure someone must reasonably take account of their insured's immediate insurance history and someone whose policy has been avoided for material misrepresentation is a material fact which any insurer would take account of.

- If Mr C's misrepresentation of facts for the 2021 and 2022 policies had been discovered prior to the inception of the 2023 policy, then a quotation for the 2023 policy would not have been offered by underwriters and the 2023 policy would not have existed at all.
- It said the broker's letter asked Mr C to tell Zurich if any of his circumstances had changed.
- The broker highlighted the garaging endorsement to Mr C when the policy renewed in 2023. And it said Mr C had shown a complete disregard for the terms of the policy and was clearly in breach of this endorsement.

Mr C

- He disputed he'd made a misrepresentation in 2022. He said, as he didn't reply to the broker, he or his broker never confirmed the car was kept in a garage. And he said a misrepresentation cannot occur from an omission.
- He accepted he told Zurich's investigator that, owing to the building works, he hadn't ever kept the car in the garage. But he said this was only in reference to the time the building works were ongoing – since August 2022. And he said there wasn't any reason to not keep the car in the garage before then.
- He provided dimensions of the car and the garage to show he could and did keep the car in the garage. He said he's recently bought a bigger car that fits in the garage and he provided a photograph to support this.
- He disputes he ever told Zurich the car was kept in the garage – he says he was never asked this question at all. He says he's raised a complaint with the broker regarding this and doesn't want this complaint to impact that.
- He would like me to award the legal costs he's incurred in pursuing this matter – highlighting that Zurich had solicitors involved, so he says this meant he had to do the same. And he said it was reasonable for him to seek legal advice and support given the size of the claim.
- He wanted to confirm that he would still have the right to refer a further complaint to this Service if he disagreed with Zurich subsequent decision on 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.

I've considered all parties further comments, but I've come to the same conclusion I did in my provisional decision.

Both parties have made submissions surrounding the application of the garaging endorsement. But, for the avoidance of doubt, in this decision I have not considered whether Zurich can apply the endorsement to the claim or any other considerations relating whether to the claim is covered under the policy. This decision relates to solely as to whether it was fair for Zurich to avoid the policies.

Zurich has said that the presence of the garage endorsement means Mr C should have known to advise it the car wasn't kept in the garage. But the policy terms aren't mechanisms for gathering material facts to carry out a risk assessment. As I set out in my provisional decision, it was for Zurich to ask clear questions to gather all the information it needed before every insurance policy inception. The garage endorsement limits the coverage it provides, but I don't think it fairly forms part of the CIDRA considerations. Ultimately, I haven't seen anything to show Zurich asked Mr C during the 2023 renewal whether he kept

in car in a garage or to confirm he did so.

I recognise it considers it illogical that I can say it can avoid the first two policies, but not the third policy. I've considered its comments that it wouldn't have provided the third policy had it known about the misrepresentation earlier. But I have to think about the remedies available to Zurich under CIDRA and its rights for each insurance policy. As I said previously, each policy is subject to a new application and separate CIDRA considerations. So I have to be satisfied there was a qualifying misrepresentation on each policy for Zurich to be entitled to avoid all the policies. Ultimately, Zurich didn't ask Mr C if the car was kept in a garage as part of the 2023 policy inception. And at that time, the earlier policies hadn't been avoided. So I can't fairly say there was a qualifying misrepresentation on the 2023 policy. And my decision remains the same here.

I note Mr C has set out that there can't be a misrepresentation in the 2022 policy because he didn't confirm the car wasn't kept in a garage. But I don't agree. CIDRA specifically sets out that *"a failure by the consumer to comply with the insurer's request to confirm or amend particulars previously given is capable of being a misrepresentation for the purposes of this Act"*. Ultimately, Zurich informed the broker before the policy renewed that it had been told Mr C kept the car in a garage and asked it to confirm if this was correct. This wasn't corrected and I think would be considered a misrepresentation under CIDRA. So my decision remains that it was fair for Zurich to avoid that policy.

I've considered Mr C's comments that he could have kept the car in the garage and I note the photographs he's provided. But I've ultimately found his testimony inconsistent here. He's separately said he kept the car in the garage, but then at the same time argued he wasn't asked whether he kept the car in the garage – thereby inferring it wasn't kept in the garage, but the broker disclosed incorrect information to Zurich.

Ultimately, I'm satisfied Mr C did tell Zurich's investigator that he hadn't ever kept the car in the garage and I think this is most likely to have been the case. So my decision remains that I consider Zurich was given incorrect information at the very start about where the car was kept overnight. So it was entitled to avoid the 2021 policy too.

I note Mr C has asked that Zurich covers his legal costs. But that's not something this Service will generally award unless we consider Mr C couldn't have resolved the claim without solicitor involvement. And I don't consider that the case here. I recognise Mr C has said the claim had a high value, so he felt he needed to instruct solicitors. But I don't agree it was necessary. This Service is a free Service to consumers and solicitor involvement isn't needed to pursue a complaint. The outcome of this complaint would have been the same regardless of whether Mr C had come here directly or with the use of solicitors. So I'm not requiring Zurich to cover Mr C's legal costs.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Zurich Insurance Company Ltd to do the following to put things right:

1. Remove any record of the 2023 policy avoidance; and
2. Reconsider the claim against the existing terms and conditions of the insurance policy.

I don't require it to do anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 February 2026.

Guy Mitchell

Ombudsman