

The complaint

Mrs C complained the cost of her home insurance policy was unfairly increased by Hiscox Insurance Company Limited (“Hiscox”) mid-way through the policy term.

What happened

When Mrs C took out a home insurance policy with Hiscox at a cost of £2,992.58, it was based on upon her declaring that she had made one claim in the previous five years. Part way through the year, Mrs C made a claim on the policy.

As part of the claims process, Hiscox reviewed the Claims and Underwriting Exchange (CUE) and identified that Mrs C had also made a claim within the last five years under the home emergency section of her policy with her previous insurer. Based on this new information, Hiscox decided to increase Mrs C’s premium for the year to £3,556.97 part way through the policy term – it said this is what it would’ve charged Mrs C at the start of the policy if it had received all the information about her claims. Mrs C felt she had no option but to pay the £564.39 difference to ensure her house was still covered whilst she had building works going on.

Mrs C said when she took out her policy, she was never asked whether she had any emergency claims. She also challenged that a claim had been made at all – she said, *“no claim was ever made on the back of this leak, it was purely an emergency call out to turn the water off”*. Mrs C said when her policy had finished with Hiscox, she spoke to different insurers who informed her that she didn’t need to declare her emergency claim to them. So, Mrs C thought it was unfair and unjustified that Hiscox increased her premiums previously.

Our investigator decided to uphold the complaint. She thought Hiscox’s questions weren’t clear enough to properly ascertain the full facts when the policy was taken out. And she thought Mrs C had taken reasonable care in answering the questions that were asked when she took out the policy. She concluded that Hiscox had been unfair by increasing the premium mid-contract, so she thought Hiscox should refund the additional premium paid plus 8% interest for the time she had been without the money. She awarded £100 compensation for distress and inconvenience. Hiscox disagreed, so the case has been referred to 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.

Hiscox said *“I can confirm we have not treated this matter as misrepresentation, we were happy to offer terms, but at a slightly higher cost due to two claims within the previous five years and not the one mentioned at inception. The additional claim is a material fact and the change to the information provided for us to be able to rate the risk, changed as a result of the additional claim recorded on CUE”*.

While investigating the claim Hiscox said Mrs C didn’t provide all the information it needed –

which I think has the same effect of it thinking Mrs C misrepresented her claims history when she took out the policy. Hiscox has argued, had it known the correct information about Mrs C's claim history, it would've acted differently by offering the policy at a higher premium. As a result, Hiscox has retrospectively altered the terms of the policy by asking for a higher premium off Mrs C mid-contract. Therefore, I think it's appropriate to consider this complaint as one of potential misrepresentation.

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 must show it would've offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out several 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.

So, I've considered Mrs C's circumstances in respect to CIDRA.

Was there a misrepresentation?

When Mrs C applied for her policy, she stated she had made one claim in the previous five years. There is some disagreement between Hiscox and Mrs C whether the interaction she had with her previous insurer constituted a claim or not for the emergency call out.

I think Hiscox's investigations reasonably show evidence that the information provided by Mrs C was incomplete compared to what is recorded on the industry database CUE. As Hiscox has pointed out, if this information was inaccurate Mrs C could've raised a complaint against her previous insurer to ask for this to be changed.

However, in these circumstances, I think Hiscox has been fair in saying the full claims history hasn't been provided, as it has provided evidence to support this.

Did the consumer take reasonable care?

I've considered the questions that were asked of Mrs C when taking out the policy to see if she took reasonable care in providing her answers. Unfortunately, no call recording of the sales call is available, so there is no evidence of the precise words used on the call. So, I have relied on the standard call script that Hiscox has provided. The question that was asked of Mrs C was: "*How many buildings or contents claims have you and any person living in the property, made within the last five years?*"

Mrs C answered this question by providing details of a theft claim. Mrs C said she didn't think she needed to declare the emergency call out as she didn't think it was relevant to her future buildings and contents policy. She has provided evidence that supports why she thought her emergency call out didn't constitute a claim - she chose to commission an independent contractor to carry out the subsequent repairs. I think Mrs C's answers are genuine. She declared a much more significant claim for a theft in the five-year period, so I think if she thought she needed to declare the emergency call out she would've done. I can see her policy schedule with Hiscox excludes cover for home emergency, so I can

understand why Mrs C thought her emergency call out wasn't relevant to her future policy with Hiscox.

I think Mrs C has taken reasonable care in answering the question that was asked. I don't think the question was clear enough that Mrs C needed to tell Hiscox about any emergency call outs – the question asked specifically about buildings and contents claims.

Therefore, I think Mrs C took reasonable care to avoid making a misrepresentation – she answered the questions to the best of her knowledge. I think she acted honestly. Therefore, I don't think it was fair for Hiscox to increase the cost of Mrs C's premiums mid-contract after it had been agreed.

Our service thinks an insurer can charge additional premium mid-term where a significant event has changed the risk posed, but I can't think that would apply here. I don't think knowledge of an emergency call out does constitute a significant event.

Therefore, I think Hiscox should've honoured the terms and conditions and price that was offered at the start of the policy. So, I uphold this complaint. I require Hiscox to refund the additional premiums paid by Mrs C (£658.81). As Mrs C has been unfairly left without this money, I require Hiscox to add 8% simple interest per annum to the additional premium from the date the premium was paid to the date it is refunded. I think this experience will have caused Mrs C some distress and inconvenience due to the increased costs, so I award £100 compensation. As to future years, I would expect the insurer to assess the risk fairly and show that it has treated the consumer as it would any other consumer in their position.

My final decision

My final decision is that I uphold this complaint. I require Hiscox Insurance Company Limited to pay Mrs C:

- A refund of the additional premiums (£564.39)
- Plus 8% simple interest* (from the date the additional premiums was paid to the date its refunded)
- £100 compensation** – for distress and inconvenience

*HM Revenue and Customs requires Hiscox Insurance Company Limited to take off tax from this interest. Hiscox must give a certificate showing how much tax it's taken off it if Mrs C asks for one

** Hiscox Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it that Mrs C accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 27 April 2022.

Pete Averill
Ombudsman