

## **The complaint**

Mrs M complains that HDI Global Specialty SE unfairly declined her claim for fire damage on her home insurance policy.

## **What happened**

Mrs M suffered a serious fire at her property. But HDI declined a claim on her home insurance policy. HDI then avoided the policy (cancelled from the start) as it said Mrs M had made misrepresentations when she applied for the cover. She hadn't disclosed that someone living at the property had previously been made bankrupt.

Mrs M said a colleague, Mr K, would sometimes stay at her house when he wasn't working away. But Mr K wasn't a permanent resident. She hadn't mentioned Mr K's bankruptcy when applying online for the insurance policy as she considered herself the only permanent occupier of the property. And she felt she'd completed the application correctly. So she wants HDI to reinstate her insurance policy and consider her claim.

HDI said Mrs M had confirmed that no one living at the property had been declared bankrupt. But that wasn't the case. HDI said it'd looked at the statements provided by Mrs M and Mr K. And it felt they showed Mr K lived at the property and it was his permanent address.

HDI said it took factors such as bankruptcy and CCJs into consideration when considering whether to offer insurance cover. Had it been aware of the facts it wouldn't have offered Mrs M a policy. It'd withdrawn its cover when it'd become aware a resident at the property had been made bankrupt and had outstanding CCJs.

Mrs M wasn't satisfied with HDI's response. So she contacted our service and our investigator looked into the matter. She considered whether Mrs M had taken reasonable care not to make a misrepresentation when she took out her policy. And she looked at the questions Mrs M had answered when completing her application.

Our investigator said the questions asked on the insurer's website were slightly different to the phrase used in the statement of fact. And she didn't feel Mrs M had misrepresented any information to HDI. So she felt HDI should reinstate the policy and consider the claim in line with its terms and conditions. And she upheld Mrs M's complaint.

HDI didn't agree. When Mrs M applied online, she answered and confirmed that no one who lived in the property had been declared bankrupt or had any unsatisfied CCJs. So HDI said she'd misrepresented the facts to allow her to obtain a quotation. The statement of fact, which included the phrase 'permanently living', was only produced after Mrs M had provided her earlier responses.

If she'd responded accurately during the application, she wouldn't have received a quotation to accept and she wouldn't have received the statement of fact. HDI said just because Mr K worked away from home that didn't mean Mr M's property wasn't the permanent place where he lived. The information provided by Mrs M and Mr K confirmed it was.

After considering all of the evidence, I issued a provisional decision to Mrs M and HDI.

### **What I said in my provisional decision**

Here are some of the main things I said:

- In reviewing this complaint, I've considered the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). It sets out the obligations of a consumer when entering into an insurance contract and the remedies available to an insurer if a consumer fails to fulfil their obligations if it can show they made what the Act describes as a 'qualifying misrepresentation'.
- Under CIDRA Mrs M had to take reasonable care not to make a misrepresentation when she applied for home insurance. If Mrs M made a misrepresentation, then it is for HDI to show this was a qualifying misrepresentation. To do this HDI needs to show she didn't take reasonable care and it wouldn't have offered her cover at all if she hadn't made the misrepresentation or would've have done so on different terms.
- When Mrs M applied online for her home insurance policy, she was asked various questions about herself and the property she wanted to insure. HDI used those answers to weigh up the risk of insuring the house. And it relied on the information being accurate. HDI believes Mrs M misrepresented the situation as she didn't declare that Mr K, who had been made bankrupt, was living at the same address. And HDI said it wouldn't have offered the insurance policy if Mrs M had made it aware of Mr K's bankruptcy when she applied.
- I've carefully considered Mrs M's responses. And I've not seen anything to suggest she deliberately or recklessly misrepresented the situation when she confirmed no one else living at the property had been declared bankrupt.
- So I need to consider whether HDI was entitled to avoid Mrs M's policy. HDI needs to show that by answering its question in the way she did Mrs M failed to take reasonable care not to make a misrepresentation. And I think it's done this. One of the considerations under CIDRA is how clear the question the consumer was asked was. I think the question was clearly put and if she was uncertain Mrs M needed to check before making the declaration.
- HDI says the statements it's received from Mrs M and Mr K confirm he was living at the property. He received post there and was on the electoral roll at that address. So although he occasionally worked away the property was still his normal place of residence.
- I appreciate Mrs M felt she'd answered the questions correctly as she didn't consider Mr K to be a permanent resident at her property. But Mr K said he considered Mrs M's home to be his main address. He also noted that Mrs M wasn't receiving a single person discount for council tax and he'd been recorded as living there since 2016 as well as being on the electoral roll at the address for a few years.
- I'm satisfied Mrs M ought to have clearly understood what she was being asked to confirm when she completed her application. And this means I think HDI has shown she failed to take reasonable care not to make a misrepresentation. This means there was a qualifying misrepresentation and – in my opinion – HDI has the right to avoid the home insurance policy in accordance with CIDRA.

- This means, in effect, the policy never existed and HDI does not have to deal with the claim following the fire at the property. As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing HDI to rely on it to avoid Ms J's policy produces the fair and reasonable outcome in this complaint.

Subject to any further representations by Mrs M or HDI, my provisional decision was that I didn't intend to uphold this complaint.

### **What the parties said in response to my provisional decision**

Mrs M provided information to show Mr K had lived at a different property she owned from July 2017 to May 2019. He'd paid council tax and utility bills for that property. And he'd sometimes stayed at his mother's. So it wasn't true to say he'd been at the fire-damaged property for years. Mrs M said he'd been negotiating a contract of work away and was staying with her temporarily when she applied for the insurance. And his new contract had only been cancelled after she'd taken out the insurance policy. So she didn't feel she'd made a misrepresentation.

HDI had no further comments to make.

### **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 particular I've carefully considered Mrs M's detailed response to my provisional decision. Having done so, I'm not persuaded I should change that decision.

Mrs M has confirmed she is in a long-term relationship with Mr K. And in his statement to HDI he says, 'I have been asked where I consider my main address to be, and I would state here..' Mr K also confirms he receives post at the address, is not a lodger or tenant but rather Mrs M's partner. Mr K says he stayed at another of Mrs M's property during 2017 and 2018 and did some work there, which is supported by the information provided by Mrs M.

But when Mrs M went online to search for an insurance policy in August 2019 I think it would be reasonable to say Mr K also lived at the property – whether or not he hoped to be working away again in the near future or had stayed elsewhere in the past.

Mrs M feels that she gave her answers in good faith. She didn't consider Mr K when she answered the question 'have you or anyone living in the property been declared bankrupt'. She considered herself the only permanent resident. And Mrs M says they were in a state of shock when they gave the interviews and statements to HDI following the fire. But I don't think the statements have been cherry-picked or taken out of context.

I do appreciate how upsetting this has been for Mrs M. But based on everything I've seen I can't say HDI acted unfairly in taking the position that Mr K was living at Mrs M's property – and that she should have considered this when completing the online application and declared his bankruptcy.

As I said in my provisional decision, I'm satisfied HDI was entitled to avoid Mrs M's policy in accordance with CIDRA. It asked a clear question and Mrs M didn't take reasonable care not to misrepresent her answer. And HDI has shown it wouldn't have offered the cover if it'd known the facts about Mr K. This means – in effect – the policy never existed. And HDI does not need to deal with her claim after the fire at her property.

Where an insurer has avoided a policy due to careless misrepresentation I'd expect it to refund the premiums paid back to the date of avoidance. Following the fire I can see HDI arranged a £5000 no liability payment to help Mrs M find alternative accommodation. And it covered the cost of removing a chimney stack because of the risk of collapse, again without prejudice to liability. So I think HDI has acted fairly and reasonably in the circumstances. And I won't be asking it to do anything more to resolve the complaint.

### **My final decision**

For the reasons I've given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 1 January 2021.

Andrew Mason  
**Ombudsman**