

The complaint

Ms J has complained that UK Insurance Limited ('UKI') under her buildings insurance policy. For the avoidance of doubt, reference to UKI includes its agents, loss adjusters and representative. Reference to Ms J also includes reference to submissions made on her behalf by her authorised representative.

What happened

Ms J's mother's property unfortunately sustained extensive water damage at the end of December 2022. Ms J lodged a claim with UKI as she'd taken out a home insurance policy for the property with UKI. She'd originally taken out the policy in July 2020 and it had then been renewed automatically. In reporting the incident, Ms J gave her own address as being different to that of the flooded property. In May 2023, UKI declined Ms J's claim and voided the policy from inception as it didn't consider that Ms J was using the insured property as her main residence. It also refunded all premiums paid. It considered that a qualifying misrepresentation had been made under the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA').

Ms J complained to UKI as she said that she was living at the property as her main residence with her family in July 2020. She said that it was of no relevance that her mother owned the property. Also, she couldn't trace any renewal documents that had been sent to her. She said that as the rationale for voiding the policy was incorrect, she wanted UKI to reinstate her policy and she also wanted her claim for losses to the property and its contents to be covered, less the insurance premiums that were refunded to her. UKI maintained its position however, and Ms J then referred her complaint to this service.

The relevant investigator didn't uphold Ms J's complaint. He didn't think that Ms J had taken reasonable care in responding to questions and on renewal. As to UKI's decision to treat Ms J's misrepresentation as a qualifying one, he considered this to have been fair and reasonable and that UKI wouldn't have renewed the policy had Ms J confirmed she wasn't living at the property as her main residence. He considered her misrepresentation to be untrue or misleading. The investigator also thought that Ms J would have known that the issue about main residence was relevant to UKI. As to UKI's decision to return the premiums, he said that this wasn't exactly in line with CIDRA, but was favourable for Ms J so he didn't recommend further action. As to UKI starting to process the claim and then returning furniture to the property, he didn't think these actions were unfair or unreasonable.

Ms J was unhappy with the outcome of her complaint and the case has therefore been referred to me to make a final decision in my role as Ombudsman.

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 key issue for me to determine is whether UKI acted in a fair and reasonable manner in relying upon the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA')

to decline her claim and void her policy. Unfortunately for Ms J, I can't say that UKI acted in an unfair or unreasonable manner, and I'll explain why.

In reaching this final decision, I've carefully considered the submissions of the parties as summarised below. I turn firstly to Ms J's submissions. She said that when she originally took out cover, she lived at the insured property with her husband, child and mother, her mother being the registered owner. Ms J's representative later stated that Ms J's husband worked in health care and the presence of Covid-19 restrictions at the time meant that he lived at another property. Ms J said she'd acted with reasonable care when she purchased the policy, so there was no misrepresentation. She'd entered her own details as she'd been residing at the property while her own home was undergoing work.

Ms J said that she could just as easily have placed the policy in her mother's name and that this wouldn't have made any material difference to UKI's decision whether to offer cover, and the risk would have remained exactly the same. She referred to Schedule 1 of CIDRA and seriously doubted that UKI wouldn't have agreed to insure the property. She said that under the wording of the policy, being the owner of a property or having a financial interest in it had no relevance and wasn't a condition of cover. She said that *'given the circumstances at inception of the policy, I was acting in accordance with the terms of the policy and was entitled to take out the cover.'* She added that her mother had been financially dependent on Ms J since 2005, hence the reason why the policy was taken out by and paid for by Ms J.

Ms J said that following the incident in December 2022, there was a delay of some six weeks in UKI's agent assessing the damage, and three months before a loss adjuster inspected, and repair and contents replacement estimates were produced. UK's subsequent letter of May 2023 stating that the insurance policy was void as from July 2020 was unexpected. She considered that, as UKI had removed furniture, it had assumed risk, and had therefore *'affirmed the contract in [l]ight of its actions and is now bound to indemnify for the loss.'*

Ms J said that UKI's rationale for voiding her policy was simply incorrect. In the relevant proposal confirmation form, the checklist questions as to eligibility included *'Do you and your family occupy the home permanently?'* and, *'Are you and your family the only people who occupy the home?'* She said that her affirmative answers were correct in both cases, and she'd answered honestly and truthfully. Ms J said the policy then automatically renewed. She could find no trace of follow-up emails from UKI asking her to check any details or to update them regarding any changes, and all premiums were duly paid. Ms J said that had she been asked to clarify any change in circumstances, *'it would have been a simple enough exercise for me to simply arrange cover in my mother's name which of course I would have done'*, when required. In summary, she said she was provided with no opportunity to update the details on renewal.

The word *'home'* was defined in the wording of the policy as *'the main residence occupied by you, at the address shown in your schedule...'* Ms J said that there was nothing in the policy to suggest that there was any requirement for the proposer to be the registered owner of the property. She said the only requirement was that it must be the policy holder's main residence, and this was the case when she filled in the form and incepted cover. She said that she therefore fitted UKI's own criteria for being insurable when the policy was incepted and that there was no reason to retrospectively void cover.

Ms J felt that following input from her solicitor, UKI sought to introduce new reasons for its decision to decline the claim and void the policy. She said that its new reason was based on a clearly misconceived rationale. It had referred to the fact that policies were also incepted by Ms J in relation to two flats, which it said was inappropriate, and *'this somehow justified the decision to void cover in respect of [the property in question] ...'* Ms J said that the flat policies weren't relevant to the current issue, and she thought that UKI was seeking to

conflate two separate issues. She said that under CIDRA, specific contracts between consumers and insurers are the ones that must be considered, and that each insurance contract should be treated separately.

Ms J said that following the voiding of the insurance policy, UKI decided to return the furniture to the property, and she said that this caused additional damage to the furniture as the underlying water damage hadn't been remedied. She said that she would therefore have to incur costs in *'replacing furniture that may otherwise have been salvageable'*. In addition, due to the sudden and unexpected voiding of the policy, Ms J felt she had little option but to seek legal advice and she'd therefore incurred significant legal costs which would further increase as the matter proceeded.

Ms J apologised for *'conflicting information'*, to which the investigator had referred in his view and said that the oversight was a *'simple error and was not intended.'* However, she said that it made no material difference in any event and the representations made on inception remained correct.

As to CIDRA, Ms J said she had *'not been dishonest throughout the process of renewing the insurance policy.'* She said the fact that she told the underwriting team where she was living at the time of renewal showed that there was no dishonesty, and that there was *'a lack of clear communication on the part of the insurer due to the fact the renewal letters allegedly sent to [her] were not received by her and were not followed up by emails or phone calls to confirm agreement of the terms.'* As such, Ms J was adamant that there was no 'qualifying misrepresentation', and particularly no deliberate or reckless one, as she didn't know that the information she provided was 'untrue or misleading' as per Section 5(2)(a) of CIDRA. She didn't consider that UKI had communicated clearly as per CIDRA in connection with renewal.

I now turn to UKI's submissions in response to Ms J's complaint. In summary, UKI maintained its decision to avoid Ms J's policies for misrepresentation under CIDRA, and to refund premiums that she'd paid. It considered that the misrepresentation had been either deliberate or reckless. It said that if it had been provided with the correct information, it wouldn't have offered insurance to her.

UKI said that its records had shown that when she purchased the policy online in 2020, she'd agreed with the statement: *'The home you want to insure is your main residence which only you and your family occupy.'* It said that the documents sent to Ms J following the purchase had confirmed this answer. It said that it was now aware that the property wasn't Ms J's main residence and was owned by her mother, *'who permanently resides at the property.'* UKI said that its acceptance criteria didn't allow cover where the home wasn't the policy holder's main residence. It said that if it had been provided with the correct information, it wouldn't have offered her insurance. It treated the policy as void from July 2020 and said, *'which effectively means that there has been no cover in force.'*

UKI said that during the validation process, it came to light that the property wasn't Ms J's main residence as she resided at a different property. It was established that the property in question was the main and permanent residence of Ms J's mother. It said that Ms J did previously insure the different property, however this was cancelled in July 2022. It noted that Ms J also had policies for two flats, and that she'd insured these properties as her main residence also, although they were rented to tenants. It said that Ms J had explained that she'd taken out the relevant policies on the assumption that these would cover her to rent the flats out, however this wasn't the case as these policies were a product for tenants who were renting properties. It said that Ms J confirmed that she hadn't checked the documents and didn't recall the online assumptions.

As to any delays in the claims process, UKI apologised, and said that these were due to *'a nationwide surge of similar claims which resulted in unprecedented claims volumes at that time.'* It offered £50 compensation to Ms J in this respect. As to the furniture, which was returned to the property, it said that the items were returned with the agreement of Ms J once the policy was declared void.

UKI concluded that the policy holder was responsible for ensuring that the information they provided was accurate and kept up to date. It added that it didn't consider it reasonable or practicable to expect the insurer to extend communication to phone calls or emails at the point of renewal, to check that the information provided by the policy holder was up to date and to check that Ms J was at the relevant address to receive it. It said that this was the root cause of Ms J's renewal notice not being received. UKI added that the outcome included consideration of information presented to it at different points, and across all products held by the insured. It said that in this case, its investigations had highlighted that Ms J had provided inconsistent or misleading information on a number of occasions, *'so much so that it's now unclear what the correct information is'*.

I've also checked UKI's case-notes and chronology regarding this matter. I note that the online assumptions when taking out a policy includes the following, *'Please confirm the following statements are accurate: The home you want to insure: is your main residence which only you and your family occupy....'* And also *'Are you and your family the only people who occupy the home?'* UKI provided details of different insurance policies taken out by Ms J from early 2022 which gave different addresses for her main residence on each occasion.

I now turn to the reasons for my decision not to uphold Ms J's complaint. I've carefully considered all the above evidence and submissions. The starting point is the legislation regarding misrepresentation. This is found in the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') which states that it's the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer. If a consumer fails to take care in giving or confirming information, the insurer then has certain remedies where there is a 'qualifying misrepresentation'. For there to be a qualifying misrepresentation, the insurer must show that it would either have offered the policy on different terms or indeed that it wouldn't have offered the policy at all if the consumer hadn't made the misrepresentation. The insurer's remedy depends on whether any qualifying misrepresentation was deliberate, reckless, or careless.

Under Section 5 of CIDRA, a qualifying misrepresentation is deliberate or reckless if the consumer *'knew that it was untrue or misleading or did not care whether or not it was untrue or misleading,'* and knew that this was a relevant issue to the insurer or didn't care whether or not it was relevant to the insurer. It also makes it clear that it's for the insurer to show that a qualifying misrepresentation was deliberate or reckless, but it's presumed, unless the contrary is shown, that the consumer had the knowledge of a reasonable consumer, and *'that the consumer knew that a matter about which the insurer asked a clear and specific question was relevant to the insurer.'*

Under Schedule 1 of CIDRA, if a qualifying misrepresentation is deliberate or reckless, the insurer can avoid the contract and refuse all claims, and need not return any of the premiums paid, *'except to the extent (if any) that it would be unfair to the consumer to retain them.'* If the misrepresentation was careless, then to avoid the policy, the insurer must show it wouldn't have offered the policy at all if it wasn't for the misrepresentation. If it would nevertheless have provided insurance but on different terms, then those different terms would apply.

I note that Ms J originally took out insurance for the property in July 2020 and that it was renewed in July 2022. It's unclear when and if Ms J moved into the relevant property and also when she moved out of it if she'd lived there. However, she confirmed in December 2022 that she wasn't living at the relevant address. The standard instructions to policy holders make it clear that where a change of circumstances occurs then the insurer must be notified of such change. Where a policy holder is familiar with the insurance regime and has held several policies, whether for property or motor insurance as appears to be the case here, Ms J will have been made aware on several occasions of the standard requirement to inform the insurer of any change of circumstances. Whether the policy holder permanently resides at an insured property is a standard question which is asked of the individual when taking out a home insurance policy.

In this case, I note that Ms J took out a policy for the relevant property in July 2020, but from her phone call to alert UKI of the flooding incident which had occurred in December 2022, it was clear that by this stage, Ms J was no longer resident at the property, but that she hadn't informed UKI of the change in circumstance at a previous date. She hasn't disputed that this was prior to July 2022. Therefore, I don't consider that Ms J took reasonable care at the time of automatic renewal in June 2022, as she knew that she wasn't living at the risk address and so ought to have notified UKI of the incorrect information in the policy or of the change in circumstance.

I'm satisfied from the case file evidence that UKI did send out renewal information with renewal invites to Ms J. This information states that; *'It is therefore essential that you carefully read the information contained in this letter and advise us if anything is incorrect, incomplete, no longer entirely accurate or if you are unsure about any of the details. Failure to do so may adversely affect your policy and any claims you may seek to make under it'*

I appreciate that Ms J said that she didn't receive communication which would have reminded her of the need to inform UKI of such change of circumstances. As above however, this is a standards requirement, of which I consider that Ms J should have reasonably been aware. UKI cannot be criticised therefore for having sent all correspondence to the relevant property. In any event, Ms J has stated that her mother was financially dependent upon her. On the balance of probabilities, Ms J would also be reasonably expected to have been aware of any financial or insurance correspondence which arrived at the property.

In the circumstances, whilst I don't find that Ms J had deliberately failed to inform UKI of the true situation in terms of where she was permanently residing. It wouldn't have been in her interests to do so. However, I can't say that it was unfair or unreasonable for UKI to determine that her failure was reckless in all the circumstances. CIDRA makes it clear that a failure to comply with the request to amend particulars previously given is indeed capable of being a misrepresentation. In the circumstances, I also consider that UKI had gone further than it needed, and had acted in a fair and reasonable manner, in refunding all premiums since inception of the policy.

Even if it could be said that Ms J failure to notify UKI of the change was careless rather than reckless, I'm nevertheless persuaded, that in view of the number of concerns which it had about inconsistent information having been provided by Ms J in relation to other policies, that UKI wouldn't have offered a policy at all in this instance. Again, I can't say that this would have been an unfair or unreasonable stance for UKI to have taken. It also returned the premiums, as required in the event of a careless misrepresentation. I'm satisfied that Ms J wouldn't have met the eligibility criteria and at this point, any renewal invite would have been withdrawn. It's not known whether, if Ms J had then sought a different policy for mother, she would have been eligible under the relevant criteria. However, it's clear that the specific insurance policy, in Ms J's name, would not have been provided.

Unfortunately, the evidence has shown that Ms J hasn't been entirely consistent in her communications with UKI. It appears that she's provided answers on occasions which have been expedient or reckless. I note that Ms J purchased other policies listing herself as the policyholder and her main residence as being for all addresses at the same time. Ms J also said that she'd lived at the relevant property during Covid-19 and that her husband had lived at another property, however in her complaint form she stated that she lived at the relevant address with her husband, child and mother. She'd also stated to UKI on reporting the incident that it had been discovered by her mother when she came to stay for Christmas. T.

As to Ms J's reference to Section 3 of CIDRA, this provision states that the question of whether a consumer has taken reasonable care not to make a misrepresentation is to be determined in the light of all the relevant circumstances, and the standard of care being that of a reasonable consumer. The relevant circumstances include the type of consumer insurance contract and its target market, any explanatory material or publicity produced, how clear and how specific the insurer's questions were, and in the case of a failure to respond to questions as to renewal or variation, how clearly the insurer communicated the importance of answering those questions or the consequences of failing to do so. A misrepresentation made dishonestly is always to be taken as showing lack of reasonable care.

With regard to the above, UKI hasn't argued that Ms J made a dishonest misrepresentation. However, I'm satisfied that the relevant initial question was clear in asking Ms J to confirm that the property she wanted to insure was her main residence which only she and her family occupied. Likewise, the post-inception documents, sent by UKI to the home address given by Ms J was clear. It stated, *'Please check the Home Proposal Confirmation and ensure that the information provided is correct. You must take care to provide us with accurate information. If any of these details are incorrect, no longer entirely accurate or if you are unsure about them, then please call us immediately as incorrect information could adversely affect your policy, including invalidating your policy and causing claims to be rejected or not fully paid.'* I consider that this does spell out the possible consequences of failing to update details where they are no longer accurate. The evidence shows however that, at the point of renewal, she wasn't living at the relevant property but at one of her other properties.

As to the return of furniture to the relevant property following decline of the claim, I'm persuaded, having read the case file that this was carried out with Ms J's agreement. I can't therefore say that UKI acted in an unfair or unreasonable manner in returning the furniture to that particular property. Nor am I persuaded that the removal of furniture in the first instance indicated acceptance of the claim. This would have been a standard and responsible step for an insurer to take to mitigate damage during the process of validating a claim. This wouldn't prejudice an insurer's ability to decline a claim once it had completed its usual investigations.

Finally, I note that UKI offered or paid £50 in compensation to Ms J for the initial delays in progressing initial investigations and inspections in relation to Ms J's claim prior to its decision to decline the claim and void the policy. I consider that this was a fair and reasonable response.

In conclusion, I appreciate that this will come as a great disappointment to Ms J, however, in all the circumstances, I consider that UKI acted in a fair and reasonable manner in relation to Ms J's claim and policy and I don't require it to do anything else.

My final decision

For the reasons given above, I don't uphold Ms J's complaint and I don't require UK Insurance Limited to do any more in response to her complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 28 October 2024.

Claire Jones
Ombudsman