

## **The complaint**

Mrs G has complained that Qmetric Group trading as Policy Expert have removed her flooring to investigate a claim, and then have avoided her policy and refused her claim as they say she didn't tell them about a crack in her external walls when she bought the policy.

## **What happened**

Mrs G took out a buildings insurance policy with Qmetric from September 2020 which was renewed in September 2021. The policy was bought online through Policy Expert.

In July 2021 Mrs G reported an escape of water. Qmetric appointed agents to deal with the claim, and they sent out a team to deal with the initial problem. They removed the kitchen flooring, living room flooring and underlay and disposed of it. They also installed drying equipment. They then sent a surveyor to the property to assess the damage.

Following the surveyor's visit, Q metric made an offer of settlement, which Mrs G declined as it didn't include replacing damaged kitchen cupboards which she believed were covered.

A second surveyor attended the property to reassess the cupboards and noted there was a visible crack to the outside of the property. Further investigations of historical photos showed that the crack was visible on the property before Mrs G took out her policy, and so on reviewing the information they now had, together with Mrs G's responses on her insurance application form, Qmetric said Mrs G had made a misrepresentation on her application for insurance. They said that she had answered the question about cracks in the exterior of the property incorrectly and it considered this to be a careless misrepresentation, which entitled them to avoid her policy and refund her premiums.

Mrs G complained that this was unfair as she had never noticed the crack on the front of her property, and the first surveyor didn't notice it either.

She also complained that as the contractors had removed and disposed of her flooring, she now had to replace it.

Qmetric stood by their decision, and so Mrs G brought her complaint to us.

One of our investigators has looked into Mrs G's complaint and thought that the complaint shouldn't be upheld as there had been a qualifying misrepresentation and that Q metric was entitled to avoid the policy.

Mrs G disagreed with our investigators view and asked for an ombudsman's 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.

I haven't upheld Mrs G's complaint, and I will explain why.

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.

Qmetric thinks Mrs G failed to take reasonable care not to make a misrepresentation when she took the policy out and so she has made a careless misrepresentation. They say that when they quoted for the policy, Mrs G failed to tell them about cracking to the external walls and if she had done so, they would have declined cover. So, they say they are entitled to avoid the policy, decline the claim and refund the premium already paid.

In order to consider whether Mrs G did make a qualifying misrepresentation, I've looked at the copies of the reports provided by the surveyors who attended the property, and also the information provided by Mrs G.

### **Failure to inform of cracking walls.**

Mrs G bought her policy online.

In the questions on the webpage asked at the time of quoting, a list of statements are provided to the customer, who then responds "Yes" or "No" to the list of statements. If Yes is answered, it then populates further questions about the different areas.

It says:

*"Are the following statements about your property correct?"*

To which Qmetric say Mrs G responded "Yes". In that list was the following statement:

*"It does NOT show signs of cracking in the external wall".*

Prior to renewal in 2021, Mrs G was contacted by Q metric by phone to discuss her renewal. She was sent a renewal pack with a list of "Statements about your property" including:

*"It does NOT show signs of cracking in external walls – I agree"*

Mrs G hadn't specifically stated that she agreed on any renewal form, but on the phone she was asked whether she had checked through the renewal documents and whether anything had changed. To which she replied "no".

As Qmetric have pointed out, this is a clear and unambiguous statement and covers any cracking, not just cracking that might be a cause for concern.

As Mrs G has responded that the statement is correct, ie, that there isn't any cracking, I have thought about whether Mrs G has taken reasonable care when answering this question to ensure that her answer is correct.

In her testimony Mrs G says that she hadn't noticed any issues with or been remotely aware of any cracks in the walls of the property, and even if she had noticed them she wouldn't have considered them to be cracks as in her mind this would have to refer to significant visible damage that would cause a problem.

Scrutiny of the photograph of the front of the house shows that there is one crack in the pebbledash render which runs from the top of the right-hand side of the downstairs window upwards to under the sill of the upstairs window. It is visible on the front view of the house both close up and several feet away, and so whilst I accept Mrs G's testimony that she has never noticed the crack, I can't say that she exercised reasonable care when answering the question, because I think that if before answering the question, Mrs G had gone outside and looked at the front of the house to check for cracks, she would have noticed it.

CIDRA requires Mrs G to take reasonable care when answering the questions from the insurer, and unfortunately, I don't think Mrs G took sufficient care to check that her response was accurate.

Q metric has provided me with evidence from the underwriters to show that that if any cracking had been declared, they wouldn't have offered cover, and so I am satisfied that Mrs G's misrepresentation was a qualifying one, as no policy would have been offered.

Q metric have said that they consider this misrepresentation to be careless rather than deliberate and that is why they have avoided the policy and refunded Mrs G's premiums.

On the basis of what I have said above, I too am satisfied that Mrs G's misrepresentation was careless rather than deliberate, and so I'm satisfied Qmetric was entitled to avoid Mrs G's policy in accordance with CIDRA. And, as this means that - in effect - her policy never existed, Qmetric doesn't have to deal with her claim following the escape of water.

I have seen that Mrs G has undertaken the repairs to her flooring and kitchen at considerable cost which I understand will have been unexpected and upsetting, and I can also appreciate that this will have been added to by Qmetric initially making an offer, and then retracting this after the second surveyors report, but unfortunately for her, as CIDRA reflects our long established approach to misrepresentation cases, I think allowing Qmetric to rely on it to avoid Mrs G's policy produces the fair and reasonable outcome in this complaint.

### **My final decision**

My decision is that I don't uphold Mrs G's complaint and Qmetric Group Limited trading as Policy Expert don't need to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 23 August 2022.

Joanne Ward  
**Ombudsman**