

## **The complaint**

Mr and Mrs G are complaining that Financial Management (U.K.) Limited (trading as Commercial Direct) didn't provide their insurer with accurate information when arranging a buildings insurance policy for them. They said this meant the insurer subsequently avoided the insurance policy and declined a claim they made.

## **What happened**

The facts of this complaint are well known to all parties, so I won't set them out in detail. But, in summary, in March 2019 Mr and Mrs G took out a buildings insurance policy through Commercial Direct – a broker. In September 2019 Mr and Mrs G's property suffered damage arising from water exiting a drain. The claim was settled around January 2020. The policy then renewed in March 2020.

In February 2021, the insurer wrote to Commercial Direct to say it wasn't willing to renew Mr and Mrs G's insurance policy. So Commercial Direct looked to source another policy. It ended up arranging another policy, which was also underwritten by the same insurer, albeit managed by another company.

In July 2021 a significant flood occurred in Mr and Mrs G's area which caused significant water damage to their property. Mr and Mrs G then looked to claim for the damage against their insurance policy.

The insurer investigated the claim but, in doing so, discovered that Mr and Mrs G had not disclosed the previous claim. It said it wouldn't have provided the insurance policy had Mr and Mrs G disclosed the claim so it avoided the insurance policy back to the start and declined the claim.

Mr and Mrs G complained to both the insurer and Commercial Direct. Commercial Direct acknowledged it had made a mistake in not disclosing the claim. But it said the insurer should have known about the claim, given it was the one to settle it. So it thought liability rested with the insurer.

Our investigator upheld the complaint and said that Commercial Direct should pay Mr and Mrs G £1,000 in compensation. Both parties initially accepted the investigator's opinion. However Mr and Mrs G later said they didn't agree as they initially thought the insurer was going to settle the claim in full, but they'd since learnt it wasn't going to do so. So they think their losses were going to be significantly higher. And they still held Commercial Direct responsible for this.

Commercial Direct didn't think it was liable to pay anything more than the £1,000 in compensation that was previously agreed.

I issued a provisional decision upholding this complaint and I said the following:

*"I think there are two things for me to consider here:*

- 1. Given the previous acceptance of the investigator's opinion, can I reconsider this complaint; and, if so*
- 2. Should Commercial Direct pay any additional compensation.*

*I shall consider each point separately.*

*Can I consider this complaint?*

*Our powers to consider complaints are set out in the Financial Services and Markets Act 2000 (FSMA) and in rules, known as the Dispute Resolution Rules (DISP), written by the FCA in accordance with the powers it derives from FSMA. These form part of the FCA Handbook.*

*I haven't seen anything within our rules that set out I can't consider this complaint or that Mr and Mrs G are bound by previously agreeing with the investigator's opinion. But I also need to think about whether it would be appropriate for us to do so.*

*DISP 3.3.4A allows me to dismiss a complaint without considering its merits in certain circumstances. And it sets out when I can consider doing this. DISP 3.3.4A(5) says one of these circumstances would be when "dealing with such a type of complaint would otherwise seriously impair the effective operation of the Financial Ombudsman Service."*

*I've thought about whether to continue our investigation, given that both parties initially agreed to the investigator's compensation recommendation, would seriously impair the effective operation of the Financial Ombudsman Service – in short whether it would be appropriate to continue. But, while I note Commercial Direct's comments in this regard, I'm not persuaded it would be.*

*It's ultimately for me to decide whether I should dismiss this complaint or not. And in thinking about this, I've thought about the intention of the rules and the purpose of this Service. This Service's role is to resolve specific disputes and in doing so, we consider whether a business has done what it should have done and, if not, we look to put things right. It's clear the level of losses Mr and Mrs G may incur were potentially significantly more than what they expected when they agreed to the investigator's opinion. So, in the specific circumstances of this case, I think to dismiss this case could result in an unfair outcome and is contrary to the intentions of the rules allowing this Service to dismiss a complaint. Given this, I don't intend to do so in this case and I think it is fair for this Service to continue with its investigation.*

*Should Commercial Direct pay any additional compensation?*

*The relevant law for when a consumer takes out an insurance policy 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. The standard of care is that of a reasonable consumer.*

*The insurer has set out that Commercial Direct, on Mr and Mrs G's behalf, didn't answer the following question correctly:*

*"Has the applicant or anyone else to be insured had any claims, losses or damages in the last five years"; and*

*The insurer also says Commercial Direct incorrectly confirmed the following statement to be true:*

*"Neither the property or grounds have suffered from flooding".*

*The insurer said Mr and Mrs G had made a flood claim in 2019, but Commercial Direct had said Mr and Mrs G hadn't made any claims.*

*Under CIDRA, it's for Mr and Mrs G to take reasonable care not to make a misrepresentation. But, as their broker, Commercial Direct was required to do this on their behalf. This means it needed to ensure it had all the relevant information to do this.*

*Commercial Direct doesn't dispute it made an error here. It was aware Mr and Mrs G had made a claim in 2019 and neglected to tell the insurer this. I'm also aware it arranged other insurance policies for Mr and Mrs G prior to the policy in question and it disclosed an escape of water claim in these applications.*

*So it's clear it was aware of the claim, but didn't tell the insurer this. So it failed in its duty to ensure Mr and Mrs G took reasonable care not to make a misrepresentation. And, as I said, Commercial Direct accepts this. However, it believes it was unreasonable for the insurer to have avoided the insurance policy given it was the one to deal with the claim as it should have known it was given incorrect information. It also disagreed that it should have recorded a flood claim. It said the circumstances of the incident meant that it considered the claim to be an escape of water.*

*This Service has considered the complaint about the insurer separately so I'm not considering the insurer's actions in this decision.*

*While I think Commercial Direct has acted unreasonably in not disclosing a claim, I don't think it's unreasonable it thought the claim was an escape of water claim. I've not seen anything to show the insurer had told Commercial Direct or Mr and Mrs G it had treated the claim as a flood claim. The circumstances of the claim were that a blockage in the drainpipe caused water to build up and come out of the pipe and damage the property. Ultimately, taking everything into consideration, I think a reasonable consumer would have thought that Mr and Mrs G had made an escape of water claim. And I haven't seen anything for me to say either they or Commercial Direct should have known otherwise. So I think Commercial Direct's error was not disclosing the escape of water claim.*

*I note Commercial Direct has said that the insurer should have known about the claim. But this doesn't detract that it was Commercial Direct's error that caused the claim to not be disclosed. And it also needs to be remembered that this was an entirely new application, which I'm conscious Commercial Direct did through an underwriting agency as opposed to through the insurer directly. So I still think Commercial Direct needs to compensate Mr and Mrs G for their losses.*

### ***Putting things right***

*As I said above, Commercial Direct failed in its duty to Mr and Mrs G to ensure they took reasonable care not to make a misrepresentation. The insurer would have acted differently*

*had they done so, so this would be considered what's called a qualifying misrepresentation under CIDRA. CIDRA gives the insurer a specific set of remedies where there's a qualifying misrepresentation. And one of these allows the insurer to pay a percentage of a claim payable under the policy based on the proportion of premium Mr and Mrs G paid against what they would have paid had they disclosed the escape of water claim. And I think this is likely to be the loss Mr and Mrs G will have suffered as a result of Commercial Direct's error. So, subject to Mr and Mrs G showing that the insurer has reduced the value of the claim on the basis of them not disclosing an escape of water claim, I think Commercial Direct should cover the percentage reduction in the claim.*

*It's also clear this matter has caused Mr and Mrs G a lot of distress and inconvenience. They've had an insurance policy avoided and their claim declined. Their property suffered significant damage around two years ago and they were prevented from claim for these losses primarily due to Commercial Direct's actions. The investigator recommended it pay them £1,000 in compensation and I think that's fair."*

Both Mr and Mrs G and Commercial Direct disagreed with my provisional decision.

Mr and Mrs G said Commercial Direct also arranged the policy with an insufficient sum insured. They said the policy in question had a reinstatement value of £1,000,000, whereas the previous policy didn't have any reinstatement limit. They highlighted the compensation I've awarded doesn't take this into account.

Commercial Direct said it dealt with a number of assets for Mr and Mrs G. But it set out that, throughout all the policy applications, it only dealt with Mr and Mrs G's son. It said, while it accepts it made a mistake, when the policy was replaced at subsequent renewal, Mr and Mrs G's son paid no attention to the insurance policy despite several conversations it had with him – as well as the loss adjustor on the claim – highlighting underinsurance issues. It highlighted Mr and Mrs G's son is an experienced landlord and was aware of the necessity for policies to be checked thoroughly. But it said he didn't engage with Commercial Direct to allow this to happen. So it feels that there should be some form of contributory negligence on behalf of him to be taken into consideration.

### **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.

I've taken all parties comments into consideration, but I've come to the same conclusion as I did in my provisional decision. I'll explain why.

Firstly, all parties have made reference to Mr and Mrs G potentially being underinsured on the policy. But, in this decision, I can only consider anything that Mr and Mrs G raised with Commercial Direct *before* they asked this Service to get involved. While the insurer has made reference to Mr and Mrs G potentially being underinsured (i.e. the declared sum insured is allegedly less than it would cost to rebuild the property), it hasn't set out this is actually the case. And, crucially, I haven't seen anything to show that Mr and Mrs G raised this issue with Commercial Direct before they referred this complaint to this Service in February 2023. So I'm unable to consider Mr and Mrs G's comments regarding this in this decision.

Commercial Direct has set out that it was Mr and Mrs G's responsibility to read and check the documentation it sent out. And I don't disagree with that. But, at the same time, they're entitled to trust their representative has presented to the insurer all the relevant information they've provided. And any concerns Commercial Direct has about Mr and Mrs G's son's

actions after the event and in relation to other policies, doesn't detract from the fact that the fundamental reason Mr and Mrs G found themselves in the position they're in is because it didn't include the claim it was aware of.

So, while I do understand Commercial Direct's comments, I can't reasonably conclude that Mr and Mrs G need to share sufficient the responsibility for the failure to tell the insurer about the claim so that they need to contribute towards the losses Commercial Direct caused. So I remain of the opinion that the redress I set out in my provisional decision is the fairest to put things right.

### **My final decision**

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Financial Management (U.K.) Limited to do the following to put things right:

1. Subject to Mr and Mrs G showing that the insurer has reduced the value of the claim on the basis of them not disclosing an escape of water claim, Financial Management (U.K.) Limited should cover the percentage reduction in the claim arising because of this.
2. Pay Mr and Mrs G £1,000 in compensation if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 15 July 2024.

Guy Mitchell

**Ombudsman**