

## **The complaint**

Miss P and Mr W complain about Haven Insurance Company Limited (Haven) who has avoided their cover (treated it as though it never existed), following their claim under their home insurance policy.

## **What happened**

Miss P and Mr W obtained home insurance cover with Haven. They made a claim under the policy. During the claim's investigation, Haven discovered that Miss P and Mr W didn't disclose the full claims history. It said that when they were asked about the number of claims made in the last five years, they disclosed four out of the six claims made.

Due to the discovery, Haven voided Miss P and Mr W's policy. It considered that the misrepresentation was a deliberate misrepresentation, which meant it could void the policy and decline the claim, which it did.

Miss P and Mr W didn't agree with Haven's conclusion. They said that they entered all the claims that had been made and had evidence to prove it. They said that the price comparison website that they used (in order to buy the policy) failed to carry over the information that they inputted in the system. So, the fault lied with Haven's and the price comparison system and not with them.

Miss P said that she then obtained other insurance and received cover. The application was made in Mr W's name only. But again, Haven said that she hadn't provided complete or accurate details about the previous claims.

They were given their referral rights, as Haven maintained its position in its final response. It also refunded all the premiums paid.

Miss P and Mr W referred a complaint to our service. One of our investigators, considered the complaint and didn't think it should be upheld. His view was that there was evidence to show that Miss P and Mr W hadn't disclosed all the relevant claims. Although, he accepted that five claims were inputted in the price comparison website, two of those claims were over five years old and so automatically disregarded by the system. Consequently, he said that Haven were fair to void the policy and decline the claim.

Haven accepted the view, Miss P and Mr W did not. They maintained their position that the fault fell with both the Haven and price comparison websites and that they hadn't made a misrepresentation. They also said that they hadn't received their policy documents. So, they asked for a decision from 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.

Having done so, I will not uphold this complaint, for much the same reasons as our investigator, which I understand is likely to be a disappointment to Miss P and Mr W. But I hope my findings go some way in explaining why I've reached this decision.

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.

Haven said that there is an onus on a policyholder to ensure that the information they provide is accurate and factually correct. It also said that had it been made fully aware of all of the claims history, it would not have offered cover. Based on this, Haven said that the misrepresentation by Miss P and Mr W was deliberate.

Because Haven said that the misrepresentation was deliberate, I've had a look at the questions that Miss P and Mr W were asked, to assess whether it was reasonable for Haven to declare that Miss P and Mr W made a deliberate misrepresentation.

Miss P and Mr W were asked on the price comparison website (among other questions) how many claims had there been in the past five years. I think this question is clear. And Miss P and Mr W said that they had disclosed all the claims. They also said that there was an error with the system on the price comparison website and the system on Haven's website that didn't pull through all the information they entered. So, I've had a look at this further.

Haven said that it obtained the information from the price comparison website and that information disclosed that Miss P and Mr W entered four claims (out of six). Miss P said that she had proof by way of video (which I have viewed) that showed that she entered all the claims. She also said that those claims were dated from 2016 – 2018.

I note that two of the claims that Miss P said she entered were dated in 2016 and 2017. The other three claims were dated in 2018. But the first two dates from 2016 to 2017, were over five years ago.

As the first two entries are outside the five-year period, those would be disregarded. Consequently, the last three claims would've been pulled through. And the policy that Miss P and Mr W subsequently bought in Mr W's name only, disclosed the last three claims. Because of this, I can't agree that Miss P and Mr W are able to rely on this, as it's clear that all the claims were not disclosed. And I'm satisfied that the information was inaccurate.

Miss P and Mr W also said that they hadn't received the policy documents from Haven. I asked Haven about this, and it explained that it emailed the documents to the email address it had on file. I have checked the address and it corresponds to the email that our service has on file for Miss P and Mr W.

Also, Haven confirmed that it had sent the policy schedule, terms of business, demands and needs statement, statement of fact (that only disclosed four claims) and a direct debit schedule. Accordingly, I'm satisfied that Miss P and Mr W were sent the documents. I say this as I haven't read any evidence from Miss P or Mr W to say that they had reported to Haven that they hadn't received the documents. And I think it's reasonable, that had the documents not been received, for Miss P and Mr W to have contacted Haven to request that it send them again. I haven't seen any evidence of Miss P or Mr W having done so.

I have next considered Miss P and Mr W's complaint that Haven ought to have known about all the previous claims, as they had purchased policies with the same provider over the years. Whilst I understand their comments, this doesn't absolve them from providing complete and accurate information when requested to do so.

Each new policy that Miss P and Mr W obtained, is a new contract between them and the provider. As such, it is incumbent for them to provide both accurate and complete information. This then allows the provider to assess whether it wants to take on the risk. From the evidence before me, I can't see that Miss P or Mr W provided both complete or accurate information and as such, I'm persuaded by Haven's contentions that the misrepresentation was deliberate.

Finally, Miss W and Mr P complained that Haven had entered a cancellation marker against them. Haven confirmed that this had been done. It said it relied on the information obtained from the price comparison website, which it provided to me. Based on the evidence, I'm satisfied that Miss P and Mr W were informed that a declaration would be needed if a provider either cancelled/voided or imposed special terms on a policy. And Haven explained that it is entitled to record the cancellation, if it wants to. As this is a business decision, I don't have the power to recommend against it.

Taking everything into consideration. I find that the onus was on Miss P and Mr W to disclose factually correct and relevant information as required by the terms of the policy. Which then would've allowed Haven to make an informed choice as to whether it would've wanted to take on the risk. As this wasn't done, I'm satisfied that Haven provided enough evidence to show there had been a qualifying misrepresentation. And I think it was reasonable to void the policy (treated it as if it had never existed). I also think that it was fair to offer to refund the premiums paid, from inception of this policy until it was voided. Whilst I appreciate that this is not the outcome that Miss P and Mr W would've liked, I can't reasonably ask Haven to do anything further to resolve this complaint.

### **My final decision**

Haven Insurance Company Limited has agreed to refund the premiums paid, from inception of this policy until it was voided. And I think this offer is fair in all the circumstances.

So, my decision is that Haven Insurance Company Limited must refund the premiums paid, from inception of this policy until it was voided, within 28 days of the date on which we tell it Miss P and Mr W accept my final decision. If it pays later than this, it must also pay interest from the date of my final decision to the date of payment at 8% a year simple. If it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P and Mr W to accept or reject my decision before 3 August 2023.

Ayisha Savage  
**Ombudsman**