DRN-4352247

The complaint

Mr H complains that Accredited Insurance (Europe) Limited ("AIL") has offered a reduced settlement for a claim he made on his home insurance policy.

Reference to AIL includes its agents and representatives. Such as the administrator, B, who Mr H has been dealing with.

What happened

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- Mr H took out home insurance in December 2021 through a broker, G. The policy was underwritten by AIL.
- In July 2022, there was a water leak on the ground floor of Mr H's home which caused damage. He got in touch with AIL to make a claim.
- AIL accepted the claim in principle, but it didn't agree to pay for all of the damage.
- AIL said around 25% of his building had a flat roof – but when he took out the policy, he'd said only 5% of it did. It said if it had known that, it would have charged a higher premium – £470 instead of £190. As a result, Mr H had only paid around 38% of the premium he should have done and AIL only offered to pay 38% of the claim.
- Mr H didn't think this was fair and made a number of points:
    - He thought he'd said 25% when taking out the policy.
    - The flat roof was irrelevant to the claim.
    - The premium increase of around 150% was unrealistic – with other insurers the change from 5% to 25% flat roof covering either made no difference to the premium or up to a 20% increase at most.
- AIL said Mr H hadn't provided the right information to his broker when taking out the policy. In line with the relevant law, it was entitled to proportionately settle the claim.
- Our investigator said Mr H hadn't provided the right information and agreed with AIL that it was entitled to settle the claim proportionately. He was satisfied AIL had shown it would have increased the premium as it said it would and it was entitled to do that. He didn't think it mattered whether the flat roof was relevant to the claim or not. But he thought the complaint should be upheld because AIL had made Mr H pay an additional premium – and that wasn't in line with the relevant law.
- AIL disagreed. It said it had only charged an additional premium for the remainder of the policy year after the claim (July to December 2022) to ensure Mr H was fully insured had he needed to make another claim.

My provisional decision

I recently issued a provisional decision in which I said:

> I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
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> This complaint is solely against AIL, so I can only consider the activities it was responsible for as the underwriter of the policy. I can't consider any activities the broker, G, was responsible for. Mr H is entitled to raise a separate complaint about G if he wishes.
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> AIL wanted to know what proportion of the roof covering of Mr H's building was flat. It was G's responsibility to ask Mr H about that, provide any relevant guidance and support to him, and accurately share his answer with AIL. G told AIL the answer was 5%. AIL setup the policy, including calculating the premium, on that basis.
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> After the claim was made, AIL didn't think 5% was the right answer. The relevant law for this situation is the Consumer Insurance (Disclosure and Representations) Act 2012 (or "CIDRA"). It places a duty on the consumer to 'take reasonable care not to make a misrepresentation'. In summary, if Mr H fulfilled that duty, AIL can take no action. If he didn't fulfil that duty, CIDRA sets out the remedies available to AIL – and that can include proportionately settling the claim. The onus is on AIL to show that Mr H didn't take reasonable care – and, if he didn't, what impact that had on AIL.
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> Under CIDRA, it doesn't matter whether the alleged misrepresentation is relevant to a claim. It's about whether the insurer received reasonable information with which to setup the policy and decide what premium to charge, as well as what terms to set. If it didn't receive reasonable information and that caused it to undercharge the premium, CIDRA allows it to remedy that situation.
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> AIL says Mr H should have told it the flat roof made up over 25% of the roof covering. So I've looked at the available evidence to decide what a reasonable answer would have been.
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> AIL appointed a loss adjuster, who visited and measured the property. They said the garage and office had a flat roof which was around 22.34 square meters. They also said the dwelling was 114 square meters. I haven't seen any evidence from Mr H that might challenge these measurements, so I accept them at face value.
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> However, I don't understand how the figure of 25% has been reached. Dividing the garage and office area by the dwelling area gives a figure of around 19%. And if the measurement for the dwelling doesn't include the flat roof area, which I don't think it does, the figure is around 16%. So it seems the proportion of flat roof covering, as measured by the loss adjuster, is actually 16-19%, not 25%.
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> Nonetheless, that means Mr H's answer was unreasonable. But it changes the impact of that unreasonable answer on AIL. AIL accepts Mr H's misrepresentation was careless.
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> Mr H says he originally paid £190 for the policy. That included a loading of 15% for the flat roof covering based on his unreasonable answer. AIL has shown that an answer of 25%+ roof covering would have meant a 200% loading. Mr H has questioned this, but AIL is entitled to charge whatever premium it considers is appropriate for the risk involved in providing insurance in the circumstances

presented. It's provided an underwriting table to show its approach to risk for roof covering, so I accept what it says.

Had Mr H answered 16-19%, the loading would have been 25%. That would have meant a slightly higher premium than he paid – but significantly less than AIL says he should have paid. There appear to be more factors involved in the premium calculation than the loading, so I don't know exactly what impact the change of loading has. But I estimate the premium with a 25% loading would have been around £200. It follows that the proportion of premium Mr H has paid is likely over 90%. Which is significantly greater than the 38% AIL said it would settle the claim for.

As a result, I'm not satisfied AIG has treated Mr H fairly. To put things right, it should calculate the premium on the basis his answer was 16-19%. It should then settle the claim based on the proportion of premium Mr H paid compared to the calculated premium. Other policy terms and conditions, such as the excess, can still be taken into account.

Because of this dispute, I understand AIL hasn't paid Mr H the settlement it offered. He's carried out some work at his own expense but hasn't been able to complete it all. This means the damage has persisted, at least to some extent, for much longer than it should have done had AIL offered to settle the claim fairly. As result, I'm satisfied AIL should pay compensation for this impact on Mr H. I'm satisfied £250 is reasonable in the circumstances.

As our investigator has pointed out, CIDRA doesn't give AIL the right to charge any additional premium. Under the law, it has to keep the policy in place and let Mr H know that any further claims made during the policy year will also be proportionately settled. He could choose to cancel the policy at that point if he wished, but he wouldn't have to.

However, whilst it's not provided for under CIDRA, I consider it's fair and reasonable for an insurer to *offer* a consumer the chance to pay an additional premium to be fully insured – as long as it makes clear the position under CIDRA and that the additional premium is optional. It's then for the consumer to decide which option suits them best.

Mr H paid around £117 to remain fully insured for the remainder of the policy year. The only communication I've seen about this says, "the balance of premium will need to be paid in order for your insurance policy to continue". I don't think this is in line with the position I set out above. It gives the impression Mr H had no choice but to pay the additional premium. Whilst that communication came from G, I understand it was acting on AIL's behalf when doing so. That means AIL was responsible for that communication.

It's difficult to estimate now what Mr H would likely have done had AIL communicated in line with CIDRA and/or the fair and reasonable approach I set out above. But at the time this was happening, the policy didn't have very long until the renewal, so the risk of Mr H having to make another claim, under which he would have been underinsured, was low. Because of that, I think he's unlikely to have paid an extra premium if he'd known his options. To put that right, AIL should refund the additional £117 premium he paid.

Responses to my provisional decision

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

AIL didn't agree with my provisional decision and made some further points. In summary:

- The flat roof covering percentage was calculated on the basis the garage roof was 22.34 square meters and the main house roof was 65 square meters. This was confirmed by the loss adjuster.

- In addition to G's letter about the additional premium, AIL spoke to Mr H. It says it made things clear to him during that call.

- The claim wasn't settled earlier because Mr H said he would be challenging the decision. The loss adjuster told him to keep all receipts pending the outcome.

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.

As Mr H agreed with my provisional decision in full and AIL only made the three points above, I understand everything else is agreed and doesn't require further comment. I'll focus on those three points that remain in dispute.

Flat roof percentage

It's agreed the flat roof garage is 22.34 square meters. The disagreement is about the main house.

The loss adjuster report says the dwelling is 114 square meters. It's unclear whether that includes the garage. But, as I set out in my provisional decision, in either case the result is the same as 16-19% is in the same underwriting group. The report doesn't mention any other figures for the size of the building, roof and/or the percentage of flat roof covering.

A follow-up email from the loss adjuster says, "the main pitched area is 65 square meters". There's no other explanation and/or diagrams to accompany this statement that might show where the figure has come from, why it wasn't mentioned in the report or why it differs from the 114 square meters mentioned in the report. So I'm not clear on why 65 square meters has been used as the main house figure. With this lack of clarity, I don't think it would be fair to simply take the lower figure at face value.

During our investigation, AIL has been asked for more information about this but no further material evidence has been provided. Given the significant impact on Mr H of the figures, I would expect to see clear and persuasive evidence to show the flat roof covering was indeed at least 25%. The evidence provided doesn't achieve that in my view. So I'm not satisfied it would be fair to settle the claim on the basis the flat roof covering is at least 25%. I'm satisfied that basing settlement on the lower percentage roof covering is a fair outcome given the evidence provided. That means an increased percentage of the claim value.

Additional premium

I've listened to the call Mr H had with AIL. It told him it had given G the additional premium figure and asked it to contact Mr H to pay it. The intention was to charge an additional premium for the remainder of the policy year. It said if Mr H paid it, that would mean he would be fully insured for the remainder of the policy if he were to make another claim.

I think that call added more of an explanation than G's letter. But it still wasn't in line with the requirements of CIDRA I set out in my provisional decision. Mr H wasn't given the options he should have been in order to make an informed choice about whether to pay or not.

AIL has said its process doesn't include offering any options. Whilst that may well mean its own process has been followed, I'm not satisfied the relevant law has. I wouldn't expect AIL's process to place Mr H in a worse position than set out by the law.

So my view on this point hasn't changed.

Delay settling claim

The key point is that AIL treated Mr H unfairly by offering to settle the claim at around 38% when, in my view, it should have been significantly more – seemingly around 90%. Had the claim been settled at the higher amount, it's likely Mr H would have been able to get the repairs carried out in full sooner.

Because that didn't happen, I'm satisfied he's suffered avoidable distress and inconvenience as a result of AIL treating him unfairly. So I remain satisfied compensation is appropriate.

Overall

I've thought about all the points AIL has raised in response to my provisional decision. But, for the reasons above, I haven't been persuaded it would be fair and reasonable in the circumstances to change the findings in my provisional decision.

My final decision

I uphold this complaint and require Accredited Insurance (Europe) Limited to:

- Settle the claim at the increased proportion, as set out above.
- Pay £250 compensation.
- Refund the £117 additional premium paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 October 2023.

James Neville
Ombudsman