

The complaint

Mr K and Ms M complains that Zurich Insurance Company Ltd have declined their claim and voided the policy following their claim for accidental damage.

What happened

Mr K and Ms M took out a buildings and contents policy with Zurich in October 2023. They made a claim on 28 December 2023.

Zurich made further enquiries and discovered that there were five previous claims recorded on the Claims and Underwriting Exchange (CUE) in the previous five years, but Mr K and Ms M had only declared two when they took out the policy and so they voided the policy and declined the claim.

Zurich said they had answered the question it asked about previous claims incorrectly and it considered this to be a careless qualifying misrepresentation, which entitled it to void the policy and decline the claim. They did, however, uphold the service aspects of the complaint, and awarded Mr K and Ms M £300 compensation.

Mr K and Ms M were unhappy with this decision, the delays in dealing with the claim, and the impact on their ability to obtain alternative insurance. Zurich didn't uphold their complaint and so they brought their complaint to us. Our investigator thought that although the decision to decline the claim and void the policy was fair, the service had fallen below the required standard and increased the compensation to £500.

Neither Zurich nor Mr K and Ms M agree with the investigator's view and so the matter has come to me to decide.

I issued a provisional decision on the complaint. My provisional findings were as follows: *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 K and Ms M failed to take reasonable care not to make a misrepresentation when they only declared two previous claims when there was in fact five recorded on CUE.. I've looked at the questions that were asked and the responses given at the time the policy was inception to decide if Mr K and Ms M took reasonable care when making their declarations.

The policy was obtained through a third-party website. The questions were

“How many claims were made and/or losses suffered in the last 5 years by you and anyone living with you?”

Mr K and Ms M disclosed 2 claims:

2/11/21 – accidental damage to contents £1650

1/9/23 – Buildings £989

There was an information box next to the question, which when opened said:

“what do we mean by claims and losses? You should include all incidents or losses whether or not you actually made a claim or were paid out for a claim.”

Following the claim, Zurich undertook a CUE search which revealed five previous claims in the previous five years:

<i>14 May 2022</i>	<i>accidental damage to underground service/drains – buildings claim -</i>	<i>£982.93 – paid to supplier</i>
<i>20 February 2022</i>	<i>Storm – water ingress – building incident only/claim withdrawn</i>	<i>£0</i>
<i>18 November 2021</i>	<i>Accidental damage to sofa</i>	<i>£1699.33 – paid to customer</i>
<i>13 October 2021</i>	<i>subsidence -claim declined asno evidence of subsidence</i>	<i>£310 paid to supplier</i>
<i>29 August 2021</i>	<i>accidental damage to underground service – buildings</i>	<i>£1630.34 – paid to supplier</i>

There were also 11 home emergency claims identified. Between 28 June 2021 – 24 August 2023 – but these did not need to be disclosed as they weren’t relevant to the question. So, I’ve then thought about whether it was reasonable for Mr K and Mrs M to have declared these three additional claims that are recorded on CUE.

Mr K and Mrs M have told us that the May 2022 claim had been mis recorded as it was actually a continuation of the August 2021 claim where repairs hadn’t been completed effectively and further issues occurred. This claim has subsequently been removed from CUE as it has been identified as an error. So, I’m satisfied that in not declaring this as a claim, Mr K and Ms M didn’t make a misrepresentation, as it wasn’t a separate claim, and they couldn’t have known that it had been recorded as such by the insurer in error.

Mr K and Ms M argue that although they initially reported it to the insurer as possible storm damage, the February 2022 claim was withdrawn shortly afterwards when they discovered on advice from their roofer that the damage wasn’t storm related but was in fact a maintenance issue. They paid for repairs themselves to correct this. I think that given that the claim had been withdrawn with no cost to the insurer before the claim was even processed, it’s reasonable for Mr K and Mrs M to have thought that it did not need to be declared as a claim – a withdrawn claim is arguably no longer a claim. If a consumer discovers a leak in their roof which they find is caused by a slipped tile and they have it repaired by their own roofer, they wouldn’t have to report this as a “claim” or “loss” at policy inception, and so I consider it reasonable that Mr K and Ms M thought the same about this incident. There was no loss or cost to the insurer from this and consumers are not required

to report every maintenance issue they deal with, they are in fact required to keep their homes in a good state of repair.

They similarly argue that the October 2021 claim was made when they discovered cracking in the floor after lifting flooring and were concerned it indicated subsidence. However, after notifying the insurer, and an inspection taking place, they were told that this was actually sub floor repairs that needed completing rather than subsidence, and so they completed and paid for these themselves. They were not aware that the insurer had incurred any expense in assessing this damage, or that it would be recorded as a claim so they say they didn't consider that it needed including it on their application for cover. I think the position with this "claim" is similar to the above in that it was identified that there was a maintenance issue that needed resolving, and this wouldn't normally need to be reported, but here there was a cost to the insurer for the report and Mr K and Ms M will have known that they had an assessor out to the property. However, I haven't seen any evidence that they had been told that it was a claim which would need declaring, and so I can understand why, having been told that it wasn't a valid claim – because there was no insured peril, they wouldn't have reported it as a claim.

And so, on balance, I'm satisfied that Mr K and Ms M took reasonable care in making their declaration of two previous claims, and so I consider the actions of Zurich in voiding the policy and declining the claim is unfair, and not in line with CIDRA.

In view of the above, I haven't gone on to consider whether the misrepresentation was qualifying as it isn't necessary.

Service issues

Zurich have already accepted that they have fallen short of the service that as to be expected, and offered £300 in respect of this. The investigator increased this to £500. In the light of my proposed outcome, which is that the voidance isn't fair, I note that there has been an impact on Mr K and Ms M from this in that they have been unable to secure home insurance, which is a stressful situation to be placed in. I therefore consider that the uplift to £500 compensation to reflect this is fair.

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.

Mr K and Ms M have accepted my decision, but Zurich have not.

Zurich have raised a new point, which is that of the two claims that were declared, one of them was described as "other causes", when in fact they were both accidental damage claims, which would have precluded cover.

I've looked at this. One claim was accidental damage to a sofa caused by dog vomit, and the other was accidental damage to the underground drains and pipes, which was caused by tree root ingress. They say this falls outside their risk appetite, as their underwriting criteria says they can't offer cover where there has been "2 or more" claims of the "Same cause or peril".

I don't think this changes the position. Firstly, the claims, while both accidental damage, are for separate parts of the cover – one is contents and one is buildings - and they are also two completely different causes as described above. Secondly, the question asks for declaration of claims and losses. Ms M and Mr K have declared the claims using the drop downs and options provided on the website, so I think they have discharged their responsibility. If there

was any concern about whether the two claims affected Zurich's ability to offer cover, Zurich should have queried this at the time. I can't fairly say that the claim hadn't been declared, and Ms M and Mr K would not have known the specifics of the underwriting criteria.

Zurich have then gone on to say that I have advised that I didn't believe that withdrawn claims would need to be declared, which is inconsistent with previous ombudsman decisions.

This is a misinterpretation of my provisional decision.

I agree that all claims should be declared in line with the specific wording of any question asked or statement declared on an application for insurance. However, I am saying that in my view, Mr K and Ms M took reasonable care to answer the question to the best of their knowledge, and that their mistaken belief that the two claims in question didn't need to be declared was reasonable, given the circumstances and the reasons given above. The ombudsman decides each case on its merits and the individual circumstances, and in this case, I consider the explanations given show that reasonable care was taken.

So, I am going to uphold this complaint for the reasons stated in my provisional decision, and the additional reasons above.

Putting things right

In order to put things right I think that Zurich should

- Reinststate Mr K and Ms M's policy and proceed to consider the claim in line with the remaining terms and conditions of the policy.
- Remove any record of the voidance from internal and external databases.
- Pay Mr K and Ms M £500 for the service issues and the distress and inconvenience caused by the claim decline, voidance, and their inability to obtain insurance as a result.

My final decision

My decision is to uphold Mr K and Ms M's complaint about Zurich Insurance Company Ltd and direct them to put things right as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Ms M to accept or reject my decision before 19 March 2026.

Joanne Ward
Ombudsman