

The complaint

Mr F complains Zurich Insurance PLC has refused to pay a claim he made on his motorcycle insurance policy.

What happened

Mr F took out a motorcycle insurance policy with Zurich in April 2023. When he had an accident in his vehicle, he tried to make a claim in July 2023.

After investigating the claim, Zurich said Mr F had failed to tell it about two driving convictions and three points on his licence from 2021 when he took out the policy. Zurich considered this a careless qualifying misrepresentation which entitled it to avoid his policy and decline his claim. And it gave Mr F a pro-rata refund of the policy premium.

As Zurich didn't change its decision, Mr F brought his complaint to this service. He explained he didn't realise he had an endorsement on his license. He feels Zurich is trying to get out paying a claim when he knows people who have convictions and are insured by it, they just pay a higher premium. Mr F also told this service he didn't pay a fine and the letter about the two convictions and points went to his parents address and so he hadn't seen it before he took out the insurance. When this was raised by Zurich, Mr F said he realised he should've had post about it and spoke to his parents who found the letter in a drawer. He explains the actions of Zurich have impacted him both financially and mentally.

The Investigator looked into matters. They thought there had been a careless qualifying misrepresentation, so, Zurich was entitled to avoid the policy (treat it as though it never existed), refuse to pay the claim and take the steps it had. Mr F doesn't agree with this – he says he didn't intentionally misrepresent anything.

As an agreement couldn't be reached, the matter was passed to me for a decision.

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, I must tell Mr F I think the investigator has reached a fair outcome here. So, I don't uphold his complaint in this matter. I'll explain why.

The relevant law here 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. The standard of care is that of a reasonable consumer. If they fail to do this, the insurer has remedies provided the misrepresentation is – what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation, the insurer must show it would've 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 says Mr F failed to take reasonable care not to make a misrepresentation when he answered questions about previous driving offences. I've listened to the call when Mr F applied for the policy. The advisor asks '*Any motoring convictions, driving licence endorsements or fixed penalty points in the last five years including any pending?*' Mr F says '*Err, don't believe so*' when this wasn't correct.

Zurich was clear how important it is to answer the questions correctly. This was also emphasised in the paperwork sent to Mr F after the call which he was asked to check.

Zurich has sent this service evidence it would never have offered cover if it'd been given the correct information, in particular in relation to one of Mr F's previous convictions. So, I'm satisfied Mr F's representation was a qualifying one.

Based on the information available to me, I don't consider it more likely Mr F was unaware of both of the convictions and points he'd been given in 2021. I say this in light of the evidence provided by Zurich about the claim, Mr F's answer to the question at the outset, the likely process followed to convict Mr F of these offences, the severity of the convictions involved, and information Mr F has provided to this service about the reason he wasn't aware of them. It follows I'm satisfied Mr F's qualifying misrepresentation was more likely deliberate or reckless. I've therefore looked at the actions Zurich can take in accordance with CIDRA. And it was entitled to avoid Mr F's policy from the inception of it (the beginning). As this means - in effect - his policy never existed, Zurich doesn't have to deal with Mr F's claim following the accident. And it's also entitled to keep the premiums. That said, Zurich has agreed a pro-rata refund of Mr F's premium, so I don't intend to interfere with this.

Whilst I appreciate the impact Zurich's actions are having, I don't uphold this complaint against Zurich. I recognise Mr F will be disappointed with this outcome. But my decision ends what we – in trying to resolve his dispute with Zurich – can do for him.

My final decision

For the reasons set out above, I don't uphold Mr F's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 6 February 2024.

Rebecca Ellis
Ombudsman