

The complaint

Mrs M complains that Lloyds Bank General Insurance Limited (Lloyds) declined her claim for damage caused by an escape of water and avoided her home buildings insurance policy (treated it as though it never existed).

Mrs M is represented by Mr M in her complaint. I will refer to Mrs M in my decision for ease of reading.

What happened

In January 2022 Mrs M noticed water coming up from her kitchen floor. She contacted Lloyds and registered a claim under her buildings insurance policy.

Lloyds arranged for an inspection of the damage. It subsequently declined the claim and avoided the policy because of inaccurate information it says Mrs M provided when taking out cover. It says Mrs M informed it the property had six bedrooms and four bathrooms. Lloyds says the property has a minimum of six bedrooms, four bathrooms and additional toilets. It also says from the estate agent advertisement in 2018 the property was described as having eight bedrooms.

Mrs M disagreed with Lloyds. She says the property has an outbuilding that is used for storage and as an office. She says it has no bedrooms and one bathroom. Mrs M says the questions Lloyds asked at the application stage referred to the main property not the outbuilding. She says the policy documentation she received refers to the “detached house” and confirms she gave correct information that the property has six bedrooms and four bathrooms.

Lloyds didn’t change its decision to decline the claim and avoid the policy. It also says that when Mr M was interviewed, he told it the two upstairs storage rooms in the outbuilding had previously been classed as bedrooms. Lloyds says a toilet was also in situ when it visited the outbuilding. It says its underwriting criteria can’t cover more than a total of 10 bedrooms and bathrooms. Mrs M didn’t think this was fair and referred the matter to our service.

Our investigator didn’t uphold Mrs M’s complaint. She says the policy wording required Mrs M to declare all bedrooms and bathrooms including those in outbuildings. She says this information was made clear in the documentation sent to Mrs M. And that she was informed to contact Lloyds if any of this information was incorrect. Our investigator points to the policy terms that require any bedrooms, now being used for another purpose, should also be included. This meant the outbuilding storage rooms should’ve been declared as bedrooms, in addition to the toilet, in the application.

Our investigator says that even without counting the additional bedrooms in the outbuilding, there was an additional toilet that hadn’t been declared. This meant there were at least 11 bedrooms and bathrooms at the property. Lloyds sent its underwriting criteria confirming it wouldn’t provide cover for a property with more than 10 bedrooms/bathrooms/toilets. Because of this our investigator thought it had acted fairly in line with the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This allows Lloyds to avoid

the policy and decline Mrs M's claim with the return of the premiums she'd paid.

Mrs M disagreed with this outcome. She says Lloyds initially confirmed it would continue cover with the number of bedrooms and bathrooms at an extra cost of £270.28. She says at this time Lloyds was also aware of the extra bathroom. Because of this Mrs M says Lloyds can't now refuse to provide cover.

As an agreement couldn't be reached it has been passed to me to decide.

I issued a provisional decision in May 2023 explaining that I was intending to uphold Mrs M's complaint. Here's what I said:

provisional findings

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

Having done so my intention is to uphold Mrs M's complaint. Let me explain.

The relevant law in this case is 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 have 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it is entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

Lloyds says Mrs M failed to take reasonable care when taking out her policy to provide the total number of bedrooms and bathrooms at the property, which included outbuildings. I've looked at the questions Mrs M was asked during the online application to see if they were clear. The questions ask:

"Rooms?

How many rooms does your house have?

Bedrooms – Include rooms that were originally built as a bedroom and any that have been converted for another use, e.g. a study or office."

And:

“Bathrooms

Include en-suites and any room containing a toilet.”

As discussed Mrs M told Lloyds her house had six bedroom and four bathrooms. There is no reference to outbuildings in the questions asked. The question only asks how many rooms the house has. I’ve seen a plan of Mrs M’s house this has six bedrooms and four bathrooms/toilets. She says her understanding is that the questions related to her house not the outbuilding.

It’s not for a consumer to decide what an insurer wants to know. I think the questions asked were clear. They didn’t include any reference to outbuildings. Based on this I don’t think Mrs M answered the questions she was asked incorrectly.

I’ve thought about the policy documentation Lloyds sent to Mrs M and whether this shows she failed to take reasonable care not to make a misrepresentation. Lloyds says the answers Mrs M gave don’t include the toilet, or the two bedrooms currently being used as storage rooms in the outbuilding.

I’ve read the “Insurance Statement” Lloyds sent to Mrs M when she agreed the policy. This says the property has six bedrooms and four bathrooms. This is detailed under the “property to be insured” section. The following information is also provided under this section:

“Number of bedrooms (including any rooms which were originally intended to be bedrooms but are now used for other purposes, such as a study or home office)”

And:

“Number of bathrooms (including en-suites, shower rooms and separate toilets) at the Home”

The insurance statement has the heading, “Property to be insured” and under this it says, “Detached House”. I note Mrs M’s comments that there is no mention of outbuildings cover in this section. And that the correct number of bedrooms and bathrooms were confirmed. I also note her comment that there is no indication she needed to comment on the outbuilding here.

I’ve seen the document headed “How Our Policy Meets Your Needs”. Under “Buildings Insurance” it says that outbuildings cover is included.

The policy schedule has the heading “About your property”, which it describes as “Detached House” with six bedrooms. Under the heading “Buildings Insurance” it splits the cover into two further headings of “Private residence cover” and “Outbuilding’s cover”. There is no reference in this section to what the rooms in the outbuildings are used for.

In its decline letter Lloyds says the policy documentation it sent to Mrs M contained a list of the responses she had provided during her application. It says it was clearly stated that she should carefully check the details and contact it immediately if any of the information was incorrect. I don’t disagree that this is what the documentation said. But I don’t think this shows that Mrs M answered Lloyds’s questions incorrectly.

If Lloyds wanted Mrs M to include the bathrooms and bedrooms from the outbuilding it didn’t make this clear. I don’t think it was unreasonable for Mrs M to have answered in the way she

did based on the questions she was asked. Similarly, I don't think the information set out in the policy documentation clarified this point either. This includes the policy schedule, insurance statement and the document entitled "How our policy meets your needs". Based on this I don't think Mrs M made a misrepresentation. This means the remedies under CIDRA weren't available to Lloyds for it to avoid the policy and decline the claim.

Having considered all of this I don't think Lloyds treated Mr M fairly when avoiding the policy and declining her claim. It should now reinstate the policy for the relevant period and remove any reference to the avoidance from any internal and external databases. It should also consider Mrs M's claim under the remaining terms and conditions of its policy.

I said I was intending to uphold Mrs M's complaint and Lloyds should:

- reinstate the policy for the relevant period and remove reference to the avoidance from any internal and external databases; and
- consider Mrs M's claim based on the remaining policy terms and conditions.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Mrs M accepted my provisional decision.

Lloyds says Mrs M had made multiple applications online for home insurance, and a telephone call to its sales department to clarify the cover offered. It says Mrs M provided different details relating to the number of bedrooms and bathrooms at her property throughout her applications.

In its response Lloyds says a maximum of ten bathrooms and bedrooms is allowed under its underwriting criteria. It refers to a transcript of a call from 20 February 2018 in which Mrs M's representative was asked questions about her property. It highlights the answers given and says this shows Mrs M was aware of the underwriting limits it had in place.

Lloyds has also provided details of several quotes that were provided for its insurance in 2018, 2020 and 2021. It says that although Mrs M's policy was cancelled her representative continued to make online applications for its insurance services. It concludes its response to say Mrs M had an awareness of its underwriting criteria, which is why it thinks its decision was fair.

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 Lloyds's comments about applications and a telephone discussion relating to policy applications in previous years. However, of relevance here is the application that was made on 21 June 2021. It was under this policy that Mrs M made a claim for the escape of water in her kitchen.

As discussed in my provisional decision CIDRA is the relevant law here. One of the conditions it sets out is whether the questions asked by the insurer were specific and clear.

In my provisional decision I said Mrs M's application confirmed six bedrooms and four bathrooms. This was in response to the question under how many rooms does your house have. There was no reference to outbuildings in the question asked. I said I thought Mrs M had answered the question accurately.

I also referred to the Insurance Statement Lloyds sent to Mrs M. Under the heading “*Property to be insured*” it provides the description “*detached house*” directly beneath. Under the heading of “*Buildings Insurance*” in the same document it then separates “*Private residence cover*” from “*Outbuilding’s cover*”. There’s no reference in this section to what rooms in the outbuildings are used for.

I’ve considered all of the documents sent to Mrs M and I don’t think it’s made clear that rooms in the outbuildings should be included when answering questions about the detached house. I said in my provisional decision that it’s not Mrs M’s role to interpret what Lloyds wants to know. She needs to respond to the questions she is asked accurately and take reasonable care not to make a misrepresentation. I think she did this. I don’t think the policy documentation reasonably alerted her to an issue either. Certainly, I don’t think it makes it clear that Mrs M should have added the outbuilding rooms to those declared for her detached house.

In summary I don’t think Lloyds’s question, about the number of rooms, was clear and specific in asking for the rooms in the outbuildings to be included. And I don’t think its policy documents made this any clearer for Mrs M. Because of this I’m not persuaded that a change to my provisional decision is warranted. This will now become my final decision.

My final decision

My final decision is that I uphold this complaint. Lloyds Bank General Insurance Limited should:

- reinstate the policy for the relevant period and remove reference to the avoidance from any internal and external databases; and
- consider Mrs M’s claim based on the remaining policy terms and conditions.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs M to accept or reject my decision before 19 July 2023.

Mike Waldron
Ombudsman