

## **The complaint**

Mr and Mrs N complains Highway Insurance Company Limited avoided their home insurance policy (treated it like it never existed) and refused to pay their claim.

## **What happened**

In June 2023, Mr and Mrs N reported a claim for theft after they'd been burgled whilst away.

When reviewing the claim, HICL discovered Mr and Mrs N had an active limited business (recorded as a manufacturer of other fabricated metal products) being run from the substantial workshop to the rear of the property. The loss adjusters report stated Mr N had previously run a successful business from the very large two storey workshop employing 11 people. That business was ultimately sold, and Mr N's activities had been scaled down over the years to the point where he no longer had any employees, but still has the odd client customer (by appointment only) who attends the workshop, which he uses to carries out metal and wood working activities.

HICL says Mr and Mrs N failed to disclose this when the policy was first taken out and when it was renewed. It says this information was set out in the initial policy and renewal documents, which notified Mr and Mrs N of the importance of ensuring the information was correct. And its underwriting criteria meant it wouldn't have offered cover if Mr and Mrs N's business use had been disclosed to it. HICL considered this a qualifying misrepresentation. Because this hadn't been disclosed at policy inception nor renewal, it avoided their policy, declined the claim, and said it would refund the policy premiums Mr and Mrs N had paid since March 2022.

Mr and Mrs N complained to HICL. They made a number of points including the following:

- The failure to declare a business operating from their address was an oversight which was in no way deliberate.
- The business was more of a hobby, working towards retirement, dealing with a select number of long-standing clients.
- The house is separate to the workshop and business wasn't operated from their home. Therefore, the household aspect of the claim should be covered.
- Confusion had arisen as the schedule shows business equipment is covered.
- The decision by HICL to avoid their policy is having a significant practical and financial impact on them and their wellbeing.

HICL didn't change its view. However, it explained the reason business equipment up to £10,000 is covered by the policy is for the equipment used by someone undertaking clerical work at home, which would be covered by the policy. And HICL pointed to the definition of '*Business Equipment*' in the policy terms which supports this.

Mr and Mrs N brought their complaint to this service. The Investigator looked into matters but didn't think it should be upheld. He thought there had been a careless qualifying misrepresentation, so, HICL was entitled to take the steps it had.

Mr and Mrs N don't agree with this. They reiterated the error was a genuine and innocent mistake and say they accept there is no valid claim. The company has now ceased to trade and final tax return submitted to HMRC. Mr and Mrs N also say HICL has the option to avoid the policy but isn't required to. In this situation, they asked for HICL to reverse its decision to avoid the policy as it's this which is having the most significant impact on them. Specifically, they've asked for the Ombudsman to take certain matters into account including their age and lack of any negative history in the insurance industry. Lastly, they explained the premiums still hadn't been returned to them and this Service contacted HICL about this. Ultimately, the 2023 premium was returned in January 2024 and the 2022 premium returned in March 2024. HICL has since offered £100 compensation to recognise time it took for the refund to reach Mr and Mrs N.

As an agreement couldn't be reached, the matter was passed to me for 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.

Having done so, I must tell Mr and Mrs N I think the investigator has reached a fair outcome here. So, I don't uphold their complaint in this matter, which I understand will come as a huge disappointment to Mr and Mrs N. I'll explain why.

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.

If the 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 must 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.

HICL says Mr and Mrs N failed to take reasonable care not to make a misrepresentation when they didn't tell it about the business being run from the property at policy inception in March 2022 or on renewal in March 2023. It says when Mr and Mrs N took out their policy, and at renewal, they were asked a number of questions, including about the use of the property, and it used this information, along with the responses to its other questions, to evaluate the risk of the policy. When the policy renewed, the information Mr and Mrs N had provided was set out in the policy documentation they were sent by their broker.

I'm satisfied the policy documents and renewal information they received was clear - it was Mr and Mrs N's responsibility to ensure the answers given and details set out in their policy were accurate. The questions asked are set out below.

2022 *'Is the property insured...lived in or used in any way for trade, professional or business purposes? If yes, is the business use restricted to clerical use only?'*

2023 *'Is any business carried out at the property?'*

The answer to these questions was 'No' when it should have been yes. Whilst I recognised Mr and Mrs N have said this was a mistake made without any ill intention, this doesn't change the fact the answer wasn't an accurate representation of the risk they were seeking cover for.

HICL sent this service evidence it wouldn't have accepted the risk had it known Mr and Mrs N were using the property for their business at the time the policy was inception and renewed. Having reviewed this evidence, I accept cover wouldn't have been provided. It follows Mr and Mrs N's representation was a qualifying one.

Mr and Mrs N's representation has been treated as a careless qualifying misrepresentation. As this is the most favourable to them and recognises there was no deliberate intention to deceive, I don't intend to interfere with this.

In light of the above, HICL was entitled to avoid Mr and Mrs N's policy from the policy inception in March 2022. As this means - in effect – their policy never existed, HICL doesn't have to deal with Mr and Mrs N's claim following the theft. And Mr and Mrs N confirm the premiums paid in 2022 and 2023 have now been returned to them.

Mr and Mrs N have described the impact on them of HICL's decision to avoid their policy in addition to the burglary. Notwithstanding this, HICL has maintained its decision to avoid the policy under CIDRA. Whilst I sympathise with the situation Mr and Mrs N are in, it's my role to decide if the action HICL has taken is in accordance with the relevant law. Having taken everything into account, I'm satisfied it is. So, whilst I recognise the significant impact the avoidance is having, I don't uphold this complaint against HICL.

I note Mr and Mrs N say recently there has been little business to account for as Mr N is semi-retired. They also say they thought there was cover for business equipment of £10,000. But I'm not persuaded this alters the outcome of their complaint. This is because Mr and Mrs N were obliged to provide accurate information in their answers, taking care not to make a misrepresentation even if this wasn't deliberate. So, any business use at the property - even if this had reduced from what it had been previously - needed to be disclosed when asked about it. And I'm satisfied the terms about business equipment are clear. Even so, if Mr and Mrs N were unclear about anything they had the opportunity to obtain assistance from their broker or contact HICL to clarify matters. At the time of the policy inception and renewal, the information they gave about business use at the property wasn't correct.

I recognise Mr and Mrs N will be disappointed with this outcome. But my decision ends what we – in trying to resolve their dispute with HICL – can do for them.

Finally, I note HICL's offer to pay £100 to Mr and Mrs N for the time it took the refunded premiums to reach them was accepted without prejudice to the Ombudsman's consideration of their complaint about HICL's decision to avoid their policy. Having now done so, I consider the offer made by HICL for this aspect to be a fair and reasonable way to compensate Mr and Mrs N for the delay.

**My final decision**

For the reasons set out above, I don't uphold the Mr and Mrs N's complaint about the avoidance of their home insurance policy. Highway Insurance Company Limited doesn't therefore need to do anything more than it has already offered to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N and Mr N to accept or reject my decision before 1 May 2024.

Rebecca Ellis  
**Ombudsman**