

The complaint

Mr and Mrs M complain that Accredited Insurance (Europe) Ltd (“Accredited”) unfairly declined a claim for water damage due to an error in the address that was passed on by their broker when setting up the policy.

What happened

Mr and Mrs M purchased the house next door to theirs when it became available. They initially intended to renovate it to either rent it out or to move in, and they ultimately used it for a variety of purposes.

They took out an insurance policy through a broker, but it transpired that the broker had provided the incorrect address when passing on information to Accredited. As a result, Accredited ended up setting up the policy for the first property and not the second.

When there was an escape of water at the second property, Mr and Mrs M contacted Accredited to claim on their policy, thinking that the property was insured. Accredited told them it didn’t cover that property, so it declined the claim.

Accredited also said it classed the property as unoccupied, and as a second home. It said that it wouldn’t have offered cover had it known of the property’s intended use. Unhappy with this, Mr and Mrs M made a complaint. In its response to the complaint, Accredited said it believed it was insuring the first property, but that it was clear the broker had made a mistake and the first property had dual insurance. So it felt it was therefore appropriate for the claim to be declined and the policy cancelled. Premiums were also refunded.

Mr and Mrs M didn’t accept Accredited’s response, so they referred their complaint to this service. Our Investigator considered the complaint and thought it should be upheld. She said Accredited should reinstate the policy and reconsider the escape of water claim, because she had concluded that it wasn’t fair to consider the house as a second home or to consider it unoccupied, due to its use as an extension of the family space.

Accredited didn’t agree with our Investigator, it said a misrepresentation was made when the policy was taken out. And that it wouldn’t have offered cover for the second property had it known about the occupancy status of it. But it made clear that the reason the claim was declined was because there was no policy providing cover for that property. Because an agreement couldn’t be reached, the complaint was passed to me to decide.

I issued my provisional decision on 15 November 2024 and said I was minded not to uphold the complaint. I’ve included an extract of my provisional decision below:

“I agree with our Investigator that the newly purchased house should not have been classed as a second home, or as unoccupied, based on the evidence I’ve seen of its regular use. However, I’m not persuaded that Accredited is responsible for Mr and Mrs M’s loss.

It’s not in dispute that the broker caused the initial error in passing on the incorrect

property address to Accredited when the policy was taken out. I appreciate that the broker's error didn't come to light until the escape of water claim was declined, but this doesn't mean that Accredited has unfairly declined the claim.

I'm satisfied, based on what I've seen so far, that Accredited didn't provide cover for the newer property, and so the claim wasn't valid. And from the information available, I'm persuaded that the error in insuring the incorrect property wasn't Accredited's fault.

It follows therefore, that I don't currently intend to uphold the complaint. And I'm not minded to require Accredited to do anything differently, because I don't consider it to have declined the claim unfairly."

Accredited didn't respond to my provisional decision. I'll assume that's because it agrees with what I said. Mr and Mrs M did respond – through their legal representative – who said that although a mistake was made in setting up the insurance contract, this was no more than a clerical error and the remedy of rectification should apply.

The representative has further stated that it was the mutual understanding of both parties that the intention of the insurance contract was to insure the second property and not the first which was already insured with another insurer. It has said that Accredited wasn't disadvantaged by the mistake as it received an appropriate premium for the risk.

And Mr and Mrs M's representative has highlighted that when the mistake came to light there was an informal expectation that it could be rectified, but that those discussions came to an end once the insurer's concerns around occupancy arose.

I've thought carefully about the submissions I've received and have reached a final decision regarding this complaint.

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.

Having done so, I'm afraid I'm not upholding this complaint. I'll explain why.

Mr and Mrs M's representative's comments refer to the legal remedy of rectification to correct clerical mistakes in contracts. But in order for the mistake to be rectified, it has to be determined that the contract doesn't reflect both parties' intentions.

In this case, Accredited has said it would not have insured the second property, in which there was an escape of water, because it wouldn't have considered the property to be Mr and Mrs M's permanent residence if it had known how the property was used. So I don't think Mr and Mrs M's legal representative is right when he says the mistake in insuring the wrong property was merely a clerical error which led to the insurance contract not reflecting the true intentions of the parties. I'm satisfied it would not have been Accredited's intention to insure the second property if it had been provided with accurate information about its use.

I said in my provisional decision that I didn't think the second property could have fairly been described as "unoccupied" based on the information I'd seen pertaining to its regular use, and I also didn't think it could be classed as a "second home" for the same reason. I accept that it was likely used more than an unoccupied property or a second home would've been.

But this doesn't mean that Accredited would've insured the property had it known it wasn't

where Mr and Mrs M and their children spent most of their time or stayed overnight. I say this because Accredited has provided its underwriting criteria which shows that it would only have insured a customer's permanent residence.

Our Investigator felt that the usage of the property was similar to that of a "weekday home" – which, for the purposes of underwriting a policy, Accredited would've treated as a permanent residence. But I don't agree that the use of Mr and Mrs M's second property was like that of a weekday home. A weekday home would be slept in overnight, for the greater part of the week, so it would be the main home in which the majority of time would be spent. Mr and Mrs M have said that they would use the second property in a variety of ways, for example it had a gym, a classroom, a room for arts and crafts, and guest bedrooms, among other things. But Mr and Mrs M and their children did not regularly stay there overnight. So whilst I can appreciate why a weekday home would be classed as a permanent residence, I don't think Mr and Mrs M's second property was used in a manner consistent with a weekday home. So I don't think it would be right to class it as their permanent residence.

And although I don't think it's fair to consider the property to have been "unoccupied" – as it was regularly used by the family and by guests – this still doesn't mean it was the family's permanent residence, or "lived in" by the family, in line with the usual meaning of this term for the purposes of underwriting an insurance policy.

Mr and Mrs M have said that in addition to the second property being used most days by their family, an Uncle would frequently stay there overnight. So I've looked at whether that changes things according to the policy.

The Statement of Facts highlights that a requirement of cover is that *"the property will be lived in by you from the inception or renewal date of this policy and will not be left unoccupied for any period longer than 30 days"*. The Statement of Facts also specifies the type of occupancy as "Permanent Home".

The term "lived in" is referred to in the policy as holding the meaning that the property is being slept in for more than one consecutive night.

"You" refers to the person(s) named in the schedule as the policyholders, (in this case Mr and Mrs M).

"Home" is also defined in the policy as *"the residential property where you live at the address shown on the schedule...used for domestic and clerical business purposes only"*.

"Family" means *"your husband, wife, civil or domestic partner, children or relatives (other than tenants or paying guests) permanently living with you."*

Where a term isn't defined, I've used the ordinary everyday meaning of that term. For example, I've taken the word "permanent" to mean *"lasting, not temporary" or "continues without changing or ending, in a way that is not brief or temporary"*.

The dictionary I've used also specifies that a person's "permanent home" or "permanent address" is the one at which they spend most of their time, or return to after having stayed at other places.

Whilst Mr and Mrs M have said that an Uncle would frequently sleep at the property overnight *"every 2-3 weeks for the entire weekend"*, the policy and Statement of Facts clearly require the policyholders or family members who live with them, to reside permanently at the insured address. Even if the definition of "You" was extended to include "Family", the Uncle staying at the property frequently wouldn't meet this definition, because

he wasn't living there permanently. So the situation described doesn't align with the requirements of cover as set out in the Statement of Facts.

And given the definitions I've referred to, I don't consider there was a degree of permanence to the way the property was lived in by the family either, (specifically, slept in overnight), because the policyholders – as I understand it – would return to their main residence to sleep, if they'd spent time at their property next door. So I don't consider the use of the second property to have been akin to that of a permanent residence for the purposes of meeting the requirements of the policy.

Accredited hasn't said the policy was voided in accordance with the remedies available under CIDRA. It says it cancelled the policy because the property was already insured by another insurer and there was no contract of insurance in place for the property Mr and Mrs M had intended to insure. But, because Mr and Mrs M's representative has said this was no more than a clerical error and the mistake could have and should have been rectified, I've still considered whether the policy would've been offered at all if the use of the property had been made clear to Accredited.

Accredited has shown that had the questions around occupancy been answered accurately at the time the policy was taken out, then it would not have offered a quote, because of the differences in how the two properties were used. One was lived in by the family, meeting the requirements of a permanent residence under the policy terms, and the other was not slept in overnight and could therefore not be classed as the family's permanent residence. Accredited has confirmed, with supporting evidence, that the use of the property as described by Mr and Mrs M, presented a risk it would not have been willing to insure. And I can understand generally why Accredited would assess the risk posed by insuring a property other than a permanent residence to be greater than the risk of insuring a customer's permanent residence.

I've also looked at the information Accredited asked for, and I can see that the list of options provided at renewal included other types of occupancy which would've been more suitable in this instance. So I consider the incorrect option to have been selected. Whilst it is unfortunate that there was an error, I'm satisfied that – in line with our usual approach to these types of cases – it wouldn't be fair or reasonable for Accredited, a party which didn't make the mistake, to be responsible for the loss incurred.

I empathise a great deal with Mr and Mrs M in this situation. I've no doubt they've been honest and forthcoming about the use of their properties and have provided ample evidence in support of their claim and complaint. However, I'm afraid that the mistake that was made in insuring the wrong property wasn't Accredited's mistake, and it's shown that had it been given the correct information, it wouldn't have offered cover.

So whilst I appreciate this will be disappointing for Mr and Mrs M, it follows that I do not uphold this complaint.

My final 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 Mr M and Mrs M to accept or reject my decision before 2 January 2025.

Ifrah Malik
Ombudsman