

The complaint

Mr E complains about Haven Insurance Company Limited (Haven), regarding their avoidance of his home insurance policy and rejection of a claim for damage from a leak at his property.

Haven uses agents to administer and provide services under the policy, as well as to deal with claims and complaints. Reference to Haven in this decision includes those agents.

What happened

In June 2022 Mr E took out a home insurance policy with Haven through a comparison website. When taking out the policy, one of the questions asked was whether there was any structural building work or renovation taking place or due to take place at the property. As he was having a loft conversion at his property carried out, Mr E answered 'yes' to the question.

However, Mr E provided an incorrect email address as part of the details he gave when taking out the policy. As communication was through email, this meant he didn't receive the policy documentation, including the detailed terms and conditions. Part of the policy terms and conditions included an endorsement that meant any building works being undertaken (or planned to be undertaken) would need to cost less than £20,000. However, the estimated value of Mr E's loft conversion was £40,000. The work was carried out from June 2022, being completed at the end of September/early October 2022.

Subsequent to taking out the policy, in March 2023 there was a leak under the kitchen floor of Mr E's property. He contacted Haven to tell them about the leak and lodge a claim. However, as part of their validation of the claim, Haven became aware of the loft conversion work and its cost. As it exceeded the limit in the endorsement, they declined Mr E's claim as he'd breached one (or more) policy endorsements.

They also avoided (cancelled) his policy as they considered he'd made a careless misrepresentation of a material fact, and, under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), they were entitled to avoid his policy. While they avoided his policy, as they considered Mr E had made a careless misrepresentation, they returned the premiums he'd paid under the policy.

Unhappy at his claim being declined, Mr E complained to Haven, but they didn't uphold the complaint. In their final response, Haven said the claim had been referred to them (as the policy underwriters) following the loss adjuster's visit to the property, and the information he'd provided. Haven referred to the wording of the policy *Ongoing Works Endorsement* including the limit of £20,000 on renovation work. Haven noted the loft conversion work at Mr E's property was valued at £40,000 and, had they been made aware of this, Haven wouldn't have offered cover under any terms.

Haven said they considered this to be a careless misrepresentation of a material fact, and, under CIDRA, they were entitled to avoid the policy (the contract of insurance) and decline any claims made under the policy. Following their final response, Haven again confirmed decline of the claim on the grounds Mr E breached one (or more) policy endorsements.

Unhappy at what had happened, Mr E complained to this Service. He felt unfairly treated by Haven as he didn't have an opportunity to fully review his policy documents as he never received them due to his providing an incorrect email address. But he thought that would have generated a 'bounce back' to their email and Haven should have contacted him through the phone number and address he'd provided when taking out the policy. He wanted Haven to accept his claim and pay for the repair work.

He'd had to pay to repair the damage caused by the leak, as well as having to tell future insurers about the avoidance of the policy. This meant it likely he'd have to pay significantly more for insurance for the next five years (his new policy was around three times more expensive than his policy with Haven). He wanted records of the avoidance removed, thereby avoiding the impact on future insurance policies he might take out.

Our investigator upheld the complaint, concluding Haven hadn't acted fairly in avoiding Mr E's policy. When he took out his policy, Mr E was asked a question about any structural building work or renovation taking place or due to take place, to which he answered 'yes'. But he wasn't asked what the estimated value of the work would be. So, Mr E had answered truthfully the specific question he was asked. So, the investigator concluded Mr E hadn't made a misrepresentation.

Due to the error in his email address, Mr E didn't receive the policy documents, so wasn't aware of the £20,000 endorsement that would have applied. The investigator accepted Mr E's view that had he been aware of the £20,000 endorsement he would have cancelled the policy in the cooling off period and sought alternative cover elsewhere. In any event, the endorsement only applied to the policy whilst building works were ongoing. But the works were complete at the date of the leak, so the claim shouldn't have been declined and Haven should have completed the necessary work to repair the damage.

To put things right, the investigator thought Haven should reimburse the cost of repairs Mr E had incurred, as well as interest on the sum. Haven should also remove any record of the policy avoidance from internal and external databases (such as the Claims and Underwriting Exchange, CUE). Haven should also pay Mr E £150 compensation for the distress and inconvenience he'd suffered from what happened.

Haven disagreed with the investigator's conclusions and requested an ombudsman review the complaint. They said Mr E provided the incorrect email address, so didn't receive the policy documents and the terms and conditions. Nor did he contact them to say he hadn't received the documents. The Ongoing Works endorsement was applied to the policy from inception and all correspondence regarding the endorsement and the maximum limit for building works was sent to the email address provided by Mr E. The endorsement was also shown on the comparison site before the policy was purchased. And had they known the cost of the building works, they wouldn't have offered cover to Mr E.

In my findings, following details provided by Haven about the sales journey Mr E would have followed when taking out the policy indicated he would have been able to view the full wording of the endorsement, including the limit of £20,000. The wording also indicated that should this requirement not be met, Haven reserved the right to cancel or void the policy. Which is what they did, given they wouldn't have offered the policy had they known the value of the renovation work exceeded the £20,000 limit.

Given the sales journey, I concluded Haven had provided sufficient evidence to demonstrate the endorsement was shown before the policy was purchased (one of the points they made in disagreeing with the investigator's view).

While the endorsement wording would only have been visible had Mr E clicked on a link, I thought it reasonable to expect Mr E to have accessed the relevant endorsement wording before proceeding to take out the policy, given the importance of understanding the cover provided under the policy – including endorsements. So, Mr E should reasonably have been aware of the endorsement even without receiving the policy documents directly.

So, I concluded Mr E made a careless misrepresentation when taking out the policy and Haven acted reasonably in avoiding his policy and (subsequently) declining his claim.

Because I reached a different conclusion to the investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

What I've provisionally 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.

My role here is to decide whether Haven have acted fairly towards Mr E.

The key issue in Mr E's complaint is whether Haven have acted fairly in avoiding Mr E's policy on the grounds the building works at his property exceeded the £20,000 limit contained in the endorsement. Mr E says he didn't receive the policy documents, so wasn't aware of the endorsement. Had he received the documents, he would have been aware of the endorsement and cancelled the policy in the cooling off period and sought cover elsewhere. He also says the loft conversion was completed before the leak in the kitchen and was unrelated to the leak.

Haven say Mr E breached the ongoing works endorsement because the cost of his loft conversion work was some £40,000 – when the endorsement contained a limit of £20,000. The relevant wording of the endorsement, PA13 Ongoing Works" is contained as one of a list of endorsements set out in the Policy Schedule, is as follows:

"The endorsement applies to your policy whilst you have ongoing structural or cosmetic works at your property. The renovations should cost less than £20,000; Contractors must have their own liability for all the renovations. Existing structure only is covered until all works have been completed and signed off. No cover for unfixed Building materials, equipment, or goods. No liability is covered for anything in connection with the renovations or any resulting damage caused to your existing structure...

If the above requirements are not met then we reserve the right to cancel, void or amend the terms of your policy or refuse to deal with a claim. All limits, conditions, exclusions, and everything under "what is not covered" in your policy booklet apply unless they have been changed by this endorsement."

Haven say Mr E made a misrepresentation when taking out the policy, by not telling them about the value of the loft conversion. He'd breached the terms of the endorsement. Which mean they were entitled to avoid the policy and decline his claim for damage from the leak. Mr E provided an incorrect email address, so didn't receive the policy terms and conditions, and didn't contact them to say he hadn't received them. The endorsement applied from policy inception and all correspondence regarding the endorsement and the £20,000 limit for building works was sent to the email address provided by Mr E. The endorsement was also shown on the comparison site before the policy was purchased. Had they known the cost of the building works, they wouldn't have offered cover to Mr E.

In considering the case, I've first considered whether, as Haven say, Mr E made a misrepresentation under CIDRA when taking out his policy. Which entitled them to avoid his policy from inception and decline his claim, both being remedies available to an insurer where they consider a consumer has made a representation under CIDRA when taking out an insurance policy. In this case, the remedy Haven applied (including the refund of premiums) indicates they treated the case as a qualifying (but careless) misrepresentation.

CIDRA 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 they 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 say Mr N didn't tell them about the value of the loft conversion work when he took out the policy. Had he done so, as the figure was higher than the limit in the endorsement, they would have declined to offer the policy. Given this, I've considered what Mr E was asked when he took out the policy, and the answers he provided, with particular reference to questions about whether there were any ongoing (or planned) structural or renovation work.

What isn't in dispute is that Mr E was asked a question "is there any structural building work or renovation underway or due to take place?" Mr E answered "yes" to the question, as the loft conversion work was scheduled to take place between July and September 2022. In addition to the question, looking at a screenshot provided by Haven, there's an explanatory note next to the question setting out examples of the kind of work or renovation the question covers (and examples of things that are considered cosmetic). The note doesn't refer to any need to provide details of the value of any such work or renovations. Nor is there a supplementary question prompting Mr E to record the value of any work or renovation.

So, I've concluded Mr E answered the 'yes/no' question accurately.

However, Haven have told us that answering 'yes' to the question would then automatically lead to the endorsement being applied to the policy. They've also provided evidence of the sales journey Mr E would have made from the comparison website.

From the quote page there's a link headed 'Proceed to site' which would take a consumer to Haven's website. At that point there's a screen headed '2 Review Cover Details.' The text beneath the heading states:

"It is important that you understand the cover provided to you before you proceed. Please click the links below to view your policy summary and conditions, excesses and any endorsements that apply to this policy."

Beneath the text are three options to click: 'View excesses applicable to your cover'; 'View endorsements applicable to your cover'; and 'Insurance product information document'. There is also, next to these three options, a heading 'Useful Document' with icons for 'Policy Booklet' and 'Terms of Business'.

Clicking on the 'View endorsements applicable to your cover' brings up a table of endorsements, one of which is headed 'Ongoing Works' and includes the following wording:

“This endorsement applies to your policy whilst you have ongoing structural or cosmetic works at your property. The renovations should cost less than £20,000. Contractors must have their own liability for all the renovations. Existing Structure only is covered until all works have been completed and signed off...No liability is covered for anything in connection with the renovations or any resulting damage caused to your existing structure...If the above requirements are not met then we reserve the right to cancel, void or amend the terms of your policy or refuse to deal with a claim...”

Beyond this screen are three further screens, covering: ‘Choose Additional Cover’ options (Family Legal Solutions and Home Emergency Solutions); ‘Keeping You Informed’; and ‘Buy This Policy Securely Online’ which has an icon labelled ‘Confirm & Buy’.

Following this sales journey indicates Mr E would have been able to view the full wording of the endorsement, including the limit of £20,000. The wording also indicates that should this requirement not be met, Haven reserve the right to cancel or void the policy. Which is what they did, given they wouldn’t have offered the policy had they known the value of the renovation work exceeded the £20,000 limit.

Given the above sales journey, I think Haven have provided sufficient evidence to demonstrate show the endorsement was shown before the policy was purchased (one of the points they make in disagreeing with the investigator’s view).

While the endorsement wording would only have been visible had Mr E clicked on the ‘View endorsements applicable to your cover’ link, I think it reasonable to expect Mr E to have accessed the relevant endorsement wording before proceeding to take out the policy, given the text quoted above about the importance of understanding the cover provided under the policy – including endorsements. So, Mr E should reasonably have been aware of the endorsement even without his not receiving the policy documents directly.

So, I’ve concluded Mr E made a careless misrepresentation when taking out the policy and Haven acted reasonably in avoiding his policy and (subsequently) declining his claim.

My provisional decision

For the reasons set out above, it’s my provisional decision not to uphold Mr E’s complaint.

Haven responded to say they had no further information to add.

Mr E responded to make several points.

First, the endorsement applied while there was ongoing work at the property – by the leak happened after the work was completed and was unrelated to the work carried out.

Second, at the point Mr E took out the policy, he wasn’t having the work carried out – he was in two minds whether to have the work carried out due to the estimated cost increasing. But he ultimately decided to proceed – but only after he took out the policy. So he didn’t provide an incorrect answer when taking out the policy, so he questioned whether Haven wouldn’t have offered the policy in those circumstances. He answered ‘yes’ to the question as there was a good chance he would proceed with the work, so he was trying to be honest in answering the question. And had he subsequently told Haven about the work proceeding (and its estimated cost) would they have cancelled the policy.

Third, he didn’t see the endorsement when taking out his policy.

Mr E also asked whether, even if Haven didn't accept the claim for the damage from the leak, the record of the policy cancellation and the misrepresentation could be removed. This would mitigate the impact on him from having to declare the misrepresentation when taking out future insurance policies, which would have a significant financial impact on him through the likely higher premiums he'd have to pay.

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.

My role here is to decide whether Haven have acted fairly towards Mr E.

I've considered the points raised by Mr E carefully. Taking each one in turn, regarding the first point that the endorsement only applying when work was ongoing, I don't think this is the key issue. Which is Mr E breached the terms of the endorsement by having work carried out that exceeded the £20,000 figure. The wording of the endorsement also made it clear Haven reserved the right to cancel the policy if the terms of the endorsement were breached. And had Haven known of the planned work, they wouldn't have offered the policy to Mr E. So, it isn't relevant to say the endorsement only applied while the work was ongoing.

On the second point, I agree Mr E didn't answer incorrectly by answering 'yes' to the question *"Is there any structural building work or renovation underway or due to take place?"* While he may not have definitely decided to proceed at the point he took out the policy, I think it reasonable to answer 'yes' because – as Mr E puts it – there was a good chance he would proceed with the work. So, I think it reasonable to think that would come under the reference to 'due to take place'. Having answered 'yes' then the endorsement was automatically applied to the policy, which I think reasonable.

On the third point, that he didn't see the endorsement when he took out the policy, for the reasons I set out in the provisional decision I think it reasonable to have expected him to access the endorsement wording from the link in the sales journey as set out in the provisional decision. From which, he should reasonably have been aware of the £20,000 limit and the terms of the endorsement, including the possibility of the policy being cancelled should the terms of the endorsement be breached. In his responses to the provisional decision, Mr E hasn't challenged or otherwise provided evidence to refute what the provisional decision said about the sales journey. So, I haven't changed my view on this point, that he should reasonably have been aware.

On the specific point about whether, had Haven known of the planned work, they wouldn't have offered the policy to Mr E, this is a hypothetical question – it isn't what actually happened. But it isn't unreasonable to think they would have cancelled the policy – or have the option to cancel the policy – if they had been aware of the work proceeding at a cost exceeding the £20,000 figure in the endorsement.

On the point about whether record of the misrepresentation could be removed – even if Haven didn't accept the claim for damage from the leak, I understand why Mr E makes this point and I recognise the misrepresentation would need to be declared when taking out future insurance policies (not just property insurance policies). However, as I've concluded Haven acted fairly and reasonably in cancelling Mr E's policy and declining his claim, it wouldn't be reasonable (or consistent with my conclusion) to ask Haven to remove record of the cancellation and the misrepresentation.

My final decision

For the reasons set out above, it's my final decision not to uphold Mr E's complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 21 February 2024.

Paul King
Ombudsman