

## **The complaint**

Mr J and Mrs J have complained that QIC Europe Ltd (QIC) avoided their home insurance policy (treated it like it never existed) and refused to pay their claim.

## **What happened**

Mr J and Mrs J took out a home insurance policy with QIC via a price comparison website. Mr J and Mrs J had a fire at their home, so they contacted QIC to make a claim. QIC investigated the claim and told Mr J and Mrs J they had answered the questions about cracking to external walls incorrectly. It considered this to be a careless qualifying misrepresentation, which entitled it to cancel the policy from the beginning and to decline the claim, but to refund the premiums paid.

When Mr J and Mrs J brought their complaint to this service, our investigator upheld the complaint. She said there hadn't been a misrepresentation, as Mr J and Mrs J had given an appropriate response to the question asked based on what Mr J and Mrs J had been told in a homebuyer's survey. She said QIC should reinstate the policy, remove any references to the voidance from databases and refund any cancellation fee if this was charged. She also said QIC should deal with the claim in line with the policy terms and conditions and pay £350 compensation for the distress and inconvenience caused.

As QIC didn't respond to the investigator's findings, the case was referred to me for a decision.

## **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 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.

QIC thinks Mr J and Mrs J failed to take reasonable care not to make a misrepresentation when they first took out the policy by incorrectly answering a question about cracks to the external walls to the property. I've looked at what was asked when Mr J and Mrs J took out the policy. The application process included statements that said:

*“Your property has NOT been subject to subsidence or had structural support or underpinning within the last 10 years*

*It does NOT show signs of cracking in external walls”*

Mr J and Mrs J agreed with these statements. Shortly after the policy came into force, Mr J and Mrs J made a claim for a fire. QIC sent a surveyor to assess the fire damage, who found cracking to the external render. QIC has provided evidence to show that if there was cracking to external walls that it wouldn't have agreed to provide the policy.

Mr J and Mrs J have said that when they took out the policy, they looked at a homebuyer's report that had been carried out a few years previously. They said that although this referred to cracking, this was to the render, not to the walls themselves. I've looked at that report and agree that it only refers to cracks in the render and to some plaster within an internal cupboard. So, I don't think the question was clear that it required Mr J and Mrs J to declare any cracking to the render as well. If QIC wanted to know this, it could have asked it as part of its questions.

I also note that the question asks about signs of cracking “in” external walls. Render is applied to walls as a form of covering. So, I think there is a difference between the external walls themselves and any rendering that is added to it. QIC's response to Mr J and Mrs J's complaint also said “*The cracking ... is within the cement render which is located on an external wall*”. I think this also suggests there is a difference between the render and the walls. I don't think cracks within the render showed there were therefore cracks in the external walls themselves or that a question about cracks in external walls meant issues with the render had to be declared as part of responding to the statement.

I'm aware QIC has also said the homebuyer's report said there was evidence of movement, which it said should also have been declared. However, I've seen nothing within the questions QIC asked that required Mr J and Mrs J to declare this. The report confirmed there was no evidence of subsidence and didn't refer to any signs of previous structural stabilisation. So, I think Mr J and Mrs J took reasonable care to answer the questions accurately and that they therefore didn't make a misrepresentation.

So, based on the above, I uphold this complaint. As a result, I require QIC to reinstate the policy and remove any reference to the voidance from internal and external databases. If Mr J and Mrs J were charged a cancellation fee, this should be refunded to them and interest paid on that amount. QIC should also deal with the claim for the fire in line with the terms and conditions of the policy. Mr J and Mrs J should be aware that even if the policy premium was previously refunded to them, they will need to pay the relevant policy premium for the policy to be reinstated.

I've also thought about compensation. When Mr J and Mrs J complained to this service, they explained that the policy voidance had caused them a lot of anxiety and sleepless nights. They had also found it difficult to get insurance elsewhere. So, thinking about this, I require QIC to pay Mr J and Mrs J £350 compensation for the distress and inconvenience caused to them.

### **Putting things right**

QIC should reinstate the policy and remove any references to the policy voidance from internal and external databases. It should also refund the cancellation fee, if one was charged, and pay interest on that amount. QIC should also deal with the claim for the fire and pay £350 compensation.

## **My final decision**

For the reasons I have given, it is my final decision that I uphold this complaint. I require QIC Europe Ltd to:

- Reinstatement of the policy.
- Remove any references to the policy voidance from internal and external databases.
- Refund Mr J and Mrs J any cancellation fee, if one was charged, and pay 8% simple interest on that amount from the date on which it was charged to the date on which it is refunded.
- Deal with the claim for the fire under the terms and conditions of the policy.
- Pay Mr J and Mrs J £350 compensation for the distress and inconvenience caused to them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 22 March 2022.

Louise O'Sullivan  
**Ombudsman**