

The complaint

Ms B complains that Zurich Insurance PLC unfairly declined her home insurance claim.

Zurich is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of its agents. As Zurich has accepted it is accountable for the actions of the agents, in my decision, any reference to Zurich includes the actions of the agents.

What happened

In late 2022, Ms B took out a home insurance policy with Zurich. Ten days later, Ms B made a claim on the policy, after an escape of water caused damage to her property.

Zurich initially accepted the claim and arranged for strip out and drying works to be carried out. However, in October 2023, Zurich said it was declining her claim because it believed the property had been unoccupied since the cover had begun and Ms B hadn't notified it of this.

Ms B denied that the property had been unoccupied for a period of more than 30 days. She raised a complaint, but Zurich maintained its position, so she asked our service to consider the matter.

Our investigator thought Ms B's complaint should be upheld. He didn't think it was fair for Zurich to decline Ms B's claim on the basis that the property was unoccupied. He recommended Zurich reconsider Ms B's claim in line with the remaining policy terms. He also recommended Zurich pay Ms B £250 for distress and inconvenience. This was in addition to £200 it had offered her in response to her complaint.

Zurich disagreed with our investigator's outcome. It said it was clear that the property had been unoccupied since purchase, which was more than a year before the loss. It didn't believe Ms B had declared the true occupancy of the property. It said that if it had been aware of the true occupancy status of the property the cover would have been reduced to fire, lightning, explosion and earthquake cover only and escape of water would have been excluded. So, the complaint has been passed to me to decide.

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've decided to uphold Ms B's complaint. I'll explain why.

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 Ms B failed to take reasonable care not to make a misrepresentation when she took out the policy in December 2022. It has referred to the statement of fact document Ms B received when she took out the policy. Next to: "*What is the main proposer's residential status in the property?*" It says: "*Main Sole-Occupants*". Next to: "*Is the property left unoccupied?*" it says: "*30 days*".

Zurich says Ms B's broker would have asked Ms B questions about the occupancy of the property when she first took out insurance for it (with a different insurer) and there were several unoccupied options: "*30 days / 60 days / Day Time / Night Time / No / Permanent*".

Zurich says the questions would not have been repeated in 2022, but the documents sent to Ms B by her broker would have included the statement of fact for her to review. If the occupancy had changed, Ms B should have informed the broker and the risk would have been amended accordingly.

Zurich says that when Ms B took out the policy, there was no indication the property would be unoccupied. It says it understood Ms B was purchasing the property and split her time between the insured property and her other property, with no long periods of unoccupancy. However, the loss adjuster confirmed the property had remained unoccupied since policy inception, unfurnished with no evidence the property was ever occupied.

Zurich says if it had known that the property was unoccupied when Ms B took out the policy it would have applied endorsements including the following condition:

"If You fail to tell Us within 90 days of the property becoming Unoccupied the insurance by Section One Buildings will be limited to loss or damage arising from Fire (excluding arson), lightning, explosion and earthquake only."

The policy's terms and conditions define "*Unoccupied*" as follows:

"Unoccupied -: (any one or combination of) the property:

- *Being Unfurnished*
- *Being occupied by squatters*
- *Not lived in by You or Your family or by any other person to whom You may have given your permission for more than 30 consecutive days.*

Note: By 'lived in' We mean activities which must include; sleeping (overnight), bathing, cooking and eating, all of which are frequently carried out in Your Home, by any person who has Your authority to be lawfully in Your Home."

Ms B says that when she first purchased the property in January 2022, it was her intention to gradually move into it while selling her existing property in another part of the country. She had surgery in the spring of 2022 and her recovery was slower than expected. However, she had been going to the new property regularly, moving furniture and items and taking her time due to her disability. She also had some work carried out to the property. She says she was planning to make the final move in December 2022, but this didn't happen due to the water leak resulting from a burst pipe.

Zurich says it believes it's clear that the property was unoccupied since purchase, around a year before the loss. It says the fuel usage was lower than would be expected for an occupied property. It's referred to an email where Ms B says:

"... the plan was to take my time to move; gradually moving into the property and taking my time to market and sell my existing property... (which I own). In the meantime my sister and brother were checking the property as were my neighbours who had a key... I planned to make the final move in December.. I had arranged for new floors in the bedrooms to be completed, a fire to be installed in the sitting room and a cat flap to be fitted."

Zurich says this is evidence Ms B had two properties and intended to move to the insured address, but she didn't move in before the incident occurred.

Prior to taking out the policy with Zurich on 10 December 2022, Ms B's property was insured by a different insurer on the same occupancy basis. Zurich seems to think that Ms B gave inaccurate information about the occupancy status to her previous insurer and is of the belief that the property remained unoccupied when Ms B took out the Zurich policy. However, Ms B didn't tell either insurer that the property was permanently occupied. She said that it wouldn't be unoccupied for more than 30 days.

Ms B has provided evidence to support what she's said about regular visits to the insured property throughout 2022. I note that the two properties were less than two hours' drive apart. So, some of the evidence Ms B has supplied (such as transactions on credit card statements), wouldn't necessarily prove she stayed at the property overnight. However, Ms B has also provided text messages which support what she's said about both her and her brother staying at the property on several occasions. She's also provided statements from neighbours confirming she stayed there regularly as well as photographs of furniture in the property, including some with mould on them.

In any event, I don't think the information Ms B gave to her previous insurer or the occupancy status of the property prior to the inception of the Zurich policy is particularly relevant here. To persuade me that it was fair to decline Ms B's claim on the basis that it did, Zurich would need to show that Ms B made a misrepresentation when she took out the policy which began on 10 December 2022.

Ms B says she was about to move into the property when her builders informed her of the escape of water incident on 20 December 2022. So, the property was unoccupied for less than 30 days at the time of the incident. And, if I accept what Ms B has said, she wasn't planning for it to be unoccupied for more than 30 days either.

Zurich has referred to an email Ms B sent it on 24 January 2023 which says: *"I am in the process of moving house and will need to move into my property in the next few months."*

It says this is evidence that the property was never going to be occupied within 30 days. But when Ms B took out the policy in December 2022, she was still trying to sell her other property which meant she still had the option of living in it. She wasn't able to move to the insured property in December as planned due to the damage caused by the escape of water incident. So, I'm not persuaded that this email shows that the property was never going to be occupied within 30 days. I think it's likely that Ms B's plans changed because of the damage caused by the escape of water.

Having carefully considered the information available to me, I'm not persuaded that Zurich has shown that Ms B made a misrepresentation when she took out the policy in late 2022. It

follows that I don't think Zurich's decision to decline her claim was fair. So, it should reconsider her claim in line with the remaining terms and conditions of the policy.

Zurich initially accepted Ms B's claim and arranged for some drying and strip out works to be carried out. Ms B says she had to delay selling her other property because of Zurich's delays in progressing the claim before it declined it in October 2023. She didn't receive any alternative accommodation and had to arrange some repairs to her property herself so she could move into it. This meant she had to stay longer in a property that was less suitable for her due to her disability, and she was prevented from moving closer to a family member who was terminally ill.

In its final response to Ms B's complaint, Zurich offered Ms B £200 for a delay in reaching its decision to decline her claim. Our investigator recommended Zurich pay Ms B an additional £250. I think a total of £450 reasonably recognises the considerable distress and significant inconvenience Ms B experienced because of Zurich's actions. So, Zurich should pay this amount to her if it has not already done so.

Putting things right

Zurich should:

- Reconsider Ms B's claim in line with the remaining terms and conditions of the policy and
- Pay her a total of £450 compensation for distress and inconvenience (if this has not already been paid).

My final decision

For the reasons I've explained, I uphold Ms B's complaint and direct Zurich Insurance PLC to put things right by doing as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 13 January 2025.

Anne Muscroft
Ombudsman