

The complaint

Mr J and Mrs J complain Accredited Insurance (Europe) Ltd unfairly declined an escape of water claim under a home insurance policy.

What happened

Mr J and Mrs J purchased a property on 25 November 2022 to live in. They insured it with Accredited a few days later and say they planned to move in on 23 December 2022. Mrs J says they moved some furniture in, stayed overnight a few times, and frequently visited the property to keep an eye on things.

An escape of water occurred on 16 December 2022 from a cold-water pipe in the loft. They raised a claim to Accredited and it appointed a surveyor to validate the claim. They assessed the damage, took photos, and said Mr J and Mrs J were not living at the property at the time of loss. And that they had only bought the property less than a month before.

Accredited later declined to assist with the claim. It said the property had been unoccupied since the purchase date and the policy excluded damage caused by an escape of water while the property was unoccupied or unfurnished. It also said Mr J and Mrs J ought to have informed it the property would be unoccupied for more than 30 days in a row. And had they done so, it would have added an endorsement to the policy excluding cover for escape of water damage during this period.

Mr J and Mrs J didn't think this was fair because there was less than 30 days between purchasing the property and the claim incident occurring. They also say it was always their intention to move in on 23 December 2022 – so the property wasn't going to be unoccupied or unfurnished for more than 30 days in a row. They were prevented from moving in on the date they planned to due to the resultant damage. As they remained unhappy, they asked our Service for an impartial review.

The Investigator didn't think Accredited applied the policy terms fairly based on the specific circumstances of the claim. Nor did she think Mr J and Mrs J failed to take reasonable care not to make a misrepresentation during the sales process. Therefore, she recommended the claim be accepted in line with the remaining policy terms, and Accredited should include interest on any settlement to reimburse any claim-related repair costs paid by Mr J and Mrs J.

Accredited didn't agree and maintained its position. So, the case was passed to me to decide.

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.

Having done so, I'm upholding the complaint. I'll explain why.

Misrepresentation

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.

Accredited thinks Mr J and Mrs J failed to take reasonable care not to make a misrepresentation when Mrs J took out the policy on their behalf answering these questions with the following answers:

- *'Who is the property occupied by?'* Mrs J answered saying it was occupied by her and her family.
- *'When is the property normally occupied?'* Mrs J answered saying both day and night.
- And *'Is the property your main residence?'* Mrs J answered saying yes.

Accredited said had it been made aware the property was unoccupied or unfurnished it would have added an endorsement to the policy to exclude cover for escape of water damage during this period.

The policy was purchased by Mrs J a few days after the purchase date of the property. And they say they were moving from a large house so were planning to move part of the furniture across by the moving in date of 23 December 2022. Mr J and Mrs J say the plan was to move in ahead of the Festive period. Their plans were put on hold however as they couldn't move in because of the resultant water damage.

I don't find Mrs J's answers to the questions during the sales process via a price comparison site amount to a failure to take reasonable care. I'm most persuaded, based on the information available to me, that this newly purchased property was intended to be their main residence, occupied by them, and a moving in day was set for 23 December 2022. And the plans were halted due to the resultant escape of water damage which meant the property was unoccupied for longer than anticipated.

Accredited say Mrs J was asked whether the property would be left empty for more than 30 consecutive days. And Mrs J answered no. But it seems more likely than not – in my view – that's because Mr J and Mrs J never intended for the property to be unoccupied for more than a short period of time while they arranged to move in. So, I don't find Mrs J's answer to this question amounts to a failure to take reasonable care either.

Therefore, I'm not satisfied I could safely conclude Mr J and Mrs J failed to take reasonable care not to make a misrepresentation based on the specific circumstances of this complaint. Therefore, it follows, I'm not satisfied Accredited have a remedy available to it under CIDRA.

The policy terms

Accredited also referred to the policy terms to decline the claim. I'll address each policy term Accredited relied on in turn.

'Changes in your circumstances we need to know about

*Here are some examples of changes that **you** must tell **us** about.*

*6. If **your home** will be **unoccupied** or **unfurnished** for more than 30 days in a row (losses are more likely to happen in **unoccupied** or **unfurnished** properties).'*

I don't find, on balance, that Mr J and Mrs J were required to tell Accredited about any changes in their circumstances. And I say this because nothing changed. They had purchased a property they were planning on moving into within a few weeks of purchasing it (and arranging insurance). The property then became unoccupied for more than 30 days in a row because of the resultant damage which prevented them from moving in.

Section one sets out cover is included for loss or damage arising from an escape of water. But that it won't cover:

*'h. loss or damage while the **buildings** are **unoccupied** or **unfurnished**'*

And the policy defines unoccupied as:

*'We consider **your home** to be unoccupied when it is not lived in by **you** or **your family** for more than 30 days in a row.*

*Lived in means slept in frequently (we will not accept visits to the **home** or occasional overnight stays as living in **your home**).'*

The policy started on 29 November 2022 and the loss occurred on 16 December 2022. Therefore, I'm not satisfied Accredited acted fairly and reasonably when relying on the unoccupied exclusion to decline the claim.

It also said the policy states it won't respond to a claim if the property is unoccupied or unfurnished, and that there is no timeframe within the definition of unfurnished. And that this likely means Mr J and Mrs J were not at the property as frequently as they otherwise would have been had it been furnished. So, they were unable to prevent the incident from occurring.

I'm not persuaded by this argument. I say this because I've kept in mind the proximate cause of the loss was said to have been from a cold-water pipe in the loft. The surveyor's report says Mr J and Mrs J found water pouring through the kitchen ceiling, dining room, hallways, and kitchen floor. This suggests to me it's more likely than not that this incident was a very sudden, one-off, unexpected event. Based on these facts, and the specific circumstances of this case, I've thought carefully about whether the property being furnished would have meant the loss could have been mitigated or even prevented here. But I'm not persuaded that would have likely been the case.

Therefore, it follows, I'm not satisfied, based on the very specific circumstances of this complaint, Accredited applied the policy terms fairly and reasonably here.

Ultimately what happened here is Mr J and Mrs J purchased a property they planned to move into within a couple of weeks to occupy as their main residence. I've found their

testimony to be plausible and consistent throughout, in the absence of any evidence to the contrary.

The property was damaged by an escape of water not long after they had purchased and insured it with Accredited. This meant they were unable to move in when they planned to. And I'm not satisfied I could fairly conclude here that Accredited acted fairly and reasonably when declining to assist them with the claim based on the unoccupied or unfurnished policy exclusion.

Putting things right

For the reasons I've mentioned above, I'm not satisfied Accredited have a remedy available to it under CIDRA. Nor am I satisfied it applied the policy terms fairly and reasonably. So, Accredited must now reconsider the claim in line with the policy terms and include 8% simple interest* on any claim settlement paid to Mr J and Mrs J for any amounts they have incurred to repair the claim-related damage. Interest should be calculated from one month from the date of the claim to the date of settlement.

My final decision

For the reasons I've mentioned above, I've decided to uphold the complaint. I now require Accredited Insurance (Europe) Ltd to settle this complaint in line with my instructions above.

*If Accredited Insurance (Europe) Ltd considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr J and Mrs J how much it's taken off. It should also give Mr J and Mrs J a tax deduction certificate if they ask for one, so they can reclaim the tax back from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 14 March 2024.

Liam Hickey
Ombudsman