

The complaint

Mrs H complains that Advantage Insurance Company Limited rejected a claim on her buildings insurance policy and said the policy was void.

What happened

Mrs H took out home buildings insurance in June 2020 and renewed the policy in June 2021 and June 2022.

She made a claim on the policy in February 2023 after a surveyor had noted an issue with the wall adjoining her neighbour's property. The surveyor said there was significant movement in the garage and car port, which was likely due to nearby vegetation and the hot summer of 2022.

Advantage appointed loss adjusters who inspected the property. After considering the loss adjusters' comments, Advantage said it would not cover the claim, was declaring the policy void as from its start date and would return the premiums Mrs H had paid. It said there were longstanding cracks in the walls which had been there for some years – before Mrs H had bought the house in 2015.

Advantage said it wouldn't have provided insurance if it had known about this, and said Mrs H had failed to disclose nearby vegetation, and this was also a factor in deciding to void the policy.

Mrs H didn't agree and complained but Advantage didn't change its position, so she referred the complaint to our Service. She said she hadn't noticed any damage when she bought the property, it hadn't been noted on the mortgage valuation done at the time, and the surveyor who had visited had said the previous repairs noted were cosmetic and not structural.

Our investigator thought the complaint should be upheld. She said:

- Advantage had only provided limited evidence.
- This didn't include all the evidence showing what question Mrs H had been asked when she took out the policy or when she renewed it, or evidence showing Advantage would not have offered her insurance.
- She didn't think the evidence showed the damage had been present before Mrs H bought the house.
- So it wasn't fair to reject the claim or to void the policy.

Advantage didn't accept the investigator's view and asked what evidence it would need to provide to confirm its position. The investigator explained what evidence was needed but Advantage didn't provide anything further.

As no agreement has been reached, I need 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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly, and not unreasonably reject a claim. When reviewing the complaint I've taken these rules into account, together with the relevant law – in this case, the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA").

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out an insurance policy. The standard of care is that of a reasonable consumer.

If a consumer fails to take reasonable care and makes a misrepresentation, the insurer has certain remedies if there is a qualifying misrepresentation, as defined in CIDRA. For it to be a qualifying misrepresentation the insurer has to show it would either have offered the policy on different terms or not offered it at all, if the consumer hadn't made the misrepresentation.

I first need to consider if there was a misrepresentation. CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. One of these is how clear the question asked was.

When Mrs H bought the policy she was asked a number of questions. Advantage says she was asked questions about whether there was bulging or cracking in the walls of the property, to which she answered "no". And it says the evidence shows there would have been cracking or bulging in the walls so her answer was not accurate; she should have said "yes".

For there to be a misrepresentation there would need to be evidence Mrs H was asked a clear question before she bought the policy, failed to take reasonable care when answering, and Advantage would not have offered the policy on the same terms (or at all) if it had been given the correct information.

Our investigator asked Advantage to provide all evidence from the sale to show the question Mrs H was asked about this but it hasn't provided this. So I can't be satisfied she was asked a clear question about bulging or cracking in the walls.

Advantage also failed to provide evidence to show what it would have done differently if Mrs H had answered "yes" to this question.

Advantage has also said Mrs H didn't disclose nearby vegetation to her property. It has provided screenshots that show she was asked: "*Are there any trees higher than 10 metres tall, within 5 metres of the property?*" And she answered "no".

So I think she was asked a clear question about nearby vegetation. But Advantage hasn't provided any further evidence about the height of the trees, or why Mrs H should have been aware the answer to this question should have reasonably been "yes".

Mrs H's surveyor said she gave correct answers as there are no trees over 10m tall within 5 metres of property and confirmed she was unaware of the cracking. He says there was only superficial pointing in the garage – not cracks in the wall itself.

The surveyor said "*The car port has suffered more substantial damage which is now evident, but not as implied over a period beyond the policy.*" And he said, "*the exposed mortar which may have been painted at the time the photograph was taken and since uncovered, is not a*

repair in the sense to rectify a structural failure; it is just superficial pointing which was not applied by the insured. The mortar is now cracked which means is a 'recent' failure."

The surveyor's opinion was that repairs mentioned in the house valuation report were cosmetic, not structural. Looking at the report I would agree – it didn't say there were any serious or structural issues with the property.

Taking all of this into account I don't think Advantage has shown the damage was already present before Mrs H bought the house or that there was a qualifying misrepresentation when she took out the policy.

At each renewal, Mrs H was sent policy documents and asked to say if anything was incorrect. But our investigator also asked Advantage for evidence of any questions asked of her and answers provided. Again, we haven't been given this evidence, or any underwriting evidence that shows what Advantage would have done differently if Mrs H had provided different information.

I don't think it can be said there was a qualifying misrepresentation either when Mrs H bought the policy or when she renewed it, or that the damage was already present when the policy was bought. So it wouldn't be fair to reject the claim and void the policy.

Mrs H has explained how upsetting the situation has been for her, as the damage to her property and the garage is progressive and is getting worse. She's also explained that although she was able to get insurance for her property with another insurer, it doesn't cover subsidence. She's been worried that she will need to sort out the subsidence and get the repairs done herself, which she can't afford.

Subsidence claims like this can be complex and expensive to deal with. This has caused Mrs H a lot of worry. In the circumstances, I think it's fair that she's compensated for all the distress and inconvenience caused, together with putting right the problems with her house.

It's not clear whether the premiums have been returned; Mrs H says she didn't receive them and the bank card that Advantage said it would use for the refund was no longer in use. But if they were, Advantage may request payment again.

If the insurance Mrs H obtained elsewhere was more expensive as a result of her policy being voided, she should be reimbursed for this; it would not be fair for her to be out of pocket.

Putting things right

To put things right, Advantage should

- reinstate the insurance policy and remove any records of the voidance from all internal or external records;
- ensure Mrs H has ongoing and uninterrupted subsidence cover until the present day;
- accept and deal with the subsidence claim, without reference to damage being pre-emption, in line with the remaining policy terms;
- pay the difference in cost between the policy provided to Mrs H by an alternative insurer and the policy that would have been provided by Advantage if the policy had not been declared void; and
- pay Mrs H £650 for the distress and inconvenience caused.

My final decision

I uphold the complaint and direct Advantage Insurance Company Limited to take the steps and pay the compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 19 July 2024.

Peter Whiteley
Ombudsman