

The complaint

Mrs W complains that Building Block Insurance PCC Ltd voided her pet insurance policies and wouldn't pay her claims. My references to Building Block include its agents.

What happened

Mrs W took out a pet insurance policy online for her dog, insured by Building Block. The policy started on 8 February 2021 and was renewed on 8 February 2022. The policy terms gave cover for a condition for 12 months from the date the condition started.

Mrs W made two claims, the first for her dog's treatment for dermatitis in January 2022 and the second for her dog's treatment for swollen abdomen and lethargy from 11 to 23 February 2022.

Building Block said when Mrs W bought the policy she ticked a box to confirm she'd agreed to some listed assumptions which included '*Your pet must not be overweight based on its breed type and age*' but the vet evidence showed Mrs W knew her dog was overweight. So Building Block considered Mrs W had made a careless qualifying misrepresentation under the relevant legislation, which it said entitled it to void both policies as it wouldn't have offered Mrs W the policies if it had known her dog was overweight.

Building Block voided the policies for both 2021/2022 and 2022/2023 so it wouldn't pay either claim and it refunded the premiums Mrs W had paid. It apologised to Mrs W for the confusion caused by the claim handler acknowledging receipt of the second claim when it had already told Mrs W the first claim was declined and the policies had been voided.

Mrs W complained to us. In summary she said:

- She hadn't been asked for her dog's weight when she took out the policy.
- The treatment claimed for didn't relate to her dog's weight.
- Building Block's poor service caused a lot of confusion with it not being clear about what claims it might be assessing when it had told her the policy was void.
- She wants Building Block to pay both claims.
- She wants Building Block to reinstate the policy starting February 2022 for her to cancel so she doesn't have a record of an insurer voiding her policy which would make it difficult for her to find alternative insurance. During our investigation Mrs W updated us to say she'd been able to get alternative insurance for her dog.

Our investigator said he wasn't persuaded Mrs W had made a qualifying misrepresentation so Building Block couldn't reasonably void the policies and it should reassess the claims.

Building Block disagreed and wanted an ombudsman's decision.

What I provisionally decided – and why

I made a provisional decision explaining why I was intending to uphold the complaint but with a different outcome than our investigator recommended. I said:

'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.

If a consumer fails to take reasonable care, 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.

Building Block says Mrs W failed to take reasonable care not to make a misrepresentation when during the policy sale process she ticked the box to confirm she'd read the assumptions and also when the policy automatically renewed.

I've looked at the evidence Building Block provided about the policy sales process and policy documentation Mrs W was sent then and at policy renewal. I've also looked at Mrs W's dog's vet records and I think she was told her dog was overweight before she bought the policy. But I don't think Building Block has shown Mrs W failed to take reasonable care. I'll explain why.

Building Block didn't ask Mrs W a question about her dog's weight during the policy sale or at any other time. But as Building Block points out, section 2 (3) of CIDRA says:

'failure by the consumer to comply with the insurer's request to confirm or amend particulars previously given is capable of being a misrepresentation for the purposes of this Act...'

I accept there may be some circumstances when a consumer incorrectly confirming a clear assumption may be making a misrepresentation. But I don't think that's so in this case.

When buying the policy Mrs W was asked to confirm she'd read the assumptions which she had to access by clicking on a link. She was shown a long list of 11 assumptions and the assumption about her dog's weight was 9th in the list. I think the weight assumption is an unusual criteria for policy eligibility and I think it would have been reasonable for the weight criteria to have been highlighted more clearly than it was if Building Block wanted to rely on that unusual criteria for policy eligibility.

Also, when Mrs W bought the policy she was sent an email with attachments. One of the attachments was the Statement of Fact (SoF) which included assumptions for her to check.

Under the heading of 'Assumptions' the SoF said:

*'Please read the assumptions we have made to give you a quote and make sure you have understood these along with the policy wording for your policy.
If any of these assumptions are not correct it could result in a claim not being paid or your policy being voided or additional terms'.*

There's then a list of assumptions but the weight assumption Building Block relied on to void the policy isn't listed. Building Block accepts that the SoF sent to Mrs W when she renewed

the policy also didn't include the weight assumption. So the policy sale SoF and renewal SoFs gave no prompt for Mrs W to check if she did agree the weight assumption.

I acknowledge the policy renewal covering email sent on 11 January 2022 to Mrs W does list the weight assumption. But I don't think that's sufficient for me to say Mrs W failed to take reasonable care to notify Building Block that the assumption wasn't correct as the assumption is missing from both SoFs she was asked to check.

Building Block also accepts that when Mrs W bought the policy she was sent a policy schedule which stated:

'Assumptions

I have read and agree with the policy assumptions. No'.

Building Block says the answer should have been populated with 'Yes', as it wouldn't have been possible for the policy seller's system to generate a policy schedule without Mrs W having selected 'I confirm' she'd agreed the assumptions in the quotation webpage. But Building Block can't show that Mrs W did agree the assumptions as part of the sale process and her policy schedule clearly told her that she hadn't agreed the policy assumptions. In addition the schedule for the policy which renewed on 8 February 2022 also stated '*I have read and agree with the policy assumptions. No*', so that message was reinforced to Mrs W.

In all the circumstances I don't think Building Block has shown that Mrs W failed to take reasonable care if she confirmed she agreed the weight assumption during the online policy sale process. As I don't think she made a misrepresentation Building Block couldn't rely on CIDRA to void the policies and I think it acted unfairly in doing so.

To put things right Building Block needs to put Mrs W back in the position she would have been in if it hadn't voided the policies. That means I think Building Block should:

- Reinstatement both the 2021/22 and 2022/23 policies.
- Amend its records and any central databases to make sure any record of the avoidance is removed.
- Pay both claims less the excesses once Mrs W has repaid the premiums it refunded to her.

In cases where I say a policy must be reinstated I would generally say the insurer then has to assess a claim in line with the remaining policy terms. But Building Block has already told us that if we found that Mrs W hadn't made a misrepresentation it would pay the claims and it set out options for its settlement calculations. Mrs W's calculation of the amount she thinks she's owed for the claims differs from the amount in any of Building Block's calculations. So I think it's fair to both parties for me to set out what I think is a fair settlement of those claims.

On the current evidence I have I think Building Block should pay:

- For the treatment for dermatitis which was in the 2021/2022 policy year. The vet fees claimable were £178.99, less £50 excess so the claim payment is £128.99. (I note Mrs W has given a higher claim figure for her first claim in correspondence but the claim form and vet invoice show the vet fees claimable are £178.99).
- For the treatment for swollen/lethargy which was in the 2022/2023 policy year. The vet fees claimable were £570.49, less £50 excess so the claim payment is £520.49.

- Total claim payment for the two claims is £128.99 + £520.49 = £649.48

But Mrs W will need to return the 2021/2022 policy premium she was refunded, which was £224.56, and the 2022/2023 policy premium which she paid until that policy was voided, which I understand was £57.54. So Mrs W needs to repay to Building Block a total of £282.10.

I don't agree with Building Block's suggestions that Mrs W needs to pay the whole 12 months premium for the 2022/2023 policy. Due to Building Block unfairly voiding the policy she's had to pay for alternative insurance for her dog. It wouldn't be fair for me to say she has to pay two lots of insurance for the same period and as she has alternative insurance Building Block had no risk to insure after it voided the policy unless Mrs W has further claims she would have made against Building Block's policy before she took out the alternative policy.

In Mrs W's response to my provisional decision I'd like her to tell me whether she did pay for vet treatment or other after the Building Block policy was voided and before she took alternative insurance that she wants to claim on the reinstated Building Block policy.

If Mrs W has other claims she wants to make against the reinstated 2022/2023 policy I would reconsider what's a fair remedy and it's likely I would then think Mrs W would need to pay the further premiums until she took out the alternative insurance and Building Block would need to assess those other claims. If Mrs W hasn't got further claims I will clarify that Building Block needs to reinstate the 2020/2023 policy until the date when it voided the policy and it should be recorded that Mrs W cancelled the policy at that date.

To summarise, on the evidence I have I think the fair and reasonable outcome is for Building Block to pay the vet fees in the two claims, less excesses, which is £649.48 less the premiums Mrs W needs to refund of £282.10. So Building Block should pay Mrs W £367.38 in total for the two claims plus interest as I've set out below.

I understand why Mrs W was confused when the claim handler acknowledged receipt of the second claim when it had already told Mrs W the first claim was declined and the policies had been voided. But I think Building Block's apology for that error was reasonable and enough'.

Responses to my provisional decision

Building Block didn't agree with my provisional decision. It said I'd not referred to the vet notes showing that Mrs W had twice been told her dog was overweight before the policy started and also after she took out the policy. It also said the policy terms stated a dog isn't eligible for cover if overweight.

Mrs W said she didn't have anything more she wanted to claim against her Building Block policy and she confirmed her dog was now insured through a different insurer.

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 said in my provisional findings that I'd looked at Mrs W's dog's vet records and I thought she was told her dog was overweight before she bought the policy. Seven days after she bought the policy the vet notes say '*Weight Comment: sl overweight, adv to monitor*'. So to restate, I think Mrs W was told her dog was overweight.

But Building Block voided the original and renewed policies, and declined the claims, on the basis that Mrs W hadn't taken reasonable care to not make a misrepresentation about her dog's weight during the policy sale and when the policy automatically renewed. I explained in my provisional findings why in all the circumstances I thought Building Block hadn't shown that Mrs W failed to take reasonable care, and its response hasn't changed my mind about that.

For the reasons I've given in my provisional findings and these findings I don't think Mrs W made a misrepresentation about her dog's weight so Building Block couldn't rely on CIDRA to void the policies and decline the claims, and I think it acted unfairly in doing so.

Building Block has raised that the policy says a dog isn't eligible for cover if overweight. But I don't think it would be fair for Building Block to now want to rely on the weight criteria in the list of eligibility in the policy document to decline the claims. As I've said, I don't think that unusual criteria for eligibility for cover was adequately highlighted at the sale of the policy and the SoFs sent to Mrs W to check at policy sale and renewal didn't include the weight eligibility criteria to highlight that to her.

I'm satisfied the fair and reasonable outcome of this complaint is for Building Block to:

- Reinstate the 2021/22 policy and reinstate the 2022/23 policy as I've set out below.
- Amend its records and any central databases to make sure any record of the avoidance is removed as I've set out below.
- Pay both claims less the excesses once Mrs W has repaid the premiums it refunded to her, as I've set out below.

In my provisional findings I set out what I thought Building Block paying the two claims and Mrs W repaying the premiums it had refunded meant in monetary terms. I also explained why I thought Building Block's suggestion that Mrs W should pay the whole year's premium for the 2022/23 policy wasn't fair. Building Block has made no comment on those issues so I've no reason to change my mind.

Mrs W has confirmed she now has alternative insurance for her dog and she has no other claims she wants to make on the Building Block policy. So Building Block needs to reinstate the 2020/2023 policy until the date when it voided the policy and it should be recorded that Mrs W cancelled the policy at that date.

Given Mrs W's response, I confirm that Building Block must pay the vet fees in the two claims, less excesses, which is £649.48 less the premiums Mrs W needs to refund of £282.10. So Building Block should pay Mrs W £367.38 in total for the two claims plus interest as I've set out below.

As I said in my provisional findings, I understand why Mrs W was confused when the claim handler acknowledged receipt of the second claim when it had already told Mrs W the first claim was declined and the policies had been voided. But I think Building Block's apology for that error was reasonable and enough.

Putting things right

Building Block must reinstate the 2021/22 policy and the 2022/23 policy as set out below, amend its records and any central databases to make sure any record of the avoidance is removed and pay both claims less the excesses once Mrs W has repaid the premiums it

refunded to her. That means it must pay Mrs W a total of £367.38 for her two disputed claims referred to in this complaint plus interest as set out below.

My final decision

I uphold this complaint and require Building Block Insurance PCC Ltd to:

- Reinstatement the 2021/22 policy, and
- Reinstatement the 2022/23 policy until the date when Building Block Insurance PCC Ltd voided the policy and it should be recorded that Mrs W cancelled the policy at that date, and
- Amend its records and any central databases to make sure any record of the avoidance of those policies is removed, and
- Pay Mrs W pay a total of £367.38 for her two disputed claims referred to in this complaint plus interest* at 8% simple a year from the dates of the claims to the date of settlement.

*If Building Block Insurance PCC Ltd considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mrs W how much it's taken off. It should also give Mrs W a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 16 March 2023.

Nicola Sisk
Ombudsman