

## **The complaint**

Mr K, Mr D and Mr A complain that Avantia Insurance Limited trading as Homeprotect mis-sold a home insurance policy.

For ease of reading I will only refer to Mr K in my decision.

## **What happened**

In August 2021 Mr K said he asked Homeprotect to change his buildings insurance policy from homeowner to a let to tenant policy after he moved out of his property. And Homeprotect agreed to this. Homeprotect sent Mr K the amended policy documents.

In March 2022, Mr K said he was told that the policy would renew and payment would be taken. But the payment wasn't taken and the policy was lapsed. Homeprotect said the policy shouldn't have been agreed to when Mr K had told them he was no longer living at the property. Mr K when he spoke to Homeprotect said he was told that he wouldn't have been covered by the policy, even though he'd paid the premium. He complained to Homeprotect.

Homeprotect said that when Mr K asked for the change to his insurance policy it should have been referred to their underwriters. If it had been the policy wouldn't have been agreed to as it wasn't something they offered as the policyholder needed to be resident in the property. Homeprotect said as the error was theirs, they would have honoured any claim made by Mr K. They also said that Mr K shouldn't have been told that the policy would renew. Homeprotect offered Mr K £200 to compensate him for the distress and inconvenience this had caused to him.

Mr K wasn't happy with Homeprotect's response and referred his complaint to us. He said as Homeprotect has told him his property wouldn't have been covered, the policy had been mis-sold and he wants his premiums refunded.

Our investigator said it wasn't fair that Mr K had paid for an insurance policy he shouldn't have been sold. He said Homeprotect should refund Mr K the premiums he'd paid, plus 8% simple interest. And £200 for the distress and inconvenience caused to him.

Homeprotect didn't agree they said any claim would have been honoured so there wouldn't have been any detriment to Mr K. They asked for an ombudsman 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.

It's not in dispute that when Mr K asked to amend his insurance cover, Homeprotect did something wrong. So in reaching my decision the remaining issue is how to put things right.

Homeprotect said they'd previously been able to provide cover under the policy as their criteria covered several flats with multi occupancy within the property provided one of the flats was occupied by a freeholder, in this case Mr K. But when he left the property all the

occupants were tenants, meaning several leasehold flats under one roof. And this fell outside of their risk appetite.

When Mr K moved out of the property, there was no longer a freeholder at the address and so when he notified them of the change in August 2021, it should have been referred to their underwriters, and the policy cancelled. But this didn't happen.

I can see after Mr K notified Homeprotect, in August 2021 of the change, he was sent a policy adjustment letter with the policy schedule. I can't see any mention in the policy schedule for the need for one of the properties to be occupied by a freeholder. So, I don't think Mr K would have known about the impact of his move. And I can't see that Homeprotect notified Mr K of this before he looked to renew the policy, so leading him to believe the policy would continue.

In March 2022 Mr K was sent notification by Homeprotect that his policy was ready for renewal, and this would happen automatically from 06 April 2022, with payment being taken a week before. Homeprotect said they sent Mr K an email 22 April 2022 explaining that the policy had been lapsed. Mr K has said he didn't receive this email.

When considering mis-sale complaints the fact a policy might have been mis-sold isn't a deciding factor on its own. I also need to consider whether the consumer would have done something differently, but for the mis-sale.

The Insurance Conduct of Business sourcebook (ICOBS) 6.4.12 says about midterm changes:

*(1) When explaining the implications of a change, a firm should explain any changes to the benefits and significant or unusual exclusions arising from the change.*

*(2) Firms will need to consider whether mid-term changes are compatible with the original policy, in particular whether it reserves the right to vary premiums, charges or other terms. Firms also need to ensure that any terms which reserve the right to make variations are not themselves unfair under the Unfair Terms Regulations (for contracts entered into before 1 October 2015) or the CRA.1*

ICOBS also says an insurer should ensure customers can make an informed decision: the appropriate information rule

ICOBS 6.1.5 (1): *A firm must ensure that a customer is given appropriate information about a policy in good time and in a comprehensible form so that the customer can make an informed decision about the arrangements proposed.*

ICOBS 6.1.6 The appropriate information rule applies: *(1) at all of the different stages of a contract and includes pre-conclusion and post-conclusion, and also when mid-term changes and renewals are proposed.*

In this case the change wasn't compatible with the original policy. And it wasn't explained to Mr K what the impact of the changes would be. I think if Homeprotect hadn't made the error the policy would have been cancelled as it was a product that didn't satisfy their underwriting criteria. And Mr K would have had to have done something differently as he would have needed to find another insurer who would cover his insurance needs.

When thinking about how the business should put things right, the guiding principle is putting the consumer back in the position they would be in now if the business hadn't done something wrong.

I think if the error had been identified during the period of the policy there were two options – to cancel the policy or to tell Mr K any future claims would be settled. But Mr K wasn't given the option of cancelling the policy or accepting the reassurance of any future claim being met. As the error was only addressed when the policy was due for renewal.

I can't know what Mr K would have done if he'd been given the right information – but if Homeprotect hadn't made the error and referred Mr K's change request to their underwriters I think the policy would have been cancelled. I've considered the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) which says where there has been careless misrepresentation (albeit this would be by the consumer) regardless of who cancels a policy, the insurer should return any unused premiums to the consumer (sometimes referred to as a 'pro rata' refund).

Homeprotect has said they would have honoured a claim if Mr K had made one as the error was theirs, so there hadn't been any detriment to Mr K. And if Mr K had made a claim, during the life of the policy when he was unaware Homeprotect had made an error, this is what I would have expected Homeprotect to do. But Mr K didn't make a claim. And he wasn't told until after he'd looked to renew the policy that the policy shouldn't have been accepted when he reported the change in August 2021.

I've also considered that if the error had been Mr K's and a policy had been put into place that shouldn't have been the insurer could under CIDRA avoid the policy, treating it as if it had never existed.

### **Putting things right**

If Homeprotect hadn't made an error and referred Mr K's change to their underwriters I think the most likely outcome would have been the cancellation of the policy, and Mr K would have been paid a pro rata refund. So, to put Mr K back into the position he would have been in, they should refund the premiums for the remainder of the policy term.

This has caused Mr K distress and inconvenience. He has the distress of thinking his property was uninsured. And the inconvenience of having to seek other insurance cover after he was led to think his policy would continue.

### **My final decision**

I uphold this complaint. And ask Avantia Insurance Limited trading as Homeprotect to:

- Refund Mr K's premiums from the 14 August 2021 to 05 April 2022 plus \*8% simple interest from date of payment to date of settlement; and
- Pay £200 for the distress and inconvenience caused.

\*HM Revenue & Customs requires Avantia Insurance Limited trading as Homeprotect to take off tax from this interest. Avantia Insurance Limited trading as Homeprotect must give Mr K a

certificate showing how much tax they've taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K, Mr D and Mr A to accept or reject my decision before 26 November 2023.

Anne Scarr  
**Ombudsman**