

The complaint

Mr S and Ms A complain that Chaucer Insurance Company Designated Activity Company avoided their home insurance policy following a claim for storm damage.

What happened

In February 2022 Mr S and Ms A bought a property which they insured with Chaucer. Once the sale went through they visited the property and found there had been some recent damage to the roof caused by bad weather. They made a claim and Chaucer sent a loss adjuster to inspect the property.

Chaucer subsequently said it was going to avoid Mr S and Ms A's policy back to inception – cancel it as if it never existed. It said Mr S and Ms A had made a number of misrepresentations when they took the policy out, and if it had had the correct information, it wouldn't have offered the policy. It said this included the fact that the property was in a poor state of repair and that Mr S and Ms A didn't occupy the property straight away. However it said it would return the policy premiums they had paid.

Mr S and Ms A didn't think this was fair. They disagreed that the property was in a poor state of repair. They said it was in a good condition for its age and that they were able to occupy the whole property comfortably, with the exception of two rooms. They also said that while they intended to occupy the property immediately, they delayed this because of the damage to the roof that happened after they'd purchased it.

They made a complaint, but Chaucer maintained its position to avoid the policy. So they brought the complaint to this service.

Our investigator didn't recommend the complaint be upheld. He said while he was persuaded that Mr S and Ms A had intended to move into the property immediately initially, he didn't think they'd answered the question about whether the property was in a good state of repair accurately. And, under the relevant law, Chaucer was entitled to avoid their policy and return the policy premiums paid which it had done.

Mr S and Ms A didn't agree. They said that only two rooms out of 17 were unliveable so this wouldn't reasonably amount to the property being in a poor state of repair. And most of the property just needed light redecoration. He also said the previous owners were a family and lived in it comfortably and it was only the storm damage that meant it required more significant repairs. They asked for the complaint to be reviewed by an ombudsman.

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.

Chaucer has said that it considers Mr S and Ms A to have made a misrepresentation when they took out the policy with it. And that it wouldn't have offered the policy if they had provided correct information.

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.

Chaucer has said there are a number of things they believe Mr S and Ms A didn't answer correctly at inception. However in order to avoid the policy, it only needs to prove that one of these was a qualifying misrepresentation. I have therefore started by considering just one of the alleged misrepresentations – the property's state of repair.

When the policy was taken out, Mr S and Ms A were asked to agree that the following statement was true:

'My property is in a good state of repair'

Once the policy was agreed to, they were further sent paperwork that again stated as follows:

'The property is in a good state of repair Yes'

I've looked at the information, photos and commentary provided by both sides about the property. I can see that there are some rooms and areas of the property that are in a very poor state, appear significantly neglected and require substantial renovation to get them to a good standard. I also note that there are some rooms and areas that are in a good state of repair.

However I have to consider whether a reasonable person would consider the property as a whole to be in a good state of repair, and from what I've seen I don't agree they would. I think a reasonable interpretation of the term 'good state of repair' would mean that the property doesn't require significant renovation or redecoration. And from the photos and comment I've seen, I don't agree Mr S and Ms A's property met this.

Further, in the report from the loss adjuster who attended the property, it provides a link to the advert for the property while it was being sold online. While I've not been able to view this online advert, as it has since been removed, the loss adjuster goes on to quote it in his report, saying:

'The estate agent details say the house "requires complete renovation", a "restoration project'

From this, I think it's clear that the property wouldn't be reasonably described as in a good state of repair. And, Mr S and Ms A should have been reasonably aware of this when they bought it.

Mr S has said that both him and Ms A have been able to live in the property very comfortably since they've moved in. And that a family occupied it right up until they bought it. However

this doesn't persuade me that the property is in a good state of repair. The property being 'habitable' is a different consideration to whether it's in a 'good state of repair'. So a property in a poor state of repair could very well be liveable, it would just require work to get it to a good standard. And from what I've seen here, while the property was liveable it did require substantial work.

Based on this, I agree with Chaucer that Mr S and Ms A made a misrepresentation when they took out the policy.

I now need to consider if the misrepresentation was a qualifying one. To do this, I have to consider whether if Mr S and Ms A hadn't made the misrepresentation, Chaucer would have offered the same policy cover on the same terms.

Chaucer has provided a copy of its underwriting guidance. And from this, I can see that if Mr S and Ms A had told it that the property was in a poor state of repair then it would have declined to offer cover at all. So I'm satisfied that the misrepresentation was a qualifying one. And Chaucer are entitled to avoid their policy.

Under CIDRA a qualifying misrepresentation is either deliberate, reckless or careless. And the available remedy will depend on which one of these categories the misrepresentation falls into. It is for the insurer to prove that a misrepresentation is either deliberate or reckless. Otherwise it is considered careless.

Here, Chaucer has said that it considers the misrepresentation to have been careless. And I agree this is a fair assessment.

CIDRA says where a qualifying misrepresentation has occurred, and it is considered careless then the insurer may avoid the policy but must return the policy premiums to its customer. As Chaucer has already done this, I think it has acted fairly and reasonably and in line with the relevant law. So I won't ask it to do anything further.

As I'm satisfied Chaucer made a fair decision based on the misrepresentation regarding the property's state of repair, I've not considered any of the other issues it raised about information provided at the inception of the policy. As, under CIDRA, it is able to avoid the policy based on just one misrepresentation.

My final decision

For the reasons I've given, I don't uphold Mr S and Ms A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A and Mr S to accept or reject my decision before 27 October 2023.

Sophie Goodyear
Ombudsman