

The complaint

Ms C has complained that Red Sands Insurance Company (Europe) Limited ('Red Sands') avoided her home insurance policy and refused to pay her claim.

What happened

Ms C took out a home insurance policy with Red Sands. About three months later, Ms C contacted Red Sands to make a claim for theft from a shed. Red Sands said Ms C had incorrectly answered the question it asked about whether people who lived at the property had a conviction. And it considered this to be a careless/deliberate or reckless qualifying misrepresentation, which entitled it to cancel the policy from the start. It also refunded the premium paid.

When Ms C complained to this service, our investigator didn't uphold the complaint. She said it was reasonable for Red Sands to decline the claim and cancel the policy as her husband lived with her and had a criminal conviction.

As Ms C didn't agree, the complaint was referred to me.

I issued my provisional decision on 29 March 2022. In my provisional decision, I explained the reasons why I was planning to uphold the complaint. 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.

Red Sands said Ms C failed to take reasonable care not to make a misrepresentation by failing to declare that her husband lived with her and that he had a criminal conviction. I've looked at the policy documents. These don't show what Ms C was asked. However, the documents summarised what information Ms C provided and said she needed to check the documents were correct and to keep the information up to date. The documents said Ms C had said:

"You live there with 0 other adults and 3 children under the age of 18, there are no permanent lodgers, and other than those named policyholders there are no residents with criminal convictions".

During the claim, Red Sands concluded that Ms C's husband lived with her. I'm aware that Ms C has disputed this and provided information to this service to show various details related to her circumstances. I also listened to the phone calls between Red Sands and Ms C during the claim. During one phone call, Ms C explained that her husband lived with her for about a quarter of the year and lived elsewhere for work. Red Sands then spoke to Ms C again to discuss this further. It asked Ms C about her husband's main residence. Ms C explained that the accommodation her husband lived in elsewhere was provided through work. Ms C said it wasn't his residence and confirmed that he was registered at her address. Red Sands also said Ms C had previously declared that she was separated. Ms C said this had been the case, but they had got back together.

So, based on all the evidence I've seen, I think it was reasonable for Red Sands to decide that Ms C's husband lived with her. However, I haven't seen any evidence to show this, in itself, was the reason Red Sands concluded Ms C had misrepresented and so cancelled the policy. From what I've seen, that was because her husband had a conviction. So, I've also looked at this.

In one of the phone calls about the claim, Red Sands asked about convictions. Ms C explained that her husband had received a conviction the previous year and had received a fine. Red Sands didn't ask for the date of the conviction and it wasn't specifically discussed during that phone call. I note that when Red Sands provided details of the complaint to this service, it said Ms C's husband had gone to prison. However, I haven't seen any evidence to show this was the case.

I also asked Ms C for more details of the conviction. She explained that her husband had received a fine in November 2019. So, I looked at the Rehabilitation of Offenders Act 1974 (ROA) to see when this conviction would be spent. The ROA said a fine would normally be spent after 12 months. Looking at when the policy was taken out and when the insurance claim was made, both of these were more than 12 months after the conviction. So, based on what I've seen, by the time Ms C took out the policy, the conviction had been spent and so didn't need to be declared.

I also asked Red Sands whether it had considered how sentences were dealt with under the ROA, including when they became spent, and whether it had any reason to think the conviction hadn't already been spent by the time Ms C took out the policy. If Red Sands remained of the view that Ms C had misrepresented by not declaring the conviction, I asked it to explain how this was in line with the ROA, to provide the exact question Ms C was asked about convictions and to clarify the type of misrepresentation Ms C had made and its reasons for classifying it in that way. When Red Sands replied it said it should have requested more information about the conviction and considered this at the time the claim was declined. It didn't provide any of the requested details.

So, I haven't currently seen enough evidence to show Ms C made a misrepresentation about the conviction when she took out the policy. Red Sands was aware that Ms C's husband had been fined, as Ms C told it this during a phone call. It didn't then seem to follow up on this to find out further details, such as the date of conviction, and how this type of sentence was dealt with under the ROA. Red Sands now seems to accept that it didn't do enough to look at the conviction and it hasn't provided any of the requested evidence to show why it was reasonable to decide that Ms C had misrepresented. So, based on everything I've seen, I don't currently think it was reasonable for Red Sands to conclude that Ms C made a misrepresentation when she took out the policy that meant the policy should be cancelled.

As a result, I currently intend to require Red Sands to remove all references to the cancellation from databases, reinstate the policy and to continue to consider the claim, if Ms C still wishes to continue with it. It is my understanding that Red Sands refunded the

premiums. Ms C should be aware that any premiums for the policy will normally need to be paid as part of it being reinstated.

I asked both parties to send me any more information or evidence they wanted me to look at by 26 April 2022.

Ms C said she and her husband were now divorced and that he doesn't live at the property at all. She also said Red Sands hadn't refunded the premiums, so she assumed no payments would be due from her.

Red Sands said it had nothing further to add.

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've decided to uphold this complaint and for the reasons given in my provisional decision. I've found no reason to change my decision. I'm aware Ms C has said the premiums weren't refunded. She should discuss this with Red Sands to clarify the position.

Putting things right

Red Sands should remove any references to the cancellation from databases, reinstate the policy and continue to consider the claim.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint. I require Red Sands Insurance Company (Europe) Limited to:

- Remove any references to the policy cancellation from internal and external databases.
- Reinstate the policy.
- Continue to consider the theft claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 7 June 2022.

Louise O'Sullivan
Ombudsman