

## **The complaint**

Mrs H complains Liverpool Victoria Insurance Company Limited (“LV”) unfairly declined a claim for an escape of water against her home insurance policy.

Mrs H is represented, but for ease of reading I will refer to their actions collectively as hers. References to LV includes the actions of its agents.

## **What happened**

In February 2023 Mrs H made a claim for an escape of water against her home insurance policy. LV considered the claim and concluded Mrs H had told it the property would be occupied when it wouldn’t be. It said this was a deliberate qualifying misrepresentation and avoided the policy from inception (without a refund of premiums) and declined the claim.

Mrs H didn’t think this was fair, saying she had been occupying the property. She asked our Service for an independent review. The Investigator thought LV’s conclusion that the property had been unoccupied was reasonable based on the evidence available to it. Mrs H didn’t agree, so the matter was passed to me to decide.

I issued a provisional decision. I said:

“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.

Mrs H’s property had a tenant and she had a landlord home insurance policy with LV. In late 2022 the tenant moved out. Mrs H called LV and took out a domestic home insurance policy. When asked if the property would be occupied, she said it would be. LV says this was a deliberate qualifying misrepresentation because the property wasn’t occupied. The crux of this matter is whether the property was occupied or not. Mrs H says it was. LV doesn’t think the property was occupied for the following main reasons:

- A Council tax bill showed the property had been declared unoccupied from policy inception until the date of the incident;

- Mrs H's driving license didn't show the property as her home address;
- Utility bills for the property showed minimal usage in the period leading to the incident;
- There were no services such as broadband or television license registered at the property;
- Mrs H's mobile phone was registered at a different property;
- Mrs H's bank statements show many transactions in the vicinity of a different property, and none near the property;
- Mrs H was linked to other insurance products at a different property;
- There were inconsistencies about Mrs H's relationship with her representative, who lived at a different property;
- The property was not furnished and held no personal effects, such as toothpaste, shampoo or other essential toiletries; and
- Several neighbours to the property didn't think it had been occupied since before Christmas 2022.

The reasons set out above were put to Mrs H. She responded with some comments and further evidence, such as a new Council tax bill and an amended water bill. LV wasn't persuaded by this additional evidence. Having considered all the information available to LV, I find it was (and is) fair and reasonable for it to conclude the property was unoccupied from policy inception to the date of the incident. The evidence to support this conclusion is, in my view, overwhelming. I'm satisfied, like LV, that it's more likely than not Mrs H was living with her representative at his property.

The policy was taken out in a phone call in late 2022. LV has described the call to Mrs H as:

*"During the above call you authorised [Mrs H's representative] to take out this policy on your behalf. One of the questions asked during this telephone call was "So she's [you] living at the address now as opposed to renting it?" to which [Mrs H's representative] replied "Yes, yes." When asked who would be occupying the property, [Mrs H's representative] replied "It will just be her mostly as I have my own house."*

This appears to be based on a recording of the call being listened to by LV and put to Mrs H, who hasn't disputed its accuracy, so I'm satisfied I can rely on it. I find the questions and the answers clear. So, by saying the property would be occupied when it wouldn't be, I'm not satisfied Mrs H took reasonable care not to make a misrepresentation when taking out the policy. Further, LV has shown it wouldn't have provided cover at all if it had known the property would be unoccupied. It follows this was a qualifying misrepresentation.

LV considers Mrs H made a deliberate qualifying misrepresentation on the basis she knew she wouldn't be occupying the property, because she was living with her representative, but said she would be anyway. CIDRA says a qualifying misrepresentation is deliberate or reckless if the consumer:

*"(a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and  
(b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer."*

I find LV's conclusion fair and reasonable. I say this because it's more likely than not

Mrs H knew it was untrue to say she was/would be living in the property and knew it would matter to LV. As I'm satisfied Mrs H's misrepresentation should be treated as deliberate or reckless, I've looked at the actions LV can take in accordance with CIDRA. Having done so I find it's fair and reasonable for LV to avoid the policy and keep the premiums, and not pay the escape of water claim because effectively the policy never existed.

*My provisional decision*

I don't intend to uphold this complaint."

LV didn't provide any further evidence or arguments in response to my provisional decision. Mrs H responded to say she didn't accept my provisional decision but provided no further evidence or arguments on the merits of the complaint.

**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.

In the absence of any further evidence or arguments, I see no compelling reason to depart of my provisional decision. It follows I don't uphold this complaint.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 1 January 2024.

James Langford  
**Ombudsman**