

## **The complaint**

Mr T complains that Zurich Insurance PLC declined his claim and avoided his van insurance policy.

## **What happened**

Mr T bought a van to convert it into a motorhome and took out an insurance policy to cover his van. A few months later Mr T's van was stolen and so he claimed on his policy with Zurich.

When reviewing the claim, Zurich became aware that Mr T wasn't working due to problems with his back. Because of this, Mr T was receiving income protection payments through another insurance policy. Zurich said Mr T had told them he was a self-employed plasterer when he bought the policy and it didn't think this was true. It said Mr T should have said he wasn't currently working and if he had, then it wouldn't have offered him a policy. Mr T didn't think this was fair and complained.

Zurich reviewed the complaint and didn't uphold it. It said during the sales call, Mr T had someone translating for him and that he was clearly asked what his occupation was. To which Mr T's representative said he was a self-employed plasterer. And because Mr T wasn't working at the time and receiving income protection payments, Zurich thought Mr T had made a misrepresentation when taking the policy out. Because of this, Zurich avoided the policy, declined his claim and refunded his premium.

Mr T didn't think this was fair and referred his complaint here, he said he'd been honest with his insurer when taking out the policy and during the claim. So didn't think it was fair his claim had been declined. Mr T said the loss of his van had caused him significant distress and inconvenience both financially and emotionally.

Our Investigator looked into the complaint and recommended it be upheld. He found that Zurich hadn't asked whether Mr T was working but had instead asked what his occupation was. To which Mr T had given an accurate answer, because he is a self-employed plasterer. Our Investigator therefore didn't think Zurich had acted fairly and reasonably and recommended it reinstate Mr T's policy and deal with the theft claim. He also recommended any records of the avoidance were removed and that Zurich pay Mr T £250 for the distress and inconvenience caused.

Mr T accepted our Investigator's outcome. Zurich didn't. It said Mr T hadn't worked as a plasterer in around two and a half years when the policy was taken out and so didn't think he'd answered the question about his occupation correctly. Zurich acknowledged though that Mr T had declared he had medical issues with his back, but didn't think this was enough to let it know he wasn't currently working.

## **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.

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 T failed to take reasonable care not to make a misrepresentation when he bought the policy over the phone. It said this is because when he was asked what his occupation was, he said self-employed plasterer when in fact he wasn't working due to medical reasons.

I've listened to the sales call. In this call Mr T is represented by his daughter because he doesn't speak English. Mr T's daughter is asked "What is your father's occupation?", Mr T's daughter replies and says "self-employed". The advisor then asks, "what does he do?" and this is answered "as a plasterer". I understand Zurich doesn't think this was answered correctly as Mr T was receiving income protection payments, due to being unable to work because of medical reasons. However, I don't agree. I'll explain why.

Mr T was asked what his occupation is, not whether he was working. And while I understand Mr T hadn't been able to work for over two years due to medical reasons, it doesn't change the fact his occupation is that of a self-employed plasterer. I'm therefore not persuaded Zurich has shown Mr T made a misrepresentation when taking out the policy by answering the question about his occupation as he did.

As I'm not satisfied Zurich has shown Mr T made a misrepresentation when taking out the policy, it means Zurich has no remedies under the CIDRA. I'm therefore not satisfied Zurich has acted fairly and reasonably in avoiding Mr T's policy and declining his claim. I've therefore looked at what Zurich needs to do to put this right.

Zurich should reinstate Mr T's policy and remove the avoidance from all internal and external databases. It should also now settle his claim in line with the remaining terms and conditions. However, as the policy is being re-instated Zurich is entitled to charge the premium it refunded, because this was only refunded due to Zurich avoiding the policy.

I've also noted that Mr T has said that not having his claim paid has caused him financial difficulties and also caused unnecessary distress and inconvenience. Our investigator recommended Zurich pay £250 to compensate Mr T for this and I'm satisfied that is a fair and reasonable amount as Mr T accepted it.

### **My final decision**

For the reasons explained above, my final decision is that I uphold this complaint. I require Zurich Insurance PLC to:

1. Re-instate Mr T's policy and settle his claim in line with the remaining terms and

conditions

2. Remove all records of the avoidance from internal and external databases
3. Pay Mr T £250 for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 October 2023.

Alex Newman  
**Ombudsman**