

The complaint

Mr and Mrs S complain that Zurich Insurance PLC avoided his home insurance policy following a claim for fire damage.

Mr and Mrs S have been represented by a third party at points throughout the claim, however for ease of reading all references to Mr and Mrs S include the actions of the third party.

What happened

Mr and Mrs S had home insurance to cover the property they lived in. In February 2019 there was an escape of water at the property. Mr S called Zurich to report the matter but said he was going on holiday the following day so wouldn't make a claim until he returned.

On 1 April 2019 he called Zurich to make a claim. He said he'd been delayed due to an injury he had sustained and that he hadn't been living in the insured property since the escape of water at the start of February. Zurich accepted the claim and proceeded to settle it.

On 2 April 2019 the policy renewed for another year.

In August 2019 there was a fire at the property. Mr S made another claim for the damage and Zurich sent a loss adjuster to assess it. In the months that followed, Zurich carried out investigations into the claim. And at the beginning of 2021 it wrote to Mr and Mrs S to say that it was declining their claim and would avoid their policy (cancel it as if it never existed) up to the April 2019 renewal.

It said it believed the property had been unoccupied since the summer of 2018 and Mr and Mrs S hadn't declared this. It said it was a condition of the policy that if the property was going to be unoccupied then the policyholder had to inform it, and they hadn't at the renewal in 2019. It said if they had, it wouldn't have offered to renew the policy and therefore under the relevant law, Mr and Mrs S had made a qualifying misrepresentation and it was able to avoid the policy.

Mr and Mrs S didn't think this was fair. They said they had occupied the property up until the escape of water in February 2019 and had told Zurich it had been unoccupied since then in their call on 1 April. They made a complaint but Zurich didn't uphold it so they brought it to this service.

Our investigator considered the issues and recommended the complaint be upheld. He said that in order to avoid Mr and Mrs S' policy under the relevant law, Mr and Mrs S would need to have made a misrepresentation at the April 2019 renewal. And as they had called the day before the renewal to inform Zurich that the property was unoccupied, there hadn't been a misrepresentation. He therefore thought Zurich should reinstate Mr and Mrs S' policy and consider the fire claim.

Mr and Mrs S accepted our investigator's outcome. However Zurich didn't. It said while it accepted Mr and Mrs S called to say the property had been unoccupied since the escape of water in February 2019, they hadn't said it had been unoccupied since summer 2018. It said it had enough evidence to show this was the case, so still maintained that they had made a misrepresentation at renewal.

As Zurich didn't agree with our investigator's outcome, the matter has come to me to decide.

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 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.

Here, Zurich says Mr S made a misrepresentation at the renewal of the policy, as it said he didn't provide the full details of the unoccupancy of the property he was insuring.

I've looked at the renewal documents for the 2019 policy year. They are dated 3 March 2019 and explain that the policy is due to renew on 2 April 2019. The documents include the following wording:

'You must tell us immediately if any of your information is incorrect or changes. If we have wrong information this may result in an increased premium and/or claims not being paid in full, or your insurance may not be valid and claims will not be paid. If in doubt about any information please contact us as soon as possible.'

Changes in information we need to be informed of include, but are not limited to, the following examples...

- *if your home becomes unoccupied or unfurnished...*

From the information I've seen, I agree that at the time the first renewal documents were issued, Mr S hadn't informed Zurich that the property was unoccupied.

However on 1 April 2019 he called Zurich to make a claim for the escape of water at the property. In this call he said the property had been unoccupied since the incident at the start of February and remained so. The policy then renewed on 2 April 2019.

In order to say there has been a misrepresentation, I'd need to be persuaded that Mr and Mrs S provided a false statement of fact at the renewal. And before the new insurance contract began, Mr S called Zurich to let it know the property was unoccupied. Because of this I don't agree that Mr S provided incorrect information at the policy renewal, as he informed Zurich of the unoccupied status of the property before the new insurance contract began. I therefore don't agree he made a misrepresentation at renewal.

I note that Zurich has said that while it accepts Mr S did inform it ahead of renewal that the property had been unoccupied, it believes the property had been unoccupied for much longer than Mr S had declared. And therefore as he didn't disclose how long the property had been unoccupied for, he did make a misrepresentation.

I've considered this but I don't agree it's fair to say that Mr and Mrs S made a misrepresentation at this renewal. The policy documents made it clear that they should inform Zurich if the property is unoccupied and this is what they did. So at the renewal of the policy Zurich were aware that the property was unoccupied. If Zurich had concerns about unoccupancy in the previous policy year that wasn't declared that would be considered a misrepresentation during a different contract – the policy year from April 2018. However it raised no concerns at the time of the alleged misrepresentation. And it accepted and settled a claim for an escape of water during that policy year with no concerns raised about a misrepresentation then either.

But as part of this complaint, I am considering just whether Zurich has acted fairly by avoiding the policy from the April 2019 renewal. And therefore whether a misrepresentation was made at the start of that contract on 2 April 2019. As Mr S had informed Zurich that the property was unoccupied before the contract began, I don't find that he made a misrepresentation.

In order for Zurich to take remedial action under CIDRA it needs to have shown that there has been a qualifying misrepresentation. And as I've found that it hasn't shown this, it follows that it hasn't acted fairly by avoiding Mr and Mrs S' policy. I therefore agree with our investigator that Zurich should reinstate Mr and Mrs S' policy for the 2019 policy year and consider their claim for the fire. It should also ensure that both external and internal records are updated to remove any markers that show the policy avoidance.

My final decision

For the reasons I've given I uphold Mr and Mrs S' complaint. I require Zurich Insurance PLC to:

- Reinstatement their policy for the policy year beginning April 2019.
- Consider their claim for fire damage from that policy year.
- Remove all markers from internal and external databases that show a policy avoidance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 15 March 2023.

Sophie Goodyear
Ombudsman