

The complaint

Mr and Mrs P complained that Accredited Insurance (Europe) Ltd (“Accredited”) unfairly voided their home insurance policy and didn’t consider their claim. Mr and Mrs P were represented during their claim, but for ease and simplicity, I’ll only refer to Mr and Mrs P.

What happened

Mr and Mrs P made a claim under their policy when a fire caused damage at their home. Accredited validated the claim, but during this process it felt Mr and Mrs P made a misrepresentation when taking out their policy, so it decided to void their policy. This meant Accredited didn’t consider Mr and Mrs P’s claim for fire damage.

Accredited said Mr and Mrs P didn’t inform it that they had a business operating from their home. It said had it known about this it wouldn’t have offered them cover – which is why it chose to void the policy. In other words, it acted as if the policy never existed and didn’t consider their claim.

Mr and Mrs P thought this was unfair. They didn’t think they had misrepresented their circumstances when taking out the policy. They said they didn’t have any active business operating during the term of the policy, only activities that amounted to a hobby.

Our investigator decided to uphold the complaint. He didn’t think Mr and Mrs P had misrepresented their circumstances when taking out / renewing the policy, so thought it was unfair that Accredited had voided the policy. It recommended that the policy was re-instated, and the claim considered against the policy terms. For the distress and inconvenience caused, he awarded £250 compensation. Accredited 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.

Accredited voided the policy due to a misrepresentation, so I have considered the merits of this complaint from this perspective.

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 Mr and Mrs P's circumstances in respect to CIDRA.

Was there a misrepresentation?

Accredited said there was a misrepresentation as it said Mr and Mrs P didn't declare they had a business activity operating from their home address. So, I have considered what evidence Accredited has put forward to support its viewpoint.

Accredited has put forward its view that there were two businesses operating from Mr and Mrs P's home. And it has presented evidence from social media that it says proves a business was in operation from the home.

Accredited appointed an external expert to validate the claim. I think this is a reasonable process to follow and helps to bring an independent viewpoint to the claim. As part of the validation the expert considered whether Mr and Mrs P had fairly presented their circumstances in respect to business activities operating from their home.

So, I've considered what the expert reported. The expert identified two potential activities which may have been declared businesses. However, it concluded "*we consider the insured explanation for not disclosing either to be reasonable*". The expert's assessment shows the one activity had not been active since 2017. The second activity the expert described as "*we consider this falls under the description of a craft hobby as opposed to a commercial business*".

The expert concluded that there was a "*low suspicion*" of any fraud been undertaken by Mr and Mrs P in the representation of their circumstances. He did say their actions were careless.

I think the experts report carries most weight in this claim. The expert has said he doesn't think any business activities were taking place at the home during the policy cover. I appreciate Accredited have argued their view in relation to guidelines by HMRC. However, I find the expert's report more persuasive. Unless there was compelling evidence to the contrary, I would expect Accredited to follow the expert's findings. I don't think Accredited have provided compelling alternative evidence.

Therefore, I don't think it's fair Accredited have said a misrepresentation has occurred. The expert, after his detailed investigation, hasn't found any evidence to support this viewpoint. So, I don't think it was reasonable for the policy to be voided. Therefore, I uphold this complaint.

To put the situation right, I require Accredited to re-instate the policy from the start of the term. It should consider the claim in line with the terms and conditions of the policy. The delay in getting the claim considered, will have delayed any potential repairs / settlement. This would have meant Mr and Mrs P living in sub-standard conditions for longer than necessary or if they have had work carried out, it would mean they've been without this money for some time. Therefore, for the distress and inconvenience this has caused, including the time value of money, I award £250 compensation. I think this is fair.

As I don't think a misrepresentation has occurred, I haven't felt it necessary to consider whether Mr and Mrs P has taken reasonable care.

My final decision

My final decision is that I uphold this complaint. I require Accredited Insurance (Europe) Ltd to:

- Re-instate the policy from the start of the term
- Consider the claim in line with the terms and conditions of the policy
- Pay Mr and Mrs P £250* compensation – for distress and inconvenience.

Accredited Insurance (Europe) Ltd must pay the compensation within 28 days of the date on which we tell it that Mr and Mrs P 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 P and Mr P to accept or reject my decision before 9 February 2023.

Pete Averill
Ombudsman