

The complaint

Ms G complains that Admiral Insurance (Gibraltar) Limited has avoided her home insurance policy due to misrepresentation and turned down her claim because of this.

What happened

In April 2022 Ms G took out home insurance cover with Admiral. A few months later she made a claim after she noticed cracking damage in her property.

Whilst Admiral was looking into the claim, it became aware that Ms G accepted short-term paying guests at her property. Admiral said Ms G hadn't told it this information and ought to have done so. It therefore avoided the policy as it said that she had failed to take reasonable care not to make a misrepresentation. Unhappy with this, Ms G brought a complaint to this Service.

Our investigator didn't recommend the complaint be upheld. He concluded that Ms G hadn't misrepresented information when taking out the policy, but thought a misrepresentation was made when the situation later changed, and that Ms G ought to have told Admiral that she had paying guests. He was satisfied that Admiral had shown it wouldn't have offered Ms G cover if it had known that she would be having guests for longer than 90 days in a policy year, and so concluded that it had been reasonable for Admiral to avoid the policy.

I issued a provisional decision on 13 September 2023. Here's what I said:

'As this complaint concerns misrepresentation, I've considered the matter in accordance with the principles set out under 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.

When Ms G took out the policy online, she was asked to check some important statements and then asked if all of the statements were true. The relevant statement was that the property 'does not have paying guests or lodgers living there'.

Ms G answered yes to the question that the statements were true. As our investigator has said, Ms G didn't have any paying guests or lodgers at the property at the time (even though she intended to in the future). And so her answer was correct. I'm therefore satisfied Ms G did take reasonable care not to make a misrepresentation. If Admiral had wanted to know if there would be paying guests or lodgers in the property at all in the policy year, I think the statement ought to have been clearer about this.

After the policy started, Ms G accepted short-term paying guests. She didn't tell Admiral this. This wouldn't be considered under CIDRA, as I've already found there was no misrepresentation on Ms G's part when taking out the policy. CIDRA doesn't apply to changes in circumstances that occur after a policy has started (unless Ms G had contacted Admiral to tell it about the change in circumstances - then of course she would need to take reasonable care not to make a misrepresentation).

I've therefore considered whether Ms G had an ongoing duty of disclosure to tell Admiral about the change in circumstances, according to the policy terms.

The policy says:

'Keeping your policy up to date

Your policy documents show the information you have given us. It is important that you tell us if any of the information is wrong or if the details change during the period of insurance.

...

IMPORTANT

If you do not tell us about any corrections or changes, this could mean that we do not pay your claim, we reduce the amount you can claim for, or we declare your policy void (consider it to have never existed).

You must keep the following details up to date during the period of insurance.

1. Please tell us about the following beforehand.

...

- If you plan to rent out your home or use it as a holiday home"*

Ms G didn't rent out her entire home, only a room. However, I think a reasonable person would still consider this to be renting out the home.

Whilst this information was on page 12 of a lengthy policy document, I note that page three of the policy document made it clear that Ms G needed to tell Admiral if any of the information she'd given changed during the period of insurance, and she should see page 12 for further information. So I'm satisfied this information was clearly highlighted within the policy terms.

I also find that the change in circumstances was fundamental to the risk as Ms G was giving access to her property to people she didn't know. I'm therefore satisfied it was reasonable for Admiral to rely on the above term and therefore Ms G ought to have told Admiral that she was accepting paying guests.

The next point for me to consider is what Admiral would have done if it had known this information.

Admiral has provided evidence to show that it would have allowed Ms G to add on 'host insurance' cover for an additional premium. An endorsement would have then been applied to her policy to say:

'The exclusions contained within your policy documents relating to paying guests do not apply if the paying guests have arranged to use your home via a dedicated home sharing website. Subject to the following conditions:

- 1) Your home is not occupied by paying guests for more than 90 days in any period of insurance and will be occupied by you for the remainder of the period of insurance.*
- 2) The number of adult paying guests occupying your home at any one time cannot be more than double the number of bedrooms (for example, no more than 4 adult paying guests in a 2 bedroom property).*
- 3) The most we will pay for loss or damage to high risk items caused by Theft, Vandalism or Malicious Acts, or Accidental Damage while your home is occupied by paying guests is £5,000 or the amount shown on your policy schedule, whichever is less, unless kept in a locked securely fixed safe or removed from your home.*
- 4) Your home is your permanent (main) residence and not used for the sole purpose of renting to other people. The paying guest exclusions contained within your policy*

documents remain in force if your home is occupied by paying guests who have not booked via a dedicated home sharing website.'

It's not in dispute that Ms G accepted paying guests for more than 90 days in the policy year.

Admiral has provided a statement from its underwriter. This says that Admiral would not have been able to offer a policy if it had been aware that Ms G was accepting paying guests and would exceed the 90 days outlined in the endorsement.

However, Ms G says she didn't know she would have paying guests for more than 90 days in the policy year when she took out the policy. The wording of the endorsement makes it seem that if an insured didn't comply with the various conditions, then the paying guest exclusions would apply. It doesn't say that Admiral wouldn't be able to provide cover at all.

If Admiral wasn't willing to offer cover at all when an insured had paying guests, but didn't hold the additional host insurance, or couldn't meet the host insurance conditions, presumably there'd be no need for the paying guest exclusions in the first place. This means I'm not satisfied Admiral wouldn't have continued to provide the policy for Ms G if she had told them she was going to have paying guests.

Given that Ms G did accept paying guests for more than 90 days in the policy year, I think the fairest outcome would be for Admiral to assume that Ms G wouldn't have taken out the host insurance. Therefore, the paying guest exclusions would apply. Though given that the claim was for potential subsidence, the paying guest exclusions (which apply to claims for theft, malicious acts etc) aren't relevant here.

I therefore intend to require Admiral to reinstate Ms G's policy (subject to the repayment of her premiums if these were previously returned by Admiral) and deal with her claim in line with the remaining policy terms.

I've noted Ms G's point that she has obtained cover elsewhere with a different insurer. However, when a business does something wrong, the aim of this Service is to place the consumer back in the position they would have been (as far as possible) if not for the error. That means Admiral should reinstate Ms G's policy, and also reimburse her for the higher costs she paid for the alternative insurance, plus interest. It should also remove any record of the cancellation or avoidance from its records and any central databases this was added to.

It's also the case that Admiral would then be required to continue to provide subsidence cover after any repair is carried out (in line with the ABI guidance on continuation of cover following a subsidence claim). This wouldn't be the case with Ms G's current insurer.

I understand a structural engineer has begun investigating the potential subsidence. If Ms G has paid these costs, then Admiral should reimburse her, plus interest.

I think Ms G has been caused distress and inconvenience by Admiral's handling of this matter. She's had the worry of potential subsidence continuing to affect her property, and had to rearrange cover elsewhere. I therefore intend to require Admiral to pay her £350 compensation for this.

Ms G has raised concerns about the way in which Admiral has recorded her claim in the Claims and Underwriting Exchange ('CUE'). This has been recorded as a subsidence claim. As the claim was for crack damage, I don't think it was unreasonable for Admiral to record the claim as subsidence. If that turns out not to be the case, then Admiral should update CUE.'

I asked both parties for any comments they wished to make before I made a final decision.

Admiral didn't provide any further comments for me to consider.

Ms G responded to say she accepted my provisional decision.

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 neither party has provided any further comments for me to consider, I see no reason to change my provisional findings. I therefore remain satisfied that this complaint should be upheld, and for the same reasons as set out in my provisional decision.

My final decision

My final decision is that I uphold this complaint. I require Admiral Insurance (Gibraltar) Limited to do the following:

- Reinstatement Ms G's policy (subject to the repayment of any premiums Admiral previously returned) and consider the claim in line with the remaining policy terms.
- Reimburse Ms G for the higher premiums she paid for alternative cover, plus interest* at the rate of 8% simple per annum from the date each payment was made to the date of settlement.
- Reimburse Ms G for any costs incurred in hiring a structural engineer or other subsidence investigations, plus interest* at the rate of 8% simple per annum from the date each payment was made to the date of settlement.
- Pay Ms G £350 compensation.
- Remove any record of the avoidance from its records and any central databases.

* If Admiral considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Ms G how much it's taken off. It should also give Ms G 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 Ms G to accept or reject my decision before 25 October 2023.

Chantelle Hurn-Ryan
Ombudsman