

The complaint

Mrs P complains that The National Farmers' Union Mutual Insurance Society Limited (NFU) unfairly avoided her home insurance policy for misrepresentation following a claim.

What happened

Mrs P took out home insurance with NFU in September 2020 via a broker. In January 2021 she found cracks in the ceiling plasterboard and the ceiling needed battening and she made a claim to NFU. NFU's loss adjuster visited and asked if she had made any other claims in the past few years. Mrs P said she'd made a claim for a leaking chimney, which hadn't been covered and for a glass shower screen that had been covered. She said the loss adjuster told her the cracks in the ceiling weren't related to the issue she'd had with the chimney.

The broker wrote to Mrs P on NFU's behalf saying when the policy started she was asked if she had suffered any losses in the past five years, and her answer 'no' was recorded on the Statement of Facts that was sent to her. It said this induced NFU to offer her cover and it now considered this to be reckless and would avoid her policy to inception. It said this meant NFU had no liability for her claim and would retain her premiums in lieu of claims paid.

Mrs P said that when NFU avoided her policy she had to immediately seek alternative cover and said NFU also told her it wouldn't renew her motor insurance when it expired.

Mrs P complained to NFU saying she hadn't misrepresented her situation when she took out the policy as she had answered the question about her property being in a good state of repair accurately. She said the proposal form hadn't asked if she had made a claim in the past few years, but asked about loss or damage which she thought referred to anything she might have had to pay to a third party. Mrs P said she told the loss adjuster about the claims when asked. Mrs P wants NFU to rescind its avoidance of her insurance.

NFU rejected Mrs P's complaint, saying she was asked questions when she applied for the policy including that she had no claims in the past five years and that her property was in a good state of repair and free from any defect, and her responses were a misrepresentation. It said Mrs P was given a second opportunity to disclose her claims, but she still didn't disclose the latter claim, and this was only discovered from contact with her previous insurer.

Our investigator recommended the complaint be upheld. She said Mrs P disclosed previous claims to the loss adjuster and the second claim wasn't specifically asked about. But Mrs P ought to have mentioned both claims but the questions at inception could have been clearer and NFU's response should have been to charge a higher premium, not avoid the policy. She said NFU could decline the claim as it wasn't covered, but it should refund Mrs P's premiums, remove any markers and pay her £100 compensation for her inconvenience.

Mrs P agreed with the investigator, but NFU didn't. It said the question asked about losses included claims. It considered Mrs P's misrepresentation to be reckless and so it could avoid the policy. The investigator said there's no evidence of recklessness by Mrs P but NFU could treat the misrepresentation as careless and as it would have still insured the risk, albeit at a higher premium, it couldn't avoid the policy.

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.

NFU thinks Mrs P failed to take reasonable care not to make a misrepresentation when she answered the following questions on the proposal form for her insurance in September 2020. *'Is the property in a good state of repair and free from damage or defect of any kind?'*

Answer: 'Yes'

'During the last 5 years have you or any resident members of your family suffered any loss or damage or incurred any liability at this or any other address?'

Answer: 'No'

I've thought about these questions and consider them to be fairly clear, although the reference is to losses rather than claims. I don't think Mrs P took reasonable care with her responses and misrepresented her circumstances. I have now considered whether Mrs P's misrepresentation was a 'qualifying misrepresentation' i.e. did it make a difference to NFU.

NFU have said that it would likely have insured Mrs P had she disclosed her previous claims, albeit at a higher premium and with different terms. This means I'm satisfied Mrs P's misrepresentation was a qualifying one.

CIDRA sets out that insurers may classify a qualifying misrepresentation as *deliberate or reckless*, or *careless* and gives different remedies for these. An insurer is required to show that a misrepresentation is deliberate or reckless. If it does so it may avoid a policy and retain the policyholder's premiums.

NFU says Mrs P's misrepresentation was reckless because she failed to disclose recent claims when taking out the policy and again when it wrote to her in February 2021. NFU state it is highly unlikely that the damage shown in its loss adjuster's report occurred within the four-month period from policy inception as Mrs P's ceiling hadn't been repaired from the previous chimney incident. However, Mrs P said she had the chimney fixed and said no damage to the ceiling was caused by the chimney.

NFU said Mrs P had a further opportunity to disclose both previous claims when it wrote to her in February 2021. This letter was sent after Mrs P had disclosed the claims to NFU's loss adjuster but before NFU had received the loss adjuster's report and is limited to the chimney

claim. NFU was incorrect to say Mrs P had been asked about 'claims' at inception, and the broker was incorrect to tell her NFU had been induced to offer her cover by her answer of 'no' to this question. I don't think NFU has shown Mrs P to have acted recklessly, but her misrepresentation might fairly be treated as careless.

As I'm satisfied that Mrs P's misrepresentation could be treated as careless, I've looked at the actions NFU can take in accordance with CIDRA. NFU said it would have offered cover, and so it cannot avoid the policy. If NFU wishes to treat Mrs P's misrepresentation as careless it must treat the contract as if entered into on the terms that it says it would have required had there not been a misrepresentation and must also reconsider Mrs P's claim.

However, little would be gained by this as I can see that NFU would have rejected Mrs P's claim in any event based on its loss adjuster's report, '*There is no evidence that the damage to the ceiling has resulted from an insured peril or an outside force.*' In the absence of an insured event the damage would fall to be considered an uninsured loss and so the rejection appears to be fair. I understand that Mrs P accepts this and is not pursuing the claim and has cover with another insurer.

Putting things right

As I find that the avoidance of Mrs P's policy wasn't supported by CIDRA and unfair I think her misrepresentation shouldn't be treated as reckless or deliberate, and the avoidance of her policy should be rescinded by NFU, with all records amended accordingly. I think Mrs P has been caused unnecessary inconvenience by NFU in having to find alternative insurance for her home and car. I agree with the investigator that NFU should pay her £100 compensation for the impact this has had upon her.

My final decision

For the reasons I have given above it is my final decision that the complaint is upheld. I require The National Farmers' Union Mutual Insurance Society Limited to do the following:

- remove any avoidance or cancellation markers against Mrs P's name:
- pay Mrs P £100 compensation for the distress and inconvenience she has been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 29 November 2022.

Andrew Fraser
Ombudsman