DRN-4904015

The complaint

Mr M is unhappy with the decision made by Zurich Insurance Plc (Zurich) following a claim attempted under the specified item cover of his home insurance policy.

Mr M is being represented by a third party in bringing his complaint to this Service. For ease of reference, I have referred to Mr M throughout this final decision.

What happened

Mr M requested cover for his watch through his broker. The specified value of the watch was £400,000. Mr M was asked to disclose details of any previous claims made in the last five years. The Statement of Insurance sent to Mr M recorded the following information about Mr M's claims history:

> *Have you or anyone who permanently resides with you made any claims or suffered any loss or damage whether insured or not in the last 5 years?*
>
> *(You should include incidents relating to buildings, contents, personal belongings, or travel that resulted in damage to property, items being stolen or injury to other people, where you made a claim whether you received payment or not, or you chose not to or were unable to make a claim. You should include details of losses claimed for on specialist policies e.g. mobile phones).*

To this, Mr M answered 'Yes' and the following claim information was recorded:

Date	*Description of loss*	*Amount*
18/07/2021	*Accidental Loss*	*£25,000.00*

Mr M's policy commenced with a start date of January 2022. In June 2022 Zurich received notification of a theft claim for Mr M's watch. During its investigation, Zurich was made aware of two incidents of previous damage to Mr M's watch which Mr M had failed to disclose at the time of applying for insurance. The two incidents were summarised as follows:

1. *In November 2017, you dropped the watch resulting in damage costing £4,132,80 in repairs.*
2. *Further, in December 2021 you damaged the watch again resulting in £8,442.00 of damage.*

Zurich said the level of risk following disclosure of even one of the incidents alongside Mr M's claim for accidental loss from July 2021, would not have been acceptable to Zurich as it would've indicated a pattern of carelessness.

Following investigation of Mr M's claim, Zurich told Mr M that it wouldn't be paying his claim, and that it would void the policy from inception. Mr M was told Zurich considered '*…that the misrepresentations were made deliberately or recklessly'* and so Mr M's premium would also be retained in line with The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

Mr M was unhappy with this response, and brought his complaint to the Financial Ombudsman Service. The Investigator found that Zurich had acted reasonably in declining Mr M's claim, and relying on CIDRA to void Mr M's policy and retain the premium. The investigator didn't ask Zurich to do anything in settlement of Mr M's complaint. Mr M rejected these findings. As the complaint couldn't be resolved, it has been passed to me for 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.

I'd like to reassure the parties that although I've only summarised the background to this complaint, so not everything that's happened or been argued is set out above, I've read and considered everything that's been provided.

I thank Mr M for taking the time to explain his personal circumstances and everything that has happened since the incident in June 2022. I understand it was a difficult time for Mr M, and he has continued to feel the impact of this incident long after.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). It requires a consumer 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.

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 must show it would only have offered the policy on different terms, or not at all, if the consumer hadn't made the misrepresentation.

CIDRA sets out several considerations for deciding whether a 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 just careless.

If the misrepresentation was reckless or deliberate - and an insurer can show it would at least only have offered the policy on different terms - it's entitled to avoid the consumer's policy. If the insurer is entitled to avoid the policy, it won't have to deal with any claims under it. If the qualifying misrepresentation was careless, then to avoid the policy, the insurer must show it wouldn't have offered the policy at all but for the misrepresentation.

The disclosure of the incident from November 2017 was made during a telephone conversation with a Zurich representative in October 2022. The attendance note following this call recorded that Mr M had dropped his watch but the repairs were paid for by the jewellers he had purchased the watch from.

Mr M disputes that what happened during this incident resulted in 'damage' which ought to have been disclosed. I appreciate Mr M's strength in feelings about this. But I don't agree.

In reaching this decision I've considered Mr M's testimony about the incident from November 2017, in particular, describing the reason for the referral to the repairer (R) as dropping his watch. The comments from R support the circumstances reported to Zurich, as R goes on to say '*a crack is visible... As such this is commensurate with some form of shock to the watch.'* Based on this evidence, and the question asked in the Statement of Insurance, I'm satisfied there was a responsibility on Mr M to disclose details of the incident from November 2017.

Zurich say if Mr M had disclosed details of the incident from November 2017 and the accidental loss from July 2021, this level of risk would not have been acceptable to Zurich as it would've indicated a pattern of carelessness. I'm satisfied that Mr M's failure to disclose the incident from November 2017 amounts to a qualifying misrepresentation and Zurich's underwriting information supports this.

Zurich say it regards Mr M's misrepresentation to be deliberate or reckless. Mr M says Zurich has acted unreasonably in treating this as reckless. Mr M argues that that the work carried out to his watch in January 2018 was many years before he applied for insurance in January 2022. And because he didn't pay for the work, this is crucial in considering whether he had been reckless.

However I'm satisfied the question Mr M was asked was clear. There was a duty on Mr M to answer this question truthfully. If Mr M was unsure of what was expected of him, he ought to have sought clarification before declaring the information in the Statement of Insurance to be correct, and crucially, allowing the policy to continue based on what had been recorded.

The relevant law here is CIDRA. This says:

> *'A qualifying misrepresentation is deliberate or reckless if the consumer –*
>
> *(a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and*
>
> *(b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer'*

On balance, I find that Zurich has reached its position fairly. I say this because Mr M ought to reasonably have been aware that some of the information he was giving in response to the clear question about previous damage to his watch was inaccurate. I'm satisfied it was made clear that Zurich wanted to know about any loss or damage, whether insured or not, in the last five years. This included where Mr M made a claim, whether he received payment or not, or chose not to, or was unable to make a claim.

The disclosure of the incident from December 2021 was made in June 2022 following an interview with Mr M after the theft had been reported. During this interview Mr M explained the last time his watch was sent to R he had paid approximately £9,000 to repair it. Mr M was asked what had happened, to which Mr M replied *'…I just dropped it. [inaudible] something inside. I think it's a service that was-- I think it was more, actually. I think it was about 9,000 quid to service and repair*.' When asked about this repair, R said '*…this is consistent fair wear and tear on a watch of this age…we would have expected to carry out this level of work during a routine maintenance…'*

Mr M says the evidence from R in respect of the second incident should be used to support what he has explained about the watch being sent to R for servicing- rather than for damage to be repaired. I've carefully considered Mr M's comments. When evidence is contradictory or inconclusive (or both) I have to make a finding on the balance of probabilities. That is what I find is most likely to have happened in view of the available evidence and wider circumstances.

It's not disputed that Mr M, by his own admission, informed Zurich in June 2022 that he dropped his watch prior to taking out the policy with Zurich. Mr M said he had paid '*about 9,000 quid to service and repair.'* I accept that R has provided its testimony in saying that it *'would have expected to carry out this level of work during a routine maintenance…'* I have

carefully considered these comments alongside the other evidence, namely Mr M's own testimony, and the cost of completing the work on Mr M's watch at the time. And all things considered I'm persuaded it was fair and reasonable for Zurich to conclude that the incident from December 2021 ought to have been disclosed in line with the question from the Statement of Insurance which asked about damage.

I say this because although the comments from R say that there was consistent wear and tear on the watch, the comments do not go as far as persuading me that this evidence outweighs Mr M's own admission about what had happened to his watch, and what he ought to have informed Zurich about, in line with the question asked on the Statement of Insurance. I have considered the date of the incident, only a month before applying to Zurich for insurance, and the circumstances of the incident, that is, Mr M dropping his watch and the cost of the work carried out by R. And having considered this evidence, I'm satisfied Zurich has acted fairly and reasonably in saying that Mr M failed to disclose the incident from December 2021, and that this failure amounts to being deliberate or reckless in line with the definition in CIDRA.

As I'm satisfied Mr M's misrepresentation in respect of the November 2017 and December 2021 incidents can be treated as deliberate or reckless, I've looked at the actions Zurich can take in accordance with CIDRA. Here, Zurich has avoided the policy from inception (treated as if it never existed) and retained the premium. As I've found that Zurich has acted in line with the remedies allowed for under CIDRA, it follows that I won't be going on to make any findings on the actual loss event/claim here - as this policy effectively was never in place (for the purposes of this claim) and Zurich don't need to deal with the claim.

My decision will disappoint Mr M, but it ends our Service's involvement in trying to informally resolve this dispute between him and Zurich.

My final decision

For the reasons provided I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 December 2024.

Neeta Karelia
Ombudsman