

The complaint

Mr S complains that Hiscox Insurance Company Limited ("Hiscox") avoided his contents insurance policy and refused to pay his claim following a break-in at his home.

What happened

Mr S has home contents insurance with Hiscox. The policy provides cover for general contents, clothing, electronic equipment, art and collections, as well as jewellery, watches and valuable items. The policy began in December 2018 and renewed in December 2019.

Unfortunately in early December 2019 there was a break-in at his home and so Mr S reported it to the police and Hiscox. At the time Mr S told Hiscox that the break-in had occurred when no-one was home.

Hiscox instructed a loss adjustor to validate the claim. Following this Mr S says Hiscox voided the policy on the basis the declaration contained within the statement of fact was not true, accurate, or complete.

Mr S says when taking out the policy he was asked if his home was unoccupied overnight more than 90 days in total during the period of insurance. Mr S says he answered 'no' since his friend stays at the house when he is away. Mr S says he was also asked whether the property is solely occupied by him and his family. Mr S answered 'yes' because his friend only stays there when Mr S and his family aren't staying there.

Hiscox has said in a period of a year Mr S has been out of the country for 249 days which was considerably more than 90 days as stipulated within the statement of fact. Mr S says he didn't notice this in the statement of fact and he's certain it wasn't there when he originally took the policy out.

Mr S also says English isn't his first language so it's possible he misunderstood what the questions were asking. But since he was at home at the time the incident happened he can't understand what difference it makes.

Mr S says he took out the policy in good faith and Hiscox want to cancel it because he's had to make a claim. Hiscox declined the claim and voided the policy.

Mr S wasn't happy so complained to Hiscox. Hiscox said it appointed loss adjusters to investigate the claim. Hiscox said it requested clarification from Mr S on a number of occasions in relation to the claim but these weren't forthcoming. Hiscox said at the time the policy was taken out it asked Mr S a number of questions. Hiscox also said at policy application stage and for each renewal it had issued the policy documentation, including a statement of fact, and asked Mr S to read it carefully to ensure all answers contained within it was true, complete, and accurate. It said had it been aware of the extent of Mr S's travels it would have refused to provide cover. And so it voided the policy.

Mr S didn't agree so he referred his complaint to this service. Our investigator looked into things for him. He said he was satisfied Hiscox had acted fairly in avoiding the policy but

unfairly in not returning Mr S' premiums, and so he partially upheld the complaint. The investigator said Hiscox should refund the premiums from the point it avoided his policy.

Hiscox didn't agree with the investigator and has asked for an ombudsman's decision. Hiscox said due to the investigation into the claim third party costs had been incurred so it didn't agree it should refund any premiums. Because Hiscox didn't agree the matter was passed to me for review.

My provisional decision

I recently issues a provisional decision setting out my thoughts on the key complaint points and how I thought matters might best be resolved. I said:

"I've decided to uphold this complaint in part. I've explained my reasoning below.

There is a lot of information about the claim Mr S made, and I've looked through everything provided. The detail is well known to both Mr S and Hiscox so I haven't described the claim in any great detail here. I'll comment on any relevant evidence where appropriate to explain my decision. It is also not my intention to minimise the effect the claim has had on Mr S and his family. I recognise the impact the matter has had on Mr S and I empathise with the difficulties he's clearly faced.

I understand Mr S questions how having his friend stay at his home while he's away, or his home being unoccupied for longer than 90 days, could impact the underwriting of this risk. Insurers generally adopt their own approach to assessing risk, and while some might offer cover based on specific factors, others might not. An insurer will decide what factors to take into account and how much weight to put on each of them. Some may only use a few factors, others many more. We don't have the power to direct a business on what risk factors they should take into account. And, while I acknowledge consumers might sometimes have their own view on what should constitute risk, the ultimate decision on what risks are acceptable rests with the insurer.

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.

Hiscox thinks Mr S failed to take reasonable care not to make a misrepresentation in respect of the period of time spent away from the property and any arrangement in respect of a friend living at the home.

I've look at the statement of fact and the questions asked by Hiscox at renewal of the policy. The statement of fact says, "is this your main home solely occupied by you and your family." Mr S answered 'yes.' The next question is, "Is your home unoccupied overnight more than 90 days in total during the period of insurance." And the answer here is 'no.'

Mr S was out of the country for over 90 days in the insurance period but argued his friend stayed at the property when he was away so he answered no. But if this is the case then he should have made Hiscox aware of this and answered the question about the property being occupied by him and his family as 'no' since his friend stayed there. I'm satisfied the questions asked by Hiscox were clear and so I think Mr S failed to take reasonable care not to make a misrepresentation.

I will now move on to whether the misrepresentation was a qualifying one. And what Hiscox would have done had it been aware of the correct information.

Hiscox has provided evidence by way of the relevant underwriting criteria which shows that part of the decline criteria is when a property is unoccupied for over 90 days and occupied by anyone other than family the insurance policy would have been refused. So I'm satisfied Mr S's misrepresentation was a qualifying one.

Hiscox has said Mr S's misrepresentation was careless because he knew of the correct information and just didn't provide it when asked. I agree it's reasonable for Hiscox to say this misrepresentation was careless. Mr S did know of the information and so I think it was careless not to think back and provide the correct answer when asked. I do appreciate Mr S has explained about the possible language barrier. And I have thought about that here. But I haven't seen anything to show this meant Mr S couldn't understand what the question was asking, or that he could take steps to obtain clarification if he was unsure.

CIDRA explains that when considering whether a consumer has taken reasonable care, all the circumstances must be taken into account, including at renewal, "how clearly the insurer communicated the importance of answering those questions (or the possible consequences of failing to do so)."

So I've considered whether Hiscox made it clear that reviewing the previous questions and checking those was important. And I think it did. I've seen the renewal documents sent to Mr S in November 2019. The letter says, "please check all details within your policy schedule and statement of fact and if this information is incorrect please call us. It could affect the validity of the policy, or our ability to pay a claim if you do not tell us." So I think Hiscox made it clear that checking the statement of fact was important and could affect whether any claims were paid.

As I'm satisfied Mr S's misrepresentation should be treated as careless I've looked at the actions Hiscox can take in accordance with CIDRA.

Since the qualifying misrepresentation should be treated as careless, and Hiscox has shown it wouldn't have offered cover had it been aware of the living arrangements, it is able to;

- *Avoid the policy from the point of misrepresentation,*
- *Return any unused premiums,*
- *Treat the policy as though it never existed from the point of avoidance and not deal with any claims*
- *The insurer may also look to cover any cost's it's paid to a third party on any claim after the misrepresentation*

Therefore, I'm satisfied Hiscox was entitled to avoid Mr S's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, Hiscox does not have to deal with his claim following the break-in at his home. As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Hiscox to rely on it to avoid Mr S' policy produces the fair and reasonable outcome in this complaint.

Hiscox has said the premiums collected for the policy are less than the costs incurred in investigating the claim and so no refund of premiums is due to Mr S. But this isn't what CIDRA says. It says Hiscox may avoid the policy and refuse all claims, but it must return the premiums. Where the loss or damage occurred in the second year after renewal, as is the case here, I think it's fair that Hiscox refund the premiums back to the beginning of the policy Hiscox is avoiding, since the misrepresentation was careless. This is what CIDRA requires."

I invited both parties to let me have any further comments they wished to make in response to my provisional conclusions.

Response to my provisional decision

Hiscox agreed with the findings set out in the provisional decision. Mr S didn't raise any additional points or query my findings.

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.

In light of the fact that Hiscox accepted my conclusions, and Mr S didn't have anything to add to the findings set out in my provisional decision (which I've reproduced here and which forms part of this final decision) I'm satisfied it represents an appropriate way to resolve the dispute. For the reasons I've set out above, I'm upholding Mr S's complaint.

Putting things right

In light of all this I think a fair and reasonable outcome is for Hiscox to;

- Refund the premiums paid from the beginning of the policy period until the date the premiums are refunded.
- Add interest to the above amount at a rate of 8% simple per year from the commencement of the policy, until the date Hiscox makes payment.

My final decision

For the reasons set out above I've decided to uphold Mr S's complaint in part. I direct Hiscox Insurance Company Limited to do as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 August 2023.

Kiran Clair
Ombudsman