DRN-5061535

The complaint

Mr and Mrs B complain that U K Insurance Limited trading as Direct Line (UKI) unfairly avoided their policy and refused to pay a fire claim under their home insurance policy.

What happened

The details of this complaint are known to all parties, so I won't repeat them again here. But, in summary, Mr and Mrs B purchased a property in 2021 which was part of a small development containing several houses. They incepted a home insurance policy which was underwritten by UKI. They took it out online through UKI's website.

In august 2023, their car caught fire which damaged their property, so they claimed. During the claim process, UKI said it found the external walls of the property to be constructed of Structured Insulated Panels (SIPs) which is a type of material that combines wood and foam.

UKI therefore said Mr and Mrs B answered a policy application question incorrectly about the external wall construction. And it considered this to be a careless qualifying misrepresentation, which entitled it to avoid the policy and refuse the claim.

Mr and Mrs B didn't think this was fair, broadly, for the following key reasons:

- They followed UKI's online guidance when answering the question to the best of their knowledge, and in good faith, and the application process was misleading.
- They were aware their property had a superior insulation known as SIPs, but thought this was set within the walls, and not the construction itself. And there are no signs of non-standard construction when looking at the property externally.
- Neighbours within their development also didn't disclose SIPs when incepting home insurance policies. And this demonstrates a reasonable consumer in the same circumstances would have given the same answer as they did during the policy application – using UKI's guidance.

Mr and Mrs B also raised concerns with the way UKI handled matters, between 21 August 2023 when they claimed to 27 September 2023, when it communicated its claim and policy decision. This was roughly a few hours before they were due to renew, and they've found it difficult to obtain alternative insurance. They have also said UKI took far too long to communicate this – having known about the SIPs construction once its agent visited the property shortly after they claimed, and they've had to stay with family and friends while trying to fund the repairs which has added to a distressing and upsetting experience.

UKI responded to the complaint on 31 October 2023. It maintained its claim and policy decision, but paid Mr and Mrs B £500 compensation for the service issues. As Mr and Mrs B remained unhappy, they asked our Service for an impartial review. I issued my provisional decision on 18 September 2024 which set out the following:

> "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.

But if a consumer does fail to take reasonable care, 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.

UKI has said it asked Mr and Mrs B during the policy application "What are the exterior walls mostly built of?", and they answered with "Rendered – brick" from a drop-down menu. UKI has said Mr and Mrs B failed to take sufficient care to establish the external wall construction and more should have been done by them to understand what SIPs are.

UKI has said Mr and Mrs B failed to take reasonable care not to make a misrepresentation. It considered this to be a careless qualifying misrepresentation, and it has shown it doesn't cover this type of construction (SIPs).

I've reviewed the application question which includes an icon a potential consumer can hover over to find more information about the question being asked. This says:

"Exterior walls are those you can see from the outside of the property. Please select from the list provided the material that best describes what your external walls are made of. If more than one material has been used, for example, brick and stone, please select the material most used. If your external walls are made up of a material not listed, please select 'other'.

Unsure?
Check your mortgage valuation or survey for the property, or ask a builder.

Definitions
Rendered properties
Rendering is a covering applied to external walls to improve their appearance; for example, pebble dash or a stone effect. An area of wall is often left exposed (usually near the ground) which will help you determine what the external walls are made of."

The reports available show the external walls were constructed of SIPs, so I'm satisfied the answer given by Mr and Mrs B to the policy application question was incorrect. So, I need to think about the information available to them at the time they made the application, what could they reasonably have known, and importantly, whether I think they failed to take reasonable care not to make a misrepresentation.

Having done so, I'm not satisfied Mr and Mrs B failed to take reasonable care for the following key reasons:

- Mr and Mrs B were cash buyers. They opted not to obtain a property survey as they have said they were purchasing the property from a well-established developer, and the property had a 10-year guarantee. So, it follows they had no report available to them when taking out the policy to rely on when being asked what the external walls were mostly built of.

- Mr and Mrs B have provided a copy of a sales brochure from when the property was new, in 2018. UKI have also provided a copy within its file submission of a sale brochure, and I've reviewed both. And I don't find this would have given Mr and Mrs B a reasonable indication their property was of non-standard construction. They have said they understood SIPs were a form of superior insulation set *within* the walls – and not the construction itself. The brochure UKI provided doesn't make mention of SIPs – rather, it refers to bricks and clay tiles.

- The brochure Mr and Mrs B provided says under heading "external" the following: *"Handmade bricks and tiles offer a traditional build whilst the SIPs inner core provides very high levels of insulation.".* Whilst this does mention SIPs, it also refers to bricks and a traditional build. So, I don't think Mr and Mrs B's consideration that their property was constructed traditionally from bricks (with render) with an inner core of insulation was an unreasonable one for them to make.

- Mr and Mrs B have also said the visible appearance of their property gave no reasonable indication it was of non-standard construction. They have said they answered the question in the way they did because they were guided by UKI to look at their property from the outside and provide the material that best describes what the external walls are mostly made of. They did so – and when they looked at the property externally, they saw rendered walls with an exposed brick base around the ground. I'm satisfied this was a reasonable conclusion for them to reach based on photos of the property I've seen prior to the claim-related damage.

- Further, within its claim notes, UKI has said it required the construction of the walls to be disclosed, and while there may be render and brick visible, this isn't what the walls are mostly made of. This suggests – in my view – UKI accept the visible appearance of the external walls from the outside are render and brick, but underneath that, the construction is SIPs. But its application question guided Mr and Mrs B to, in essence, look at the property from the outside, and best describe the material/s the walls were mostly made of.

- I've also set out above the standard of care under CIDRA is that of a reasonable consumer. So, in essence, what I need to think about is whether I'm satisfied a reasonable consumer in the same circumstances as Mr and Mrs B would have given the same answer. Mr and Mrs B have said neighbours within their development insured their properties – built by the same developer with the same build – without disclosing the construction of SIPs. That's because, like them, they also didn't consider there was any reasonable indication their properties were of non-standard construction. I've no reason currently to doubt Mr and Mrs B's testimony regarding the same – which has been plausible and consistent throughout. I find this demonstrates a reasonable consumer in the same circumstances as Mr and Mrs B would have answered the question in the same way for this reason, and the reasons I've mentioned above.

- Finally, I've noted comments from the report dated 16 October 2023 following a site inspection. Following an inspection of the property, the report said: *"It is a testament to the build system, both the render system and the SIP system*

that they have endured against such a violent event, and that the house has not been compromised any further than it has". This suggests not only did the SIP system prevent the property from being compromised further, but the render system also contributed to this. Therefore, it's more likely than not the construction of SIPs wasn't material to the loss which gave rise to the claim.

So, I'm currently not persuaded Mr and Mrs B failed to take reasonable care, which means UKI cannot take any action because it has no remedy available to it under CIDRA. Therefore, it follows that I intend to direct UKI to remove any reference of voidance or cancellation of this policy, reinstate it, and reconsider Mr and Mrs B's claim in line with the remaining terms. I also intend to require it to include simple interest on any settlement paid to Mr and Mrs B as part of the claim.

For completeness, I've also considered the service issues Mr and Mrs B faced. I acknowledge this has been a difficult time for them. I find much of their distress and inconvenience was the result of UKI's claim and policy decision, and I've set out above what I intend to direct UKI to do to put matters right in this respect.

But I also acknowledge Mr and Mrs B's loss of expectation during the claim process where the property was said to be made watertight, and a scope of works was drawn up, but the claim was refused, and the policy avoided later. They also had difficulty obtaining alternative insurance and had to stay with relatives while starting to fund the works required to put right the claim-related damage, amongst other things. As such, I've reviewed UKI's £500 compensation payment in line with our external guidance, which can be found here:

https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience

And, having done so, while I recognise the considerable distress, inconvenience, and disruption Mr and Mrs B have faced, I'm currently minded to say I think UKI's £500 compensation payment for the service issues is fair and reasonable. Therefore, it follows that I currently don't intend to require UKI to increase this.

My provisional decision

I intend to uphold this complaint and require U K Insurance Limited trading as Direct Line to:

- Reinstate Mr and Mrs B's home insurance policy.
- Reconsider the claim in line with the policy terms and include simple interest at 8% per year on any settlement paid to Mr and Mrs B as part of the claim. This should be calculated from four weeks from the date the claim was raised, to the date of settlement; and
- Remove any reference of voidance or cancellation of this policy from any internal or external databases."

Responses to my provisional decision

Both Mr and Mrs B and UKI responded accepting my provisional decision. UKI responded with the following comments which I've set out below.

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.

Within UKI's response, it made the following points which I've reviewed:

- It agreed to provide Mr and Mrs B with cover between the date the policy was avoided to when they obtained alternative insurance, on 10 April 2024.
- It agreed to reconsider the claim and include simple interest in line with my previous instructions. It said Mr and Mrs B will need to provide it with supporting information of all the works done and the invoices / banking information to support payments made regarding the same. I find that's reasonable.
- It has said Mr and Mrs B will need to pay the premium amount for the policy that was avoided as this was returned to them previously. I'm also satisfied that's reasonable.
- It agreed to remove any reference of voidance or cancellation of the policy from any internal or external databases. I think UKI should provide Mr and Mrs B with a letter confirming the same should they need to provide this information to any current or future insurance providers.

Putting things right

U K Insurance Limited trading as Direct Line must now do the following to settle this complaint:

- Reinstate Mr and Mrs B's home insurance policy.
- Reconsider the claim in line with the policy terms and include simple interest* at 8% per year on any settlement paid to Mr and Mrs B as part of the claim. This should be calculated from four weeks from the date the claim was raised, to the date of settlement; and
- Remove any reference of voidance or cancellation of this policy from any internal or external databases.

My final decision

For the reasons I've given above, my final decision is I uphold this complaint. I now require U K Insurance Limited trading as Direct Line to settle this complaint in line with my instructions above.

*If U K Insurance Limited trading as Direct Line considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs B how much it's taken off. It should also give Mr and Mrs B a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

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

Liam Hickey
Ombudsman