

The complaint

Miss B complains that U K Insurance Limited (UKI) failed to investigate her burglary claim properly, which resulted in it declining her claim and avoiding her policy.

Miss B had buildings and contents insurance underwritten by UKI. References to actions taken by UKI may include actions taken by its agents.

What happened

Following a burglary at her home, Miss B claimed under her policy. The policy provided a limit of £50,000 for contents, with no specified items. The initial claim value of the stolen items was around £40,000, including a premium brand watch worth almost £13,000.

UKI told Miss B that because she didn't have any specified valuables listed in her policy, she would only be covered up to the single item limit of £2,000 per item.

After looking into the claim UKI told Miss B that she'd misrepresented the value of her contents at renewal, so she'd been underinsured. Treating the misrepresentation as deliberate or reckless, UKI refused to pay the claim and avoided her policy. UKI returned her premiums for the last two renewals, which was when it believed Miss B had first become underinsured.

Miss B complained to UKI. She said it hadn't investigated her claim properly because she'd purchased some of the items, including the watch, after she first bought the policy. Miss B thought UKI had treated her unfairly by avoiding her policy.

UKI said it made Miss B aware at each renewal that she should check her policy documents to make sure the cover was still adequate. UKI said if Miss B had contacted it to include the valuables on the policy, it wouldn't have offered cover on the same terms.

Miss B felt her estimated contents value was correct when she first took out her policy and she hadn't realised she needed to add the items she'd bought. So she brought her complaint to this service.

Our investigator didn't think UKI had treated Miss B fairly by avoiding her policy. He thought she'd made a careless misrepresentation when she didn't declare the full value of her items at renewal, so UKI should've offered a proportionate settlement rather than declining the claim and avoiding the policy. UKI had returned two years' premiums to Miss B and our investigator thought it was fair for UKI to recover the refund through its settlement. Our investigator also thought UKI should pay interest on the settlement and pay Miss B £300 compensation for the distress and inconvenience she experienced as a result of this matter.

Miss B accepted but UKI didn't agree. UKI said Miss B's failure to update information at renewal was a reckless misrepresentation. Therefore, in line with the relevant rules, it refused to pay the claim and avoided the policy, but it returned the premiums.

Because our investigator didn't agree that the misrepresentation was reckless, UKI asked for an ombudsman to decide.

I issued a provisional decision in December 2023 explaining that I was intending to uphold Miss B's complaint. Here's what I said:

provisional findings

There are elements of this complaint which aren't disputed, which I'll set out here first.

- *UKI accepts the burglary happened as described.*
- *There's no evidence that the list of stolen items, nor their value, is disputed.*
- *Miss B didn't specify any valuable items for cover when she bought her policy.*
- *There's no evidence that Miss B was underinsured when she first bought the policy.*
- *Miss B didn't tell UKI when she bought items valued at more than the unspecified items cover.*
- *The contents cover in place after she'd bought some of the items between policy inception and subsequent renewals was inadequate.*
- *UKI wouldn't have renewed cover on the same terms had Miss B told it about the high value items.*

The above information tells me that Miss B was underinsured because she hadn't informed UKI of the true value of her contents at renewal.

Moving on, I've looked at whether UKI's actions were in line with the relevant rules, and whether they were fair in the circumstances.

CIDRA

The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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.

Qualifying misrepresentation

While Miss B may have purchased adequate cover to begin with, each renewal is a new contract and she had a responsibility to take reasonable care not to make a misrepresentation. Miss B didn't provide up to date information about the value of her contents and, if she had, UKI would've offered her a policy on different terms. UKI provided me with underwriting criteria which confirms it would've added an endorsement requiring Miss B to keep her valuables in a safe.

Therefore, I'm satisfied that, in line with CIDRA, these undisputed elements of the complaint amount to a qualifying misrepresentation.

Deliberate or reckless, or careless qualifying misrepresentation

UKI said it treated the misrepresentation as reckless because Miss B:

- *received the renewal documents so she would've been aware of the requirement to check the details were accurate;*
- *was aware of the policy limits;*
- *knew the value of her valuables, and*
- *didn't provide updated information at renewal in either 2021 or 2022.*

CIDRA defines a misrepresentation as deliberate or reckless if the consumer:

- (a) *knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and*
- (b) *knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.*

If the misrepresentation is not shown to be deliberate or reckless, then it is a careless misrepresentation.

Having considered the evidence, I'm not persuaded that UKI has shown Miss B knowingly gave untrue information, or that she didn't care whether it was true. Miss B says she just didn't realise she needed to update the policy cover when she bought things during the policy term, and she simply understood that she had cover up to £50,000.

Given that many of the items Miss B bought were personal possessions, such as bags and shoes, I think the evidence indicates the misrepresentation was careless rather than reckless.

Remedy

UKI said it applied the remedy available to it for reckless misrepresentation in line with CIDRA, which is to:

- *not pay the claim*
- *avoid the policy*
- *keep the premiums*

The remedy available to UKI for careless misrepresentation, in the event of a claim, is:

- *If it would've charged more for the policy, UKI could pay the claim proportionally.*
- *If it would've offered a policy on different terms, UKI could assess the claim under the new terms.*

When I asked for evidence of any additional premium it would've charged, UKI confirmed the premium would've been the same. And the policy sets out how UKI would've settled the claim:

*If the sum insured isn't enough to cover the cost to replace all of the contents of your home as new, we will reduce any payment in line with the premium shortfall.
For example, if your premium was 75% of what it would have been if the sum insured was enough to replace the entire contents of your home as new, we will pay no more than 75% of your claim.*

As there was no additional premium, the policy terms don't provide for UKI to offer a proportionate settlement.

Although, as I've already said, UKI would've offered the policy on different terms, which would've required Miss B to keep valuables in a safe.

Because the evidence suggests the misrepresentation was careless, I'm minded to require UKI to treat it as such. As UKI wouldn't have charged an additional premium, the remedy available under CIDRA is to add the endorsement to the policy from the point of misrepresentation and assess the claim in line with the new policy terms and conditions.

Overall, I don't think UKI treated Miss B fairly when it avoided her policy and refused to pay her claim. So, to put matters right in respect of the misrepresentation, I'm minded to require UKI to reinstate the policy, re-underwrite it as if there was no misrepresentation, and reconsider the claim in line with the new terms.

UKI has already refunded Miss B's premiums, so it is entitled to recover the equivalent of the refund from its settlement.

Investigation

Moving on, Miss B also complained that UKI hadn't investigated her claim properly. She said she'd bought some of the items when the policy was already in place.

I see that UKI asked Miss B for further information, including receipts for the stolen items. Miss B provided them which led UKI to avoid the policy from 2021 rather than when Miss B first bought the policy. So, the evidence persuades me that UKI did investigate Miss B's claim.

However, I don't think the outcome of UKI's investigation was fair. UKI said Miss B had valuables in excess of £40,000, increasing that to £65,000 when she provided her loss list.

The policy definition of valuables is:

Valuables

- *sets of coins, stamps or medals.*
- *furs.*
- *items or sets or collections of gold, silver or other precious metals.*
- *jewellery.*
- *watches.*
- *works of art.*

But the list of items includes premium brand clothing, shoes and bags, which UKI has added into the valuables total. These items are not defined as valuables, the policy doesn't give any indication this list is non-exhaustive, and I don't think it's clear from the terms that such items

were intended to be included as valuables. So I think it's reasonable that Miss B didn't specify them in her policy. Therefore, excluding the items not covered within this definition brings the valuables sum to around £25,000.

The policy states that the maximum insured for each unspecified valuable is £2,000, and the total insured must not exceed 30% of the contents total. Because Miss B didn't specify any items on her policy, it means her claim would've been capped at £2,000 per item and £15,000 in total for her valuables.

So, while I think UKI investigated Miss B's claim, I don't think it applied the policy terms and conditions fairly when it considered all items as valuables. To put things right, I'm minded to require UKI to assess the claim for valuables in line with the policy definition – that is to say it cannot fairly group her items of clothing, bags and shoes as valuables – and the remaining relevant terms and conditions, and all other items should be assessed in line with the remaining terms of the policy.

Compensation

Overall, I find that UKI treated Miss B unfairly when it refused to pay her claim and avoided her policy because she'd failed to notify it during the policy term that she'd bought items which exceeded her insured limit. In light of the inconvenience and distress Miss B described because of this, particularly as it meant she would've needed to declare the policy avoidance to other insurers, I'm satisfied that compensation is warranted. I find that £300 is fair and reasonable and in line with awards for matters of this nature.

Interest

Miss B accepted our investigator's suggestion that UKI should pay interest on the settlement. However, given the nature of the loss, and the ongoing nature of the claim with much of it still to be assessed and UKI to determine how it is settled, I don't think it would be appropriate to direct UKI to pay 8% simple interest over the entire claim at this time. It's possible Miss B has replaced some items herself, but given the lack of an urgent need and the available evidence, I'm not satisfied this would've caused any notable financial loss that would require 8% interest.

I said I was intending to uphold Miss B's complaint and I was minded to require U K Insurance Limited to:

- reinstate the policy, re-underwrite it as if there was no misrepresentation, and reconsider the claim in line with the new terms;
- assess the claim for valuables in line with the policy definition and the relevant terms and conditions, and assess all other items in line with the remaining terms of the policy, and
- pay £300 compensation for the distress and inconvenience caused.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Responses

Miss B accepted my provisional decision.

UKI didn't agree that it should settle the claim. It said Miss B had three opportunities to provide the correct contents value for her home and, in failing to do so, she had recklessly

misrepresented the true value. UKI repeated its reasons for voiding Miss B's policy, but it didn't provide any new information.

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.

To begin with, I note UKI said I intended to direct it to settle the claim. However, I'd urge UKI to review my proposed direction where it will see that was not the award I'd intended. To be clear, my proposed direction was for UKI to reinstate the policy, re-underwrite it, and *reconsider* the claim under the new terms. Having reviewed all the evidence again, I don't intend to change my direction. That means UKI's consideration of Miss B's claim will be subject to the new policy terms and conditions. I'm neither asking UKI to settle or decline the claim.

UKI commented again that it considered Miss B's misrepresentation to be reckless. I'm satisfied that I addressed this point in my provisional decision. But, on consideration of UKI's disagreement that Miss B's actions were careless, I've thought about whether a typical policyholder would reasonably expect to update their contents insurance when buying clothes, shoes, sunglasses and handbags. On balance, I don't think they would.

In terms of valuables, a typical policyholder would likely think about those items at policy inception when answering the insurer's questions. In Miss B's circumstances, all but one of the valuables over the single item limit was bought mid-term. While that doesn't mean she shouldn't have updated her cover, or specified the items, it's more likely than not that, as Miss B said, she simply didn't think to. I consider that careless rather than reckless. Therefore, I remain of the view that UKI avoided the policy for reckless misrepresentation unfairly in the overall circumstances.

The final point I'll address is UKI's comment about the definition of valuables. UKI said while clothes, bags and shoes may not be considered valuables, the policy still says that individual items over £2,000 that are not specified on the policy would not be insured. UKI said Miss B had numerous items above this limit and, therefore, they should've been specified.

Looking at the loss list, I note there are three items which exceed the single item limit. However, those items do not meet the policy definition of valuables, so it was unfair for UKI to apply the policy limits as if they were valuables. That said, if UKI considers that any of the losses fall within another section of the policy, such as personal possessions, it would be reasonable to consider the claim under the relevant terms and conditions.

In summary, the evidence persuades me that UKI's investigation of Miss B's claim correctly identified that she was underinsured for her contents. But its decision to not pay her claim and avoid her policy for reckless misrepresentation was unfair in all the circumstances. In respect of the valuables, I'm satisfied that the policy makes it clear that limits apply if a high value item is not specified, and UKI would be entitled to apply those limits. But, given that UKI confirmed the policy premium would've been no different if Miss B's contents cover was £100,000, it's more likely than not that she would've increased her cover had she realised her clothes, shoes, and bags contributed to the value.

Therefore, I consider it fair and reasonable for UKI to reinstate the policy, underwritten based on the true contents value. UKI should then reconsider Miss B's claim based on the new policy terms and conditions, including any relevant endorsements. If UKI considers that exclusions apply under the new policy, it would need to explain that to Miss B.

My final decision

For the reasons I've explained above, and in my provisional decision, U K Insurance Limited must:

- reinstate the policy, re-underwrite it as if there was no misrepresentation, and reconsider the claim in line with the new terms;
- assess the claim for valuables in line with the policy definition and the relevant terms and conditions, and assess all other items in line with the remaining terms of the policy, and
- pay £300 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 2 February 2024.

Debra Vaughan
Ombudsman