

## **The complaint**

Mr C has complained about his property insurer Admiral Insurance (Gibraltar) Limited because it has accused him of not giving it material evidence when his policy with it was arranged in 2014 and, as a result, has voided his policy. Also that Admiral had said Mr C had acted fraudulently in respect of the claim.

## **What happened**

Mr C arranged cover in November 2014. He agreed to the following statement: "...[that he] currently reside[s] in [the] property which is furnished for normal living purposes with connected utilities, or will do so within two weeks of [the] policy start date."

In early 2015 Mr C found his house had been damaged. He made a claim to Admiral. He advised he'd come home from a weekend away to find lead taken from his roof and copper piping missing from inside the house. Admiral began investigating the claim. It had a number of concerns initially, later focussing on whether Mr C had been living in the home. It voided Mr C's policy.

Mr C complained to this service and I issued a decision on his complaint in 2017. I felt Admiral's enquiries had been reasonable – but that it hadn't established anything more than concerns. As such I felt its voidance was unfair and unreasonable. I required Admiral to reinstate the policy and consider the claim. Mr C accepted my decision.

Admiral asked Mr C for further evidence to show he'd lived at the property. Its enquiries progressed over the next four years. In July and August 2021 Admiral told Mr C it was, again, voiding his policy. It said he had failed to give it material evidence when arranging the cover – namely that he wasn't living in the house. It said that Mr C had, therefore, breached a number of policy conditions, including the fraud condition, which was why it was voiding the policy. The letters also explained that, regarding the claim itself, Admiral felt that Mr C had acted fraudulently. The letter did not reference any terms related to the events the policy covered, nor any related exclusions. It confirmed it wouldn't be paying anything for the claim. Mr C made a further complaint to the Financial Ombudsman Service. Admiral confirmed its position, referencing the July and August 2021 letters, in a final response of January 2022.

Our Investigator, commenting on fraud and misrepresentation legislation, felt Admiral had acted fairly and reasonably. So he did not uphold the complaint. Mr C remained unhappy and his complaint was referred to me for an Ombudsman's consideration.

I wasn't persuaded by Admiral's voidance or fraud arguments. So I felt the complaint should be upheld with Admiral putting things right, including both settling the claim and paying £500 compensation.

Admiral did not reply to my findings. Mr C was happy with them, but asked about his costs incurred for having done some repairs at the property.

## **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 provisionally:

*"I think Admiral had some concerns which it reasonably wanted to investigate. But I think the outcome it reached was unfair and unreasonable. I've explained my views below, focussing on the key arguments only, along with comment as to what I think must be done now to put things right."*

### **Voidance**

*I must focus, in this decision, on what happened after my previous decision of 2017. Admiral has had a substantial amount of time since to gather new evidence to present a case for voiding Mr C's policy. During which time it also took legal advice. And yet I note that in its July and August 2021 letters, telling Mr C of its final position on this, it hasn't actually set out an argument for voidance on the basis of misrepresentation. Instead Admiral said Mr C made a misrepresentation to it when arranging the policy, which meant he had breached a number of policy terms, which was why it was voiding the cover. The problem here for Admiral is that the policy terms don't allow for voidance – voiding cover means the policy never existed, so the terms of the policy can't be relied upon. In the circumstances of this complaint, I find Admiral's position and argument for voidance to be unfair and unreasonable. I'm going to require it to reinstate the cover, again, for the year of the loss. And, given all its chances and the fact we're now nine years on from when the policy was arranged, I'm not going to allow it any further chance to review or dispute its liability for the cover as a whole. I'm going to require it to accept liability for this cover.*

### **Fraud**

*Largely the claim fell away because of the voidance. But I intend to require Admiral to reinstate the cover. And I note that in the July letter Admiral did say that it thought there had been fraudulent activity regarding the claim too – in respect of disturbance allowance and detail Mr C has provided about his finances. And the same letter also referenced Mr C having breached the policy term for fraud. I think then that I reasonably need to give some consideration to Admiral's concern in this respect.*

*However, in doing so I reasonably note that Admiral has not, in either of these letters or indeed in its final response letter, explicitly set out any argument of fraud. In particular it hasn't specified what benefit Mr C was trying to gain from the policy which he was not otherwise entitled to receive. The detail about bank statements and finances doesn't seem, on the face of it even, to relate specifically to any policy entitlement. In terms of disturbance allowance and fraud, all Admiral said was:*

*"We have previously highlighted to you that given the evidence that is currently in Admiral's possession, we are gravely concerned that you have been residing at [property B] both prior to the inception of your Home Insurance policy and during the policy term. If this is the case, we considered [sic] that your claim for disturbance allowance was fraudulent and an exaggeration of the claim."*

*Admiral, in the rest of its letter explains what other evidence it has which makes it think Mr C was living at property B, and/or not at property A. And, as I've noted it also listed what it felt were relevant policy conditions – such as that for fraud. But it hasn't shown or sought to rely on any wording which might apply for DA payments. Nor has it set out any other policy terms*

– such as relating to the specific events covered by the policy and their relevant exclusions. As such, Admiral has not, in my view, set out a clear argument for fraud either in relation to the disturbance allowance or Mr C's financial information.

An allegation of fraud can have substantial consequences for a policyholder. As such this service expects an insurer making such an allegation to do so clearly. Doing so allows its policyholder a reasonable chance to defend their position, not least as they can fully understand the terms upon which the accusation is based. An allegation of fraud, simply put has to link back to a policy entitlement and it is up to the insurer, Admiral, to show that. Here, despite all of its years of consideration and even though legal advice was sought, Admiral, in my view, has not done that. It's not for me to do that for it. I don't find its allegation of fraud was fairly and reasonably made.

### The claim

With my above findings in mind regarding avoidance and fraud, I need to think about what must fairly and reasonably happen now with the claim. I'm mindful that Mr C has a claim which is now eight years old. Which Admiral has spent four years, following my 2017 final decision, 'considering'. Also that Admiral, throughout the claim has seemed to have accepted, its concerns about occupancy of the property aside, that a genuine loss covered by the policy had likely occurred. As I've noted Admiral, despite having had ample opportunity to do so, has not set out why, within the policy itself, the loss would not be covered. That said, I bear in mind, that in its July 2021 letter Admiral has said it's reserving its right to later rely on other facts and matters not set out therein. I can see why Admiral might say that. In all of the circumstances of this complaint though, including the history of the claim, I think that the time has passed for Admiral to reasonably be able to bring up new reasons for declining the claim. Taking everything into account, I'm of the view that the only fair and reasonable way forward now is for me to require Admiral to settle the claim in line with the remaining terms and conditions of the policy ie only those which relate to settlement. To be clear, Admiral won't be able to further consider its liability for the loss including in respect of any remaining concerns it may have about whether or not Mr C was occupying property A at the time of the loss.

### Compensation

Admiral, following my previous decision, undertook extensive further enquiries, I can understand it doing that. I think, in the main, its enquiries were reasonable and handled in a timely manner. I bear in mind there was some impact in later years by the Covid-19 pandemic. And that following a "challenge letter" it issued in 2020 to Mr C, setting out some of its concerns, the parties re-entered claim discussions. Overall, I think the situation in question, along with the nature of the enquiries, unfortunately meant the process was prolonged, resulting in likely one of the longest investigations I've seen. I don't doubt that Mr C was frustrated during this period, and that he likely suffered inconvenience too. However, where Admiral's enquiries were reasonable and being reasonably made, I can't fairly award compensation for any upset caused.

Ultimately though, those enquiries by Admiral, resulted in it issuing what I have found to be an unfair and unreasonable policy and claim decision. I accept that that outcome reached by Admiral was upsetting for Mr C. I'm satisfied here that £500 compensation is fairly and reasonably due."

I'm not surprised Mr C has had to do some repairs at the property. He can put his costs to Admiral for consideration as it now moves to settle the claim (assuming Mr C accepts my final decision).

As neither party has objected to my findings I've no need to change them, or add further comment here. My provisional findings are now the findings of this my final decision.

### **Putting things right**

I require Admiral to:

- Remove any record of avoidance and/or fraud from its own and any external databases.
- Accept it has overall liability for the cover.
- Reinstate the policy for the year of the claim.
- Settle the claim in line with the policy terms and conditions – those which relate to settlement, refraining from raising or seeking to rely upon any further argument about Mr C's occupancy of property A.
- Pay Mr C £500 compensation.

### **My final decision**

I uphold this complaint. I require Admiral Insurance (Gibraltar) Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 November 2023.

Fiona Robinson  
**Ombudsman**