

## **The complaint**

Mr N complains about Chaucer Insurance Company Designated Activity Company (Chaucer), declining a claim under his home insurance policy for damage to his property caused by bad weather, and cancelling his policy on the grounds Mr N hadn't disclosed building work being carried out at the property and that the property wasn't occupied.

Chaucer use agents to administer the policy and to assess claims. Reference to Chaucer includes these agents.

This decision only covers Mr N's complaint about Chaucer's decline of his claim and avoidance of his policy. It doesn't cover a separate complaint Mr N made to this service about his broker, which was the subject of a separate decision.

## **What happened**

In February 2022, at the time of Storm Eunice, a garden annexe at Mr N's property was damaged by nearby trees falling and from falling branches. There was also damage to a boundary fence. Mr N arranged for the fallen trees and branches, as well as the damaged annex, to be removed. He also contacted Chaucer to tell them about the damage and lodge a claim.

Given the value of the estimates provided by Mr N for the cost of replacing the annex and fence, as well as removal of the fallen trees and branches, Chaucer arranged for a loss adjuster (D) to visit the property and assess the damage, which they did the following month. Following the visit, Chaucer said the policy didn't cover damage to fences, so they wouldn't accept that element of the claim. Chaucer also appointed a separate firm (DSI) to further investigate the circumstance of the claim.

Following reports from D and DSI, Chaucer wrote to Mr N to say he hadn't complied with the terms and conditions of the policy, specifically those relating to changes in circumstances from those disclosed when the policy was taken out. Chaucer said he hadn't told them about significant alteration works that had begun in December 2021/January 2022, nor that he (and his family) had moved out of the property when the works began – so the property was no longer occupied. Chaucer said had Mr N notified them of the condition and occupancy of the property at the start of the policy, they wouldn't have offered cover. Due to this incorrect disclosure (failure to disclose changes) Chaucer said they were declining the claim and avoiding (cancelling) the policy from its inception (July 2021). They would refund the policy premiums paid from inception.

Mr N then complained to this service. He was unhappy at his claim being declined and his policy cancelled. As Mr N hadn't previously complained to Chaucer, we asked Chaucer to consider the issues raised by Mr N.

In their final response, Chaucer upheld the complaint in respect of avoidable delays in assessing his claim. Chaucer accepted there were delays when Mr N notified them of the damage, for which they apologised.

Our investigator then considered Mr N's complaint. She upheld the complaint, concluding Chaucer hadn't acted fairly in declining Mr N's claim and avoiding his policy, as they hadn't shown the information provided by Mr N when he took out his policy was wrong. From the underwriting criteria provided by Chaucer, they would have offered cover had they known the property was unoccupied. Also, while the underwriting criteria said cover wouldn't be provided if the property wasn't in a good state of repair, she didn't think Chaucer had shown this was the case when Mr N took out his policy. And – when answering a question about whether alteration work wouldn't be carried out in the next 12 months - Mr N had answered 'disagree'. Which indicated alteration work was due to be carried out.

To put things right, our investigator thought Chaucer should reconsider the claim against the remaining terms and conditions of the policy. If this led Chaucer to make a settlement offer, they should deduct the premiums they'd refunded Mr N when avoiding his policy (and add interest to the settlement). Chaucer should also remove any record of the policy avoidance from internal and external databases. They should also pay £250 compensation for distress and inconvenience to Mr N.

As Chaucer didn't respond to our investigator's view, the complaint has been passed to me to review.

### **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.

My role here is to decide whether Chaucer has acted fairly towards Mr N.

The main element of Mr N's complaint is that Chaucer unfairly declined his claim and avoided (cancelled) his policy from its inception date (July 2021). He maintains he provided correct information at the time, when answering the questions put to him about his circumstances (including detailed information on the planned alteration works to the property that were being planned). While I've not seen a formal final response from Chaucer covering their decline of Mr N's policy and avoidance of his policy from inception, I've taken their view to be that set out in their repudiation letter of May 2022. This states:

*“ Had you correctly notified us of the condition and occupancy of your property at the start of your policy, [we] would have declined to insure you.*

*Due to the incorrect disclosure, your claim has been declined and we will be cancelling your insurance back to the start date of 23/07/2021. All premiums paid to [us] will be refunded via your insurance broker. Cover is no longer in force...”*

In considering the case, while Chaucer don't explicitly say they treated the case as one of misrepresentation under The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA), the reasons given for the decline of the claim and avoidance of the policy indicate that's what they have done. That's because they've applied one of the remedies available to an insurer where they consider a consumer has made a representation under CIDRA when taking out an insurance policy. In this case, the remedy Chaucer have applied (particularly the refund of premiums) indicates they have treated the case as one of qualifying (but careless) misrepresentation.

CIDRA 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. 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 they 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.

Chaucer say Mr N didn't correctly tell them about the condition and occupancy of his property at the start of your policy and that had he done so, they would have declined to insure the property. Given this, I've considered what Mr N was asked when he took out the policy, and the answers he provided, with particular reference to questions about the property's condition (and the planned alteration work) and about Mr N's occupancy of the property.

Taking the second aspect first, that of occupancy of the property, Chaucer have provided the Statement of Fact document issued at the time the policy was taken out (July 2021). This records questions about the property occupancy, for example that is occupied (during the day and during the night) and continues to be occupied solely by Mr N (and his family), not left unoccupied for more than 30 consecutive days. To which Mr N answered 'yes'. Looking at the evidence available, including what Mr N has told us and his statement to Chaucer provided as part of their investigation of the claim, he and his family occupied the property until the commencement of the alteration works in January 2022. At which point they moved out to stay with relatives while the alteration work was carried out (with the intention of moving back into the property when the works were complete, planned for May 2022).

As part of their investigation into the claim, Chaucer obtained publicly available images of the property at the time the policy was taken out, which they say show ongoing works at the property (contractor signage on a side entrance gate). However, Mr N says this was in anticipation of the alteration works beginning in August 2021 – whereas they didn't start until January 2022. I've also seen confirmation from the contractors carrying out the alteration work that it was scheduled to start in August 2021, but due to a family bereavement it was deferred until January 2022. So, I'm not persuaded by Chaucer's view.

Given this, I've concluded Mr N (and his family) occupied the property at the time the policy was taken out – they moved out later when the alteration work began. So, I don't think Mr N made a misrepresentation about occupancy of the property when he took out the policy.

Turning to the other point, the condition of the property and the planned (subsequent) alteration work, I've considered the information and evidence available. When taking out the policy Mr N was asked the question:

*"The property insured is and continues to be in a good state of repair"*

To which Mr N answered 'yes'.

On the condition of the property specifically, as the alteration work didn't take place at the originally planned time, I've considered the condition of the property when the policy was taken out (also given Mr N and his family were in occupancy at the time). The same publicly available images provided by Chaucer don't indicate a property in a clear state of disrepair (or otherwise poor condition).

Based on this, I've concluded the property wasn't other than in a good state of repair.

On the alteration work, Mr N says he told Chaucer about the planned alteration works as part of his taking out the policy. I've seen email evidence that he was asked detailed questions about the planned alteration works (by his broker) and responded in detail (again, to his broker). However, it appears he sent the response to the wrong broker, which meant Chaucer weren't made aware at the time.

However, I've also noted that in taking out the policy, Mr N was asked the following question:

*"The property is and continues to be...Not due to undergo alteration within the next 12 months."*

Mr N answered 'disagree' to the question. Which indicated the property was due to undergo alteration within the next 12 months (as was the intention). The question asked only presented two options – agree or disagree. There was no opportunity to elaborate on the 'disagree' answer.

Based on these points, I've concluded Mr N answered the question reasonably and didn't make a misrepresentation at the time he took out the policy.

Taking these conclusions together, I've concluded Mr N didn't make a misrepresentation when he took out his policy. That being the case, then Chaucer haven't acted fairly and reasonably in declining his claim and avoiding his policy from the date of its inception.

Having reached this conclusion, I've thought about what Chaucer need to do to put things right. As I don't think Chaucer acted fairly and reasonably in declining Mr N's claim and avoiding his policy from inception, then they should reconsider the claim in accordance with the remaining terms and conditions of the policy.

Should Chaucer accept the claim, I'd expect them to take account of any premiums they've returned to Mr N when they avoided his policy (as well as any policy excess that may be applicable). I also think they should pay interest on any cash settlement they make (if they decide to accept the claim) from the date they would have accepted the claim had they not declined it and avoided the policy to the date any cash settlement is paid.

Chaucer should also remove any record of the policy avoidance from both internal and external databases.

I've also considered the circumstances of the case and the impact on Mr N. I think the decline of his claim and the avoidance of his policy has been distressing and inconvenient, particularly as I've concluded Chaucer haven't acted fairly or reasonably. Taking all the circumstances of the case into consideration, I think £250 would be reasonably compensation for distress and inconvenience.

### **My final decision**

For the reasons set out above, it's my final decision to uphold Mr N's complaint. I require Chaucer Insurance Company Designated Activity Company to:

- Assess the claim in line with the remaining terms and conditions of the policy reconsider the claim in accordance with the remaining terms and conditions of the policy.
- Should Chaucer accept the claim, they should take account of any premiums they've returned to Mr N when they avoided his policy (as well as any policy excess that may be applicable).

- Pay interest on any cash settlement they make (if they decide to accept the claim) from the date they would have accepted the claim had they not declined it and avoided the policy to the date any cash settlement is paid.
- Remove any record of the policy avoidance from both internal and external databases.
- Pay Mr N £250 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 8 February 2023.

Paul King  
**Ombudsman**