

## The complaint

Mr and Mrs W complain that AA Underwriting Insurance Company Limited ["AA"] has unfairly avoided – treated it as if it never existed - their buildings insurance policy and refused to pay a claim they've made following subsidence at their property.

## What happened

Mr W has raised this complaint on behalf of himself and his wife. References I make to his actions include those of his wife.

AA is the underwriter of the policy, i.e. it's the insurer. Part of this complaint concerns the actions of its agent for which it has accepted responsibility. Any reference to AA includes the actions of its agent.

The background to this complaint is well known to the parties so I've provided a summary here.

- Mr W took out a buildings insurance policy with AA through an online comparison website, which I'll refer to as C.
- Mr W noticed a crack in the external brickwork of his property and he contacted AA to make a claim on his policy. AA appointed an agent to validate the claim. It undertook a survey of the property damage and then site investigations took place over the following weeks.
- Mr W says he didn't hear anything from AA for some time until it contacted him to ask questions about a business he ran. Eventually, AA said Mr W hadn't declared that he ran a business from his home and so had made a misrepresentation at inception and renewal. It declined the claim, avoided the policy from inception – treated it as if it never existed - and refunded the premium, stating it considered the misrepresentation to be careless.
- Mr W said when taking out the policy he'd answered the questions honestly and that the business AA referred to was on land adjacent to the home. He said the polytunnels – metal-framed tunnels with a polythene cover - didn't amount to outbuildings. He expressed his dissatisfaction with AA's actions and it dealt with this as a complaint.
- AA maintained its position so Mr W raised a complaint with this Service. Our Investigator concluded Mr W hadn't made a misrepresentation when taking out the policy. She was satisfied he had answered the questions he was asked – including whether the *house* was used for business purposes – correctly.
- And she didn't think the follow up documentation, which AA said Mr W had to check, made the distinction between "house" and "home" sufficiently clear as to alert Mr W to the fact AA was asking a different question. Additionally, she said the policy didn't include polytunnels within its definition of "home". She said AA should reinstate the

policy, deal with the claim and pay Mr W £300 in compensation.

- Following this, both AA and Mr W provided more information and our Investigator's view on the matter changed a number of times as a consequence of this. In the end, she wasn't persuaded the guidance AA said was available on C's website would have been available to Mr W when he took out the policy. She upheld the complaint for broadly the same reasons as before and said it should settle it the same way.
- Mr W accepted the findings. AA didn't; and asked an Ombudsman to make a 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.

It's disappointing to note AA were slow to respond to our enquiries throughout this complaint. Our Investigator asked it on repeated occasions for information but it failed to respond within the deadlines set. Eventually, AA supplied the information but only after the Investigator had already concluded her investigations and referred the complaint for an Ombudsman's review after AA failed to respond again.

I am required to take account of all the evidence – even that which is received late - in undertaking my review despite this lack of cooperation from AA.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should also settle claims promptly once settlement terms are agreed. I'll be keeping this in mind while considering this complaint together with what I consider to be fair and reasonable.

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.

In this case, AA says Mr W failed to take reasonable care not to make a misrepresentation. And it says if it had known the true picture it wouldn't have offered cover. Mr W disagrees with this and said he answered the questions honestly.

### ***The sales process***

The first thing for me to consider here was whether the questions AA asked Mr W when he first took out the policy were clear and specific.

AA said that the question Mr W was asked during the online sales process was “*Do you or anyone in your **house** [my emphasis] use it for business purposes?*” to which Mr W answered “No”. Despite our Investigator asking, AA initially didn’t provide details of any explanation, context or explanatory detail that accompanied this question so, I will consider it as an isolated question, without guidance.

And from what I’ve seen, there doesn’t seem to be any argument that Mr W uses his *house* for business purposes. Mr W says he doesn’t and AA only argues that he uses the polytunnels which are located away from the house for business purposes. So, on that basis, it seems to me, Mr W took reasonable care to answer this accurately based on the information he had at the time and the wording of the question.

#### *AA’s subsequent position*

During the course of our investigation, AA introduced some new information which it had previously not referred to either in its final response or when presenting its case to this Service.

It said C’s website did in fact provide some guidance for users which provided clarification around business usage which it thought supported its position.

Under the question “*Do you or anyone living in your house use it for business purposes?*” it said:

*“If you think you’ll be working from your property even once during the year, select an option that best describes your role*

*What if I work in my garden, shed, detached garage, or outbuilding?  
These may be considered as working from home spaces because they’re still part of your surrounding property. Check the policy documents to see what’s covered before you choose your policy*

*What counts as working from home?  
Any task you carry out at home that’s connected to your job. This could include working on a computer, taking calls, storing stock, manufacturing goods, or providing services”.*

Initially, our Investigator said this extra information that was *allegedly* available to Mr W should have led him to realise the polytunnels in his garden likely amounted to outbuildings. Although following further information from Mr W – which I’ve detailed below - she later revised her opinion on this again.

Crucially, AA’s email only seems to show the guidance is provided *currently*, and nothing in its email confirms if it was also provided in the past.

In his testimony, Mr W said this information wasn’t present on the website at the time he took out the policy. He made enquires with C and it confirmed changes were only made to the working from home information and drop-down menus in September 2022, more than two years *after* Mr W took out his policy.

Based on what I’ve got, I think this does seem to support Mr W’s recollection of events. I also have to keep in mind here, the first time AA mentioned this guidance - and sought to rely on it to support its case - was at the end of November 2023, some 14 months after it first declined Mr W’s claim. Based on the evidence I’ve seen, it hadn’t previously made any reference to the guidance in its final response letter, in its dealings with the solicitors

instructed by Mr W, in the presentation of its case to this Service or in the subsequent correspondence with us over the five months since Mr W first raised his complaint – which in itself strikes me as unusual given the prominence it now places on this particular wording.

Keeping all this in mind and looking at the facts of this case, AA hasn't persuaded me that it's most likely that the guidance was added to C's website prior to Mr W taking out his policy and so it follows it wouldn't have been available to him at that time. So, I remain satisfied Mr W took reasonable care to answer the question accurately, based on the information he had at the time.

### *The documentation*

I've then gone on to consider the documentation AA sent Mr W after he took out the policy and at subsequent renewal. This includes a "Statement of Insurance" which explains Mr W needs to check the details and let AA know if anything's not right. It includes a warning about the consequences of not doing so.

Included within the documentation is the following statement.

*"Is your **home** [my emphasis] used for any business or trade in addition to domestic purposes?"*

The response to this question was already completed as "No" and Mr W didn't tell AA to change this.

It's the established approach of this Service that where questions asked on comparison sites differ to those the insurer itself asks – as is the case here - the insurer should be aware of this and warn the consumer if it wants slightly different information. Here, the insurer may attribute different meanings to the words "house" and "home" but I haven't seen anything which shows it highlighted this to Mr W as I would have expected it to do.

And given I'm satisfied he answered the first question accurately based on the information he had available, I'm not persuaded it would be fair or reasonable to expect Mr W to realise AA was seeking different information as a result of a question where the difference in wording is, in my view, quite subtle and unlikely to have been apparent to Mr W who had taken reasonable care in answering the questions put to him.

I've also kept in mind that while the policy terms include "*outbuildings if they form part of the property*" within the definition of "*home*", the terms don't define "*outbuildings*" so there's nothing to alert Mr W that the polytunnels might be included within this term.

In its submissions to this Service, AA says it deems the polytunnels to be outbuildings as they are "*of a sizeable nature...a permanent structure*" but in the absence of a definition within the policy which reflects this, it seems to me unreasonable for AA to expect Mr W to be aware of this when it simply hasn't provided him with this information.

So, even if he had understood the difference between "*house*" and "*home*" I'm not persuaded the terms would have drawn his attention to the fact he needed to disclose further information.

Keeping all this in mind, I'm satisfied Mr W took reasonable care not to make a misrepresentation when answering AA's questions. It follows there was no qualifying misrepresentation and that means AA can't take any action under CIDRA, even though it has shown it wouldn't have offered cover if Mr W *hadn't* taken reasonable care.

## **Putting things right**

I'm satisfied AA has unfairly avoided Mr W's policy and declined his claim. So, I will be directing it to reinstate the policy and accept the claim. In doing so, it wouldn't be unreasonable for AA to expect Mr W to return the premiums it refunded to him following the voidance of the policy.

AA should also remove any record of policy voidance/cancellation from insurance databases.

It's clear from Mr W's testimony, he's found the unfair avoidance of the policy and claim declined to be stressful. He's been living in a property which is experiencing subsidence and has the damage associated with that. He says he's also been unable to insure the property while this has been going on and he's found this has added to the stress he's experienced. So I will also be directing AA to pay Mr W £300 for the distress and inconvenience it's caused.

## **My final decision**

My final decision is that I uphold this complaint and direct AA Underwriting Insurance Company Limited to:

- Reinstatement Mr and Mrs W's policy from inception.
- Accept Mr and Mrs W's claim.
- Remove any reference to policy voidance/cancellation from internal and external insurance databases.
- Pay Mr and Mrs W £300 for the distress and inconvenience it caused.

AA Underwriting Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Mr and Mrs W accept my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

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

Paul Phillips  
**Ombudsman**