

## **The complaint**

Ms H and Mr T complain that Admiral Insurance Company Limited cancelled their home insurance policy.

## **What happened**

Ms H and Mr T had home insurance with Admiral which they took out in May 2020. In November 2020 they made a claim for subsidence after noticing cracks appearing at their property.

Admiral sent a contractor out to inspect the damage. It subsequently requested a copy of Ms H and Mr T's pre-purchase survey. On receiving this Admiral wrote to them to say it was declining their claim and cancelling their policy. It said the survey showed there had been previous subsidence at the property and this hadn't been declared when the insurance policy was taken out. Admiral said if it had been, it wouldn't have offered Ms H and Mr T the policy.

Ms H and Mr T didn't think this was fair. They said when they took out the policy they were only asked if there had been any subsidence within the last 25 years. And the survey didn't say when the movement happened, but said it wasn't progressive, so they didn't think they'd answered the question dishonestly. They made a complaint.

Admiral didn't uphold their complaint. It said that while the survey didn't give a date for when the subsidence took place, the information contained in it would be enough for Ms H and Mr T to know they wouldn't be answering the question correctly by answering 'agree'. And if it had known about the movement it wouldn't have offered the policy, so it said it was right to cancel the policy. However it said it didn't consider the misrepresentation to have been deliberate, so it refunded Ms H and Mr T's policy premiums.

Ms H and Mr T didn't agree it was fair to cancel the policy. They said the survey only concluded the subsidence happened before 2015, so they thought it was likely it happened more than 25 years ago. They brought their complaint to this service.

Our investigator didn't recommend the complaint be upheld. She said that while the pre-purchase survey didn't say when the subsidence occurred, she thought the information provided in it was enough for Ms H and Mr T to know they may not have been answering the question correctly. So she thought Admiral had acted fairly by cancelling the policy.

Ms H and Mr T didn't agree and 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.

The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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.

Admiral thinks Ms H and Mr T failed to take reasonable care not to make a misrepresentation when answering the question about previous instances of subsidence at their home.

I've considered the question that was asked and the answer given. When completing the online application Ms H and Mr T were asked:

*'Do you agree with the following statements?*

*This property has not suffered from:*

- *Flooding in the last 25 years, including the land it stands on*
- *Subsidence heave or landslip in the last 25 years'*

To this question they answered 'agree'.

The pre-purchase survey shows that there has been movement due to subsidence at the property and that there are cracks in the building due to this. And while it doesn't specify when the movement occurred, other than concluding it was before 2015, it makes no suggestion as to when it occurred before that date. So based on this Ms H and Mr T were aware that there had been subsidence, and that it occurred at some point before 2015. So I think they would have been reasonably aware that answering 'agree' to the above question may not have been an accurate answer.

Ms H and Mr T have said that as the house is over 100 years old, they think it's most likely the subsidence happened much longer than 25 years ago. So they feel they answered the question correctly, to the best of their knowledge.

While I appreciate there is ambiguity about the date of subsidence, I have to consider the facts available. And from the survey, it confirms subsidence had occurred at the property before 2015. So based on this, in order to answer the question accurately, Ms H and Mr T would need to be sure that it didn't occur at any point in the 20 years preceding 2015. And I don't think there was enough evidence for them to be able to know that this was the case.

Further, next to the statement on the website there was an icon to click for additional information about the question. So if Ms H and Mr T had any doubts about how to answer they could select this. When selected, this displayed the following information:

*'Please select 'Disagree' if your property (including garages and outbuildings) has been affected by or monitored for subsidence, heave or landslip or currently shows signs such as cracks present on walls....'*

This makes it clear that where there are signs of subsidence, such as cracks in the walls, then 'disagree' should be selected as the answer to the question. The survey documents that cracks were present at the property when it was purchased. So I think it's clear that the answer Ms H and Mr T gave wasn't correct.

Ms H and Mr T have said that this information is hidden, so it wasn't noticeable and was easily missed. I've looked at the page that they had to fill out and I think it's clear that where help is required, the icon can be selected. However even without the extra information, I am satisfied that they didn't take reasonable care to answer the question correctly. So I agree there has been a misrepresentation.

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

Admiral has provided information from its underwriters which shows that it wouldn't have offered the policy if there had been subsidence at the property within 25 years. Further its underwriters have confirmed that even though a date of the subsidence is uncertain in this case, it wouldn't have offered cover based on the information available from the survey. So I'm satisfied that if Ms H and Mr T had provided the correct information at the start of the policy, then Admiral wouldn't have offered the policy at all. So I agree there has been a qualifying misrepresentation.

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.

In this case Admiral has said it considers Ms H and Mr T's misrepresentation to be careless. CIDRA says where a qualifying misrepresentation has occurred, and it is considered careless, then the insurer can refuse all claims, avoid the policy, but should refund the policy premiums. Admiral has said it has refunded the policy premiums to Ms H and Mr T, so I'm satisfied it has acted fairly and fulfilled its requirements under CIDRA. So I won't ask it to do anything further.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H and Mr T to accept or reject my decision before 26 August 2021.

Sophie Goodyear  
**Ombudsman**