

The complaint

Mr C complains that U K Insurance Limited trading as Churchill avoided (treated it like it never existed) a home insurance policy he shared jointly with Mrs C and refused to pay his claim.

What happened

Mr C took out a home insurance policy online with UKI in June 2023. In November 2023 Mr C called UKI to ask about a possible claim for lost luggage. UKI discovered that Mr C had made previous claims which he hadn't disclosed when he bought the policy.

UKI said he'd answered the question it asked about any previous claims incorrectly. And it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid the policy, decline his claim because of this and keep the premium already paid. However, UKI made a business decision not to keep the premium, and provided Mr and Mrs C with a refund.

Mr C brought his complaint to us and our Investigator thought it shouldn't be upheld. They agreed there had been a qualifying misrepresentation and agreed it was deliberate or reckless and that UKI were entitled to avoid his policy and retain the premium he'd paid. They found that UKI had provided a more favourable outcome than it needed to for Mr and Mrs C as it had provided a refund of premium.

For incorrectly telling Mr C he had the option to cancel the policy, UKI apologised and paid compensation of £100. The Investigator thought this was fair.

Mr C doesn't agree and has asked for an ombudsman's decision. In summary he says he was living with depression around the time he applied for the policy, and had suffered bereavements of two close relatives. He doesn't agree with the classification of the misrepresentation. He says it wasn't deliberate or reckless.

So as Mr C doesn't agree, the case has been passed to me to decide.

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 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.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - 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 thinks Mr C failed to take reasonable care not to make a misrepresentation when he answered the following questions UKI asked when he applied for the policy:

“Have you or anyone living in the house made any home insurance claims or suffered any losses in the last 5 years?”

Mr C answered ‘0’.

UKI also asked;

“For how many years have you continuously held buildings insurance without any claims?”

Mr C answered ‘5’.

UKI asked; *“For how many years have you continuously held contents insurance without any claims?”*

Mr C answered ‘3’.

However, Mr C had made three previous claims in 2021 and 2022.

When UKI asked Mr C about the non disclosed claims, he said he hadn’t realised he hadn’t declared them. Mr C said he hadn’t received policy documents to check.

We asked UKI about this – as Mr C provided a copy letter which said UKI would send documents by post. Mr C said he called UKI to chase for the documents, but never received them.

UKI said Mr C had signed to receive his policy documents electronically when he applied for the policy. And it provided a recording of a call it received from Mr C a day after it issued the e- documents to him, where Mr C discussed queries he had with the policy wording.

So although I understand Mr C received a letter saying his documents would be sent by post, I don’t think Mr C was disadvantaged as it’s clear from his call that he had sight of his policy, and having read the wording, called UKI to discuss his queries.

I think the questions UKI asked Mr C about their previous claims and losses were clear. I don’t think Mr C took reasonable care when answering the questions because given the number of previous claims, and the dates, two of which were in the previous year, I think these were things a reasonable customer would know in order to answer these questions correctly. As he set up the policy in both his and Mrs C’s name, and Mr C wasn’t sure or had concerns about remembering, there was an opportunity for Mr C to check the answers he gave with Mrs C before submitting his application. And I think Mr C had a further opportunity to check the information he had provided was correct when he received the policy documents electronically.

A solicitor acting on behalf of Mr C says that the question UKI set out in a letter to Mr C dated 27 November 2023 says the question it asked about previous claims was for the past three years, which was incorrect. In any event, it doesn’t make a difference to the outcome. I say this because if the question had asked about three or five years, the non disclosed

claims were within both periods, so Mr C's answer means he failed to disclose three claims from 2021 and 2022.

So I've considered what UKI would have done had it known the correct information.

UKI has provided its underwriting evidence to show that had it known about Mr C's correct claims history, it wouldn't have offered him and Mrs C a policy. While we cannot share an insurer's underwriting criteria with customers as it is commercially sensitive, we can ask an insurer to share it with us, to ensure it has treated a customer fairly.

Having reviewed this information, I'm satisfied that UKI has treated Mr C and Mrs C fairly – and as it would any other customer in the same circumstances and this is a qualifying misrepresentation.

UKI can classify the misrepresentation as

- deliberate or reckless, or:
- careless

UKI has said Mr C's misrepresentation was reckless because it didn't accept the reasons Mr C gave as to why he didn't disclose the previous claims. Mr C said he thought he had declared them and couldn't remember.

I'm sorry to read about Mr C's circumstances. But I agree that Mr C's misrepresentation was reckless because I think the questions were clear and I think if Mr C was unsure of his memory or in any doubt, he had further opportunities to check before and after submitting his application.

I understand Mr C feels his circumstances haven't been properly considered. He's provided some medical evidence to show he was undergoing counselling treatment since 2022, and that the impact of losing two close relatives in early 2023 had an effect on his memory.

As the Investigator explained, CIDRA says under the section 'reasonable care'

"Whether or not a consumer has taken reasonable care not to make a misrepresentation is to be determined in the light of all the relevant circumstances."

It goes on to say;

"The standard of care required is that of a reasonable consumer: but this is subject to subsections (4) and (5).

(4)

If the insurer was, or ought to have been, aware of any particular characteristics or circumstances of the actual consumer, those are to be taken into account.

(5)

A misrepresentation made dishonestly is always to be taken as showing lack of reasonable care."

As UKI wasn't aware of Mr C's individual circumstances at the time when he applied for the policy, I can't say that it acted unreasonably in avoiding his policy for deliberate or reckless misrepresentation based on the standard of care of a reasonable consumer.

As I'm satisfied Mr C's misrepresentation should be treated as reckless, I've looked at the actions UKI can take in accordance with CIDRA. UKI can avoid the policy and keep the premiums.

In this case, UKI made a business decision to return the premiums paid to Mr and Mrs C. As this is a more favourable outcome than UKI could have taken, I think it has acted in a fair way here.

UKI has added an internal marker to not offer products in the future to Mr and Mrs C. I understand in error UKI sent renewal documents for another product to Mr C. And I understand Mr C doesn't agree that UKI's approach is fair to him and Mrs C as he feels it is disproportionate. He asked if UKI applied this approach to customers who have carelessly misrepresented.

In response, UKI confirmed this is its business approach where a policy has been avoided, irrespective of how it classified the misrepresentation.

We cannot interfere with a business' commercial decision not to offer products to a customer for these reasons. And as UKI has confirmed this would have been the outcome if the misrepresentation had been classified as careless, I don't think it makes a difference to the outcome.

UKI incorrectly told Mr C that he had the option to cancel the policy rather than UKI avoiding it. But a few days later it told Mr C this option wasn't available. For the error it made, and the false sense of hope it offered Mr C for this period of time, UKI paid £100 compensation. I think this is a fair and proportionate sum to reflect the distress and inconvenience caused by UKI's error here.

I think UKI's actions are fair, reasonable and in line with CIDRA. And so this means I'm not upholding the complaint.

My final decision

For the reasons set out above, I've decided not to/to uphold Mr and Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 27 January 2025.

Geraldine Newbold
Ombudsman