DRN-4371425

The complaint

Mr and Mrs T complain that Great Lakes Insurance SE avoided their Caravan Insurance Policy and refused to pay their claim for the theft of their caravan.

What happened

Mr and Mrs T raised a claim with Great Lakes – their caravan insurance policy provider – for the theft of the caravan covered under their policy.

Great Lakes appointed a loss adjuster to attend to validate the claim on its behalf. The loss adjuster reported to Great Lakes that the caravan was not stored in a designated separate storage area surrounded by perimeter fencing and a permanently locked gate, which was what Mr and Mrs T had told them when taking out the policy.

Due to the above, Great Lakes considered that Mr and Mrs T had made a qualifying misrepresentation – as defined by the relevant legislation – at the point of sale. It initially said the misrepresentation was deliberate or reckless, but it later accepted it was careless. Based on this, it avoided Mr and Mrs T's policy and returned the premiums they paid.

Unhappy with this, Mr and Mrs T approached our service. One of our investigators considered their complaint, but she didn't think it should be upheld. She thought it was reasonable for Great Lakes to consider that a qualifying misrepresentation had taken place, and to treat it as careless. She said the actions taken were in line with the relevant legislation and so were fair and reasonable in the circumstances.

Mr and Mrs T didn't accept our investigator's opinion. So, as no agreement has been reached, 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 agree with the outcome reached by our investigator. 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.

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.

Great Lakes thinks Mr and Mrs T failed to take reasonable care not to make a misrepresentation when taking out their policy. Great Lakes says Mr and Mrs T told them the caravan was stored in a clearly defined, separate storage area, that this separate area was protected by perimeter fencing encompassing the entirety of the site and behind a gate which was permanently locked apart from entry or exit purposes. But following the claim Great Lakes says it was established that the storage area was not fenced on all sides, and that it was standard practice for the gates to be left open, even when the landowners were out.

Mr and Mrs T have argued that the site where the caravan is stored is fenced on all sides, and they dispute that the gate is regularly left open. They say they needed to text the landowner to open the gates whenever visiting or collecting their caravan. However, Great Lakes has explained it feels the lack of fencing specifically around the caravan storage area is material as the thieves only had to gain access to the land and not a storage area defined by fencing, in order to steal the caravan. The loss adjuster's preliminary report, from close to the date of loss, says the landowner confirmed the gate is not permanently locked and is instead regularly left open. And it has provided street view images from multiple separate years which support that the gate was regularly left open.

Based on the above, I'm satisfied that Mr and Mrs T failed to take reasonable care not to make a misrepresentation when taking out their policy. So, I'll now consider whether the misrepresentation they made is a qualifying misrepresentation under CIDRA. To answer this question, I need to establish what Great Lakes would have done if Mr and Mrs T hadn't made the misrepresentation.

Great Lakes has provided our service with its underwriting guidance which explains that cover would not have been offered, at all, if the caravan was not to be stored on a site exclusively for the storage of caravans, surrounded by perimeter fencing and locked gates. Having considered this underwriting guidance, I'm persuaded that Great Lakes would not have offered Mr and Mrs T a policy, on any terms, had Mr and Mrs T accurately declared the storage conditions of their caravan.

CIDRA sets out the different remedies available to insurers when a policyholder makes a qualifying misrepresentation. These remedies are different depending on whether the insurer deems the misrepresentation was careless or if it was deliberate or reckless. It's for the insurer to show that a misrepresentation was deliberate or reckless.

Great Lakes initially said the misrepresentation was deliberate or reckless. But following correspondence with Mr and Mrs T, it accepted Mr and Mrs T's misrepresentation as careless. As the remedies for a careless misrepresentation are more favourable for the policyholder, I don't consider Great Lakes' decision on this aspect is unfair to Mr and Mrs T.

Where a misrepresentation is careless, and the insurer would not have offered the policy on any terms, CIDRA allows the insurer to avoid the policy from the point of the misrepresentation and refuse all claims – but it must return the premium paid.

This is the action Great Lakes says it has taken. So, as the action taken by Great Lakes was in line with the available remedies under CIDRA, and as CIDRA reflects our service's long-established approach to misrepresentation cases, I think allowing Great Lakes to rely on those remedies to avoid Mr and Mrs T's policy is fair and reasonable in the circumstances.

That said, Mr and Mrs T have said they have not had their premiums refunded. So, if it hasn't done so already, Great Lakes must return their premiums in order to deliver a fair and reasonable outcome here.

Great Lakes also accepted that the level of service it provided to Mr and Mrs T during their claim fell below its desired standards. It offered them £150 and its apologies to reflect this.

I appreciate Mr and Mrs T do not feel this amount is satisfactory given the implications of having their policy avoided and claim refused. But for the reasons set out above, I think Great Lakes decision on this aspect was reasonable. And I think the offer Great Lakes has made is sufficient to fairly compensate Mr and Mrs T for the impact of its poor claim handling, in isolation.

My final decision

Great Lakes Insurance SE has made an offer to return Mr and Mrs T's premiums, and to pay £150 compensation for its poor claim handling.

I think that offer is sufficient to fairly resolve this complaint. So, my decision is that Great Lakes Insurance SE must provide Mr and Mrs T with a refund of their premiums and pay them £150 – if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 24 November 2023.

Adam Golding
Ombudsman