

The complaint

Mr Y complains that Admiral Insurance (Gibraltar) Limited declined his claim for an escape of water and avoided his home insurance policy (treated it like it never existed).

What happened

Mr Y took out a home insurance policy with Admiral online. When the property was damaged by an escape of water, he made a claim.

Admiral said he'd answered the question it asked about occupying the property when he bought the policy and about it being furnished incorrectly. Admiral considered this to be a **careless** qualifying misrepresentation, which entitled it to avoid the policy.

Mr Y brought his complaint to us and our Investigator thought it shouldn't be upheld.

Mr Y doesn't agree with the Investigator and has asked for an ombudsman's 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.

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.

I've looked at the example decision Mr Y has sent us to support his complaint. While it has some similarities, it isn't the same and we look at each case on its own merits.

Admiral Insurance says Mr Y failed to take reasonable care not to make a misrepresentation when he answered "yes" to confirm that this would be his main residence, and currently occupied by him.

Mr Y bought the insurance policy a week before he bought the property. He said he misunderstood the question and thought it was related to whether he would occupy the

property - or that a tenant would occupy the property. As he intended to occupy the property once some renovation works had been completed, Mr Y said he believed he'd answered this question correctly.

Admiral has provided screenshots of the online journey Mr Y went through when applying for the policy as evidence to support its decision.

The first key question Mr Y was presented with was *"Is this house your main home?"* The options included *'permanent main residence'*, *'holiday home'*, *'unoccupied'*.

Mr Y answered, *'permanent main residence'*. However Mr Y was living abroad and so the property was unoccupied.

Admiral has shown that if Mr Y had answered *'unoccupied'*, he would have been presented with further questions:

- *"Why is your house unoccupied?"*
- *"How long will it be unoccupied for?"*

The options provided included *'pending sale'* which Mr Y if answered correctly he would have then needed to answer either of the following options; *'less than 30 days, 30 to 90 days, 3 to 6 months, indefinitely, until house sold'*.

Admiral has shown that if Mr Y had answered any option other than *'less than 30 days'* it wouldn't have offered a policy and the application would have stopped here.

Upon answering the questions as Mr Y did, he was presented with important statements which he needed to agree with so that the application could proceed:

The key one in relation to this case is:

"Important Statement - about your home

*Is lived in by yourself and furnished for normal living purposes with connected utilities
- or will be within two weeks of the policy start date"*

Mr Y answered, *'yes'* to the question *"are all these important statements true?"* but the property wasn't furnished or lived in by Mr Y within two weeks of the policy start date. So Mr Y didn't answer this question correctly. Mr Y told us that he was living abroad when he bought the policy and this was still the situation on 16 December 2022. So he wasn't living at the property within the timeframe set under the agreed statements.

If Mr Y had answered *'no'* to this question he would not have been able to proceed with his application with Admiral. Admiral has shown he would have been presented with the option to call Admiral to discuss his circumstances. As Admiral would have asked if the property would be furnished within two weeks and lived in by Mr Y, the correct answer was *'no'* and so the application would not have proceeded.

So - the issue in relation to the 30 day or 60 day occupying of the home doesn't change the outcome in this case - as Mr Y misrepresented the facts which would have led to a qualifying misrepresentation in relation to living in the property furnished within two weeks of the start date of the policy.

As I think the questions put to Mr Y were clear, I'm satisfied that Mr Y failed to take reasonable care and made a qualifying misrepresentation when he applied for the policy.

The next stage is to consider whether the misrepresentation was deliberate or reckless, or careless.

As I'm satisfied Mr Y's misrepresentation should be treated as careless, I've looked at the actions Admiral can take in accordance with CIDRA. Admiral has classified the misrepresentation as careless, so it has avoided the policy and refunded the premium Mr Y paid under the policy. I think this is fair and in line with CIDRA. If Admiral decided the misrepresentation was deliberate or reckless, it would be entitled to keep the premium paid.

Therefore, I'm satisfied Admiral was entitled to avoid Mr Y's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, Admiral does not have to deal with his claim. As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Admiral to rely on it to avoid Mr Y's policy produces the fair and reasonable outcome in this complaint.

My final decision

For the reasons set out above, I've decided not to uphold Mr Y's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 4 August 2023.

Geraldine Newbold
Ombudsman