

The complaint

Miss N complains that Advantage Insurance Company Limited (Advantage) unfairly declined her claim and avoided (treated it as though it never existed), her home buildings and contents insurance policy.

What happened

In February 2023 Miss N discovered that a garage she used to store household items had been broken into. A number of items were missing, and so she contacted Advantage to make a claim. She says she sent the information she was asked to provide, which included photos, receipts, and correspondence with the police. Miss N says email and phone correspondence with Advantage then continued for over 11 months.

In November 2023 Miss N says an investigator from Advantage interviewed her over the phone. He confused her causing her to muddle dates. She says her memory has been affected having been ill with the coronavirus. Following this call her claim was declined and her policy avoided back to inception. Advantage told her this was because she'd had extensive building works ongoing at the time the policy was taken out. Whereas in her application she'd said this wasn't the case. Miss N didn't think she'd been treated fairly and complained to Advantage.

In its final complaint response Advantage says that it was told that extensive building work wasn't completed at Miss N's home until June 2023. It says the policy inceptioned on 17 January 2023. During the online application Miss N was asked if building work was in progress. Advantage says she replied "no" to this question, which was confirmed in the statement of fact document it sent to her.

Advantage says that under the Consumer Insurance Act 2012 Miss N must answer all questions fully and accurately. Had it been aware there was ongoing building work, it says it wouldn't have offered cover at all. It says this is why it declined the claim and avoided the policy.

Miss N didn't think Advantage had treated her fairly and referred the matter to our service. Our investigator upheld her complaint. He didn't think Miss N provided inaccurate information when taking out her policy. He thought that when interviewed about her claim she'd confused the dates when the building work was actually completed, which was in 2022. As this was before the policy inceptioned our investigator says Advantage should reconsider Miss N's claim and pay her the value of the stolen items. This is in addition to 8% simple interest on the settlement payment, and £400 compensation for the stress and inconvenience it caused.

Advantage didn't agree with this outcome. It maintained Miss N had provided clear information that there was ongoing buildings works at the time the policy inceptioned. Because it didn't agree it asked for an ombudsman to consider the matter.

It has been passed to me to decide.

I issued a provisional decision in October 2024 explaining that I was intending to not uphold Miss N's complaint. Here's what I said:

provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so my intention is to not uphold this complaint. I'm sorry to disappoint Miss N but I'll explain why I think my decision is fair.

The relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). Under CIDRA Miss N must take reasonable care not to make a misrepresentation when taking out insurance. If Miss N doesn't do this, CIDRA allows an insurer to take certain actions, assuming the misrepresentation is a qualifying one. A qualifying misrepresentation is where the insurer wouldn't have provided cover at all, or it would only provide cover under different terms.

To understand whether Miss N made a misrepresentation I've considered the questions she was asked when applying for her policy online.

Miss N used a comparison website to apply for her insurance. She was asked to respond to the following statement, "There is no building work in progress". Two boxes with agree or disagree were set out below this statement. Miss N selected "Agree". There is an explanation box under the statement that says, "Why we need to know". It explains that building work presents a higher risk to an insurer. This means the insurer may want to ask further questions which could affect the premium or possibly mean no cover is offered.

Miss N was sent a document entitled, "Your Statement of Insurance" at the time the policy was agreed. This says Miss N should read the information carefully and inform Advantage immediately if any of the details are incorrect.

I think the question about building work was clearly written. Miss N confirmed there were no building works ongoing at the time of her application. She didn't respond to Advantage when she received her policy documents to explain this was incorrect. From this Miss N was clear that the information she provided was accurate.

I've listened to the first notification of loss call in February 2023. Miss N explained that items were moved to the garage about one and a half years ago when her house was being renovated. There was no further discussion around building works or when these were instigated or completed.

I've also listened to the validation interview with Miss N, which was recorded on 21 November 2023. I note that this was sometime after the loss had been reported. From the records there was a delay in information being provided by Miss N in support of her claim.

The records show that because of this Advantage contacted her to query if she wanted to continue with her claim. So, although I note what Miss N says about the time elapsed before she was interviewed, the records indicate this was at least in part due to her delays in providing information.

During the call Miss N was asked various questions about the loss. Including information about the garage she rents to store her belongings. She was also asked whether the police attended and questions about the items that were stolen. Miss N explained that work was being done on her property until 2023. She says work had started in 2020 with a delay

during the Covid restrictions. She says the downstairs was finished three to four months ago so she could finally have visitors around and get people in by June 2023.

In this call Miss N clearly states that building works continued well into 2023. She refers to the works having finished three to four months ago. I don't think this is a case of being confused about a date. Miss N recalled how many months ago the works had finished as this allowed her to have visitors. I think Advantage's comments are persuasive that Miss N didn't appear confused during this call and was able to provide clear information about the building works and when they were completed.

Miss N also provided an email in which she says the building works didn't complete until 2023. I note what she says in her submissions to our service. More specifically, that when she sent this email she immediately identified that she'd put the wrong completion date. However, there's no record to show that she contacted Advantage to inform it of her mistake.

Miss N says items were moved to the garage whilst work was ongoing. She says the work completed in 2022. However, the garage was still full of items when the loss was reported in February 2023. I think Advantage makes a fair point that it's not clear why these items remained in the garage. Miss N confirms she rented the garage for the purpose of storing her belongings. Advantage comments that when the work was complete it would make sense to return the items to the main property.

Based on this evidence I'm satisfied that Miss N made a misrepresentation. I asked Advantage to provide evidence to show that it wouldn't have offered cover had correct information been provided. In response it provided evidence and an explanation of its underwriting criteria. This is considered commercially sensitive so I can't share it. But I'm satisfied that this shows it wouldn't have provided cover had it known about the building works at Miss N's property. This means the misrepresentation is a qualifying one. Under CIDRA this means Advantage can decline Miss N's claim and avoid her policy back to inception, which is what it did. In these circumstances I don't think this was unfair.

Under the CIDRA rules Advantage must confirm whether it believes Miss N's misrepresentation was careless, reckless, or deliberate. It concluded this was a careless misrepresentation on Miss N's part. This means it must refund her premiums. If it hasn't already done this, it should now do so.

Having considered all of this I don't think Advantage treated Miss N unfairly when it declined her claim and avoided her policy in line with CIDRA. So, I can't reasonably ask it to do anymore.

I said I was intending to not uphold this complaint.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Advantage responded to say it had no further comment to make.

Miss N responded to say the items that were stolen came from her 'lock-up' not from her house. She says the outbuilding had its own cover.

In a further email Miss N says Advantage should cover half of the claim amount as she hadn't understood the wording of her policy.

In her final email Miss N says her policy schedule says she should advise Advantage of any structural work. But she says the work she had done was cosmetic not structural.

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.

Miss N was asked prior to her policy inception to confirm that there was no building work in progress. She agreed with this statement.

However, the evidence I've seen shows extensive building work was ongoing. So, Miss N answered this question incorrectly. As discussed in my provisional decision, she made a qualifying misrepresentation which means Advantage is able to decline her claim and avoid her policy in line with CIDRA.

I note Miss N's reference to carrying out cosmetic not structural work. But Advantage's underwriting criteria confirms no cover would be offered in these circumstances. Similarly, I note what she says about not understanding the policy wording. But the question she was asked about building work was clear. From the evidence I've seen Miss N knew that building work was ongoing and answered this question incorrectly.

I acknowledge what Miss N says about the garage being a separate building. But if she hadn't made a misrepresentation Advantage wouldn't have offered cover at all. So, there was no cover for the items taken from the garage/lock-up.

I'm sorry Miss N isn't covered for her loss. But I haven't seen cause to change my decision.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 15 January 2025.

Mike Waldron
Ombudsman