

The complaint

Mr A complains that UK Insurance Limited (UKI) unfairly avoided his home insurance policy after he made a claim.

References to UKI include its agents.

What happened

In early 2020, Mr A took out a home insurance policy with UKI. The policy was renewed in March 2021. In July 2021, Mr A made a claim under the policy after the building and contents were damaged by a flood.

UKI arranged for a loss adjuster to visit the property and validate the claim. Mr A was interviewed more than once.

UKI then decided to avoid Mr A's policy from March 2021. It said that when Mr A purchased the policy in March 2020 he had answered "no" to the question: "*In the last 3 years, have you or any adult living with you had any claims or losses*".

However, when Mr A made his claim for flood damage, it had come to light that he had suffered a theft/loss in February 2020. UKI said if it had been aware of this when Mr A took out the policy it wouldn't have offered it to him.

UKI refunded some of Mr A's premiums and refused to pay out the claim.

Mr A asked our service to consider his concerns. He disputed giving UKI inaccurate information when he took out the policy. Mr A said the incident in early 2020 was a dispute between him and his brother which he had reported to the police. The police had considered it to be a domestic dispute and refused to get involved. The items his brother had taken belonged to his late father. What was taken was considered inheritance, so there was no loss.

I issued a provisional decision on 30 November 2022 where I explained why I intended to uphold Mr A's complaint. In that decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Based on what I've seen so far, I intend to uphold Mr A's complaint. I'll 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.

UKI says Mr A failed to take reasonable care not to make a misrepresentation when he took out the policy in 2020. It's sent us recordings of calls that took place in February and March 2020. It's also sent us copies of the paperwork Mr A was sent at the time which includes a proposal confirmation with "yes" and "no" boxes ticked next to a list of questions.

The "no" box is ticked next to the question: "Have you or any other adult living with you suffered any loss, damage or liability, whether insured or not, during the last 3 years other than listed below?" and there isn't anything listed below.

UKI says it wouldn't have accepted Mr A's policy application in March 2020 if he had made it aware of the theft/loss that allegedly occurred in February 2020. If UKI can show that Mr A made a qualifying misrepresentation, it might be entitled to avoid the policy Mr A took out in March 2020. However, UKI hasn't treated that policy as void. It has only treated Mr A's policy as void from 6 March 2021, which is the date of renewal. With that in mind, I haven't considered the March 2020 policy, and what was asked of Mr A then, any further.

When a consumer renews a policy, they take out a new consumer contract. This means that the duty for the consumer to take reasonable care not to misrepresent applies again. And the insurer also has to prove there was a qualifying misrepresentation at renewal in order to take a remedy available to it under CIDRA. Even if UKI had avoided the original policy (so it didn't exist), it wouldn't give it the right to avoid subsequent contracts formed at renewal. So, I need to consider whether or not there was a qualifying misrepresentation at renewal.

UKI has provided a copy of the documents it sent to Mr A around the time of renewal. These include a proposal confirmation document, similar to what was sent to Mr A in 2020. Once again, Mr A was asked to check the accuracy of the information on the form. However, there is no question about loss, liability or damage on it. Nor have I seen any other references to prior loss or theft in the renewal documentation Mr A was sent. So, I'm not satisfied that Mr A made a misrepresentation relating to the alleged loss when the policy was renewed in March 2021. He wasn't asked a question. So, he can't have given an incorrect answer. It follows that I don't think it was fair for UKI to have avoided the policy for the period 6 March 2021 to 5 March 2022 on this basis."

I set out what I intended to direct UKI to do to put things right. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses

Mr A said he accepted my provisional decision and had nothing further to add.

UKI said the date in its voidance letter was incorrect. The policy was in fact void from inception after the date of loss had occurred.

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 acknowledge what UKI has said about the policy being avoided from the date of inception. However, this doesn't make a difference to the conclusions I reached in my provisional decision.

As I said in my provisional decision, avoiding the original policy (so it didn't exist), wouldn't give UKI the right to avoid subsequent contracts formed at renewal. I've also explained why I'm not satisfied that Mr A made a misrepresentation relating to the alleged loss when the policy was renewed in March 2021.

Putting things right

UKI should:

- Reinstatement Mr A's policy for the period 6 March 2021 to 5 March 2022
- Amend its records and any central database to make sure any record of the avoidance is removed.
- Consider any claims according to the terms and conditions of the policy.

My final decision

For the reasons I've explained, I uphold Mr A's complaint and direct UK Insurance Limited to put things right by doing as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 31 January 2023.

Anne Muscroft
Ombudsman